

The Contagious Diseases Acts — Testimony

By John Stuart Mill

(1871)

John Stuart Mill testimony to the Royal Commission on the Administration of the Contagious Diseases Acts. Mill argued that the Acts violated the principle of the 'security of personal liberty' for all women, including the prostitutes at which the Act was aimed.

The Contagious Diseases Acts

William Nathaniel Massey: *Are you acquainted with the Acts of Parliament which are the subject of inquiry by this Commission?*

I have a general acquaintance with them.

Have you any practical knowledge of the working of them?

No practical knowledge.

Then any opinion you express with regard to these Acts, refers to the principles on which they are founded?

Yes; the general principles of legislation. I have not studied the details.

The principal Act now in force is entitled "An Act for the better prevention of contagious diseases at certain naval and military stations." And are you aware that the policy which dictated this legislation in the first instance, was a desire to maintain the health of soldiers and sailors, whose physical efficiency was reported to be very seriously affected by the disease which they contracted at garrison and seaport towns, those towns and garrisons being the resort, in a peculiar manner, of common prostitutes?

Yes; I am aware of that.

Do you consider that such legislation as that is justifiable on principle?

I do not consider it justifiable on principle, because it appears to me to be opposed to one of the greatest principles of legislation, the security of personal liberty. It appears to me that legislation of this sort takes away that security, almost entirely from a particular class of women intentionally, but incidentally and unintentionally, one may say, from all women whatever, inasmuch as it enables a woman to be apprehended by the police on suspicion and taken before a magistrate, and then by that magistrate she is liable to be confined for a term of imprisonment which may amount, I believe, to six months, for refusing to sign a declaration consenting to be examined.

The Act of Parliament in express terms applies only to common prostitutes, plying their trade as prostitutes within the protected districts. The police have express instructions to confine their action to the women specified in the Act. We have it in evidence before us that those orders have been most carefully obeyed by a select body of police detached upon this particular duty. In point of fact, I do not know whether that would make any difference in your opinion. The Commission, I may say, are satisfied that no practical abuse of the Act has taken place by the police; that in fact, women who are not intended by the Legislature to be subjected to these provisions have not been molested by it. We so far qualify that by saying it is possible that in some particular instances the suspicion of the police may have rested upon women who are not within the description of common prostitutes, but

practically the Act has been carried out with great care. Is your objection confined to the possibility of a modest woman being brought up under these Acts?

That is a very great part of my objection. Although I am quite aware that the Act only authorises the apprehension of prostitutes, still a discretion must necessarily be left in the police to prevent the entire evasion of the Act: and I have understood that it is held by its supporters, medical men and others, that the powers must be very considerable if the Acts are not to be very seriously evaded. What number of cases there have been in which modest women, or women at any rate not prostitutes, have been apprehended by the police on suspicion, I do not know, but it appears to me that the police have that power, and that they must have the power, it is impossible to enforce the Acts unless they have the power, the Acts cannot be made really effectual unless those powers are strengthened. But in any case it seems to me that we ought not to assume, even supposing that no case of abuse has been found out as yet, that abuses will not occur. When power is given which may be easily abused, we ought always to presume that it will be abused, and although it is possible that great precautions will be taken at first, those precautions are likely to be relaxed in time. We ought not to give powers liable to very great abuse, and easily abused, and then presume that those powers will not be abused.

What power do you refer to?

The power of apprehending women on suspicion, and then requiring them to enter into engagements subjecting themselves to examination.

Then setting aside the tendency to which these Acts are liable in their execution of invading the liberty of modest women, do you consider it objectionable in itself that the Legislature should make provision for the periodical examination of common prostitutes who let out their bodies for hire?

I think that it is objectionable. If any penalty is to be imposed, and this must be considered a penalty, for being a common prostitute, she ought to have power to defend herself in the same manner as before any ordinary tribunal, and of being heard by counsel, in order to prove that she is not a prostitute if she can. There are great numbers of prostitutes, I believe in this country, certainly in foreign countries, who are not registered, and the effect of the examination which the Act requires, and similar examinations which are required in foreign countries, is said to be, and I believe with a great deal of truth, to lead to a great amount of clandestine prostitution, and the Acts therefore are not effectual unless clandestine prostitution is touched also

The provision of the Act is this, that a woman shall be permitted, if she thinks fit, to acknowledge herself to be a common prostitute upon paper, that is called in the Act a voluntary submission, and she may deposit that in the hands of the police or the authorities of the hospital, and in pursuance of that submission she is examined and subjected to the same examination with regard to periodical attendance as if ordered to attend before the magistrate; the alternative being that if she declines to sign a voluntary submission, she may be taken before a magistrate, and the question whether she is a common prostitute, will be a question for the magistrate to try. She may be heard by counsel, and the only difference between that mode of trial and the ordinary mode of trial is the absence of a jury. She is tried, in fact, by a tribunal analogous to that which has been created by recent legislation in an Act called the "Criminal Justice Act," which in fact merely extends summary jurisdiction which already obtained in this country. Do I understand you to say that you think the protection of a jury is necessary in such a case?

I have not considered that subject, but I think all the protection, which is necessary in other cases of judicial investigation would be necessary in this. There can be

hardly any more serious case to the person concerned than that of being charged with being a prostitute, if she is not really so. With regard to the first part of your question, supposing that her declaration of her being a prostitute is voluntary, and that her submission to examination is strictly spontaneous on her part, I have nothing to say against it then, but I do not think it is the business of Government to provide the means of such examinations.

To follow up that, supposing a woman had voluntarily submitted her person to examination, and her person was found to be diseased, would you consider it an unjustifiable violation of her liberty if she was sent to hospital, and detained in the hospital against her will until she was cured?

I should think the objection less strong than in the other case, but I still think it objectionable because I do not think it is part of the business of the Government to provide securities beforehand against the consequences of immoralities of any kind. That is a totally different thing from remedying the consequences after they occur. That I see no objection to at all. I see no objection to having hospitals for the cure of patients, but I see considerable objection to consigning them to hospitals against their will.

The condition which I took the liberty of putting to you was the voluntary submission of the women?

Yes.

Upon that voluntary submission the woman is found diseased. Now the woman being found diseased and being a common prostitute, upon her voluntary submission the law assumes the right of sending her to a hospital, and detaining her in that hospital, until she is no longer in a condition to communicate contagion. Do you think that a warrantable violation of the woman's liberty, which is the first question? Do you consider that a proper course for legislation to take?

I do not consider it a violation of the woman's liberty in that case, because she would know beforehand to what she would subject herself. If she voluntarily underwent this examination, she might well be made to undertake that if she was examined and found diseased, she should consent beforehand to go to the hospital, and be there detained until cured; therefore, on the score of personal liberty, I have no objection to it. But I have a still remaining objection to the Government undertaking, even on the solicitation of the parties concerned, to provide beforehand the means of practising certain indulgences with safety. Of course the objection on the ground of personal liberty does not occur in that case, but the other objection does. It applies to this case as much as the other, I think if a woman comes and asks to be examined and asks it to be ascertained that she is in a healthy condition, and to be submitted to treatment until she is healthy in order that she may be fitter to follow a certain profession, the State is in fact going out of its way to provide facilities for the practice of that profession, which I do not think the State is called upon, or can without considerable disadvantage undertake, to do.

Would your objection be modified by this consideration. It is in evidence before this Commission, and we will assume for the purpose of your answer that it is proved to your satisfaction that the contagious disease extends far beyond the guilty persons, and may be communicated to innocent wives, and be transmitted to innocent children?

That opens another point on which I should like to express an opinion. Of course I understand it is not the object of the Act of Parliament to afford facilities for indulgence. The object of the Act is not to protect those who voluntarily seek indulgence, but to protect the innocent from having these diseases communicated to them; that I understand to be the object. Now a woman cannot communicate the

disease but to a person who seeks it, and who knowingly places himself in the way of it. A woman can only communicate it through a man; it must be the man who communicates it to innocent women and children afterwards. It seems to me, therefore, if the object is to protect those who are not unchaste, the way to do that is to bring motives to bear on the man and not on the woman, who cannot have anything to do directly with the communication of it to persons entirely innocent, whereas the man can and does. If you ask whether I think it possible to bring motives to bear on the man, I think there are various ways in which it may be done. In the first place, the same degree of *espionage* which is necessary to detect women would detect also the men who go with them, because very often they are detected only by the circumstance of being seen to go into certain houses with men. In that case, if the women can be laid hold of, the men can also, and be obliged to give an account why they are there. But without the exercise of *espionage* on either men or women, there are other means which can be had recourse to; very severe damages in case a man is proved to have communicated this disease to a modest woman, and in the case of his wife, divorce as a matter of right; I think that a stronger case in which to apply the remedy of divorce can hardly be conceived.

Supposing for a moment that the enactment in law making it penal to communicate the disease to another person was objectionable on the ground that it would lead to extortion, and that a wife so affected would not be able to overcome all those influences which her own affections have over her to induce her not to take the extreme step of seeking divorce, what remedy would you provide for the innocent children?

The evil could only reach the children through the wife. The unborn children could only be infected by the mother being first infected. If it was proved that a man had been the means of communicating to his wife, she being a modest woman, or to his children, any of these diseases, the law should grant the woman a divorce, and compel the man in proportion to his means to pay very heavy damages to them for their support apart from himself. That, in my opinion, is what the law ought to do in the case. I quite see there would be often great difficulty in enforcing it; probably it would only be enforced in a certain proportion of cases, and very likely not in the majority of cases, but still the knowledge that it could be enforced would operate as a considerable check on the evil; and even the fact that the law declared this a very great crime, not only rendering the person who committed it subject to heavy penalties, but deemed so serious as to warrant the dissolving of the marriage tie, the mere effect of placing its mark on the conduct in this way would have very great influence, and would make this crime be considered, as in truth it is, one of the gravest a man could possibly commit.

Rev. John Hannah: *Would you think it worth while to make an effort to stop it, viewed simply as a plague?*

That is, of course, a question to be considered, but I have heard and read that many medical men, and other strong supporters of the Act, think it cannot be made effectual enough to stamp out these diseases unless it is made much more strict than it is, consequently much more oppressive to women, and still more liable to abuse, besides which I have understood that several medical men who were warm supporters of the Acts nevertheless think it impossible for the Acts to be made to that degree effectual, or any degree approaching that, unless men are subject to it as well as women, and the reason they do not propose this is because they do not think that men would consent to it.

Confining you to the one point of detention, I think I gather your objections to it arise from collateral considerations which admit of removal. I mean the consideration that the detention is simply to facilitate an immoral purpose, an objection which you dwelt upon, did you not?

It seems to me always liable to that objection, even if it is not liable to others.

Still, is not the policy of detention separable from what is clearly a bad reason, viz., to make sin safe?

I do not see how it can be separated. I do not see how that which makes illicit indulgence of that sort safe, or is supposed to do so, can be prevented from giving some degree of encouragement to it, though far, I know, from the intention of the Act.

The point, I apprehend, is really this; in case it is really a plague, differing only from other plagues by the intermixture of the moral element, then is not the Legislature justified in the interests of the innocent in endeavouring, so far as it can, to stamp it out, even if there is no hope of complete success?

I should say this question is very much affected by the degree of hope there is of complete success. It seems to me there ought to be a very good prospect of complete extirpation to justify anything of that kind, and I do not understand that such hope is entertained by those who are now most in favour of the Acts.

Sir Walter James: *You mentioned that personal examination of men and women was a degrading thing, and in itself illegal?*

I did. I think it is exceedingly degrading to the women subjected to it, not in the same degree to men; therefore there is more reason that if it is applied at all it should be applied to men as well as women, or if not to both, rather to men than to women. Men are not lowered in their own eyes as much by exposure of their persons, besides which it is not a painful operation in the case of a man, which I believe in the case of a woman it often is, and they very much detest it.

With regard to the cost of these Acts, I understand on the continent these Acts are self-supporting, are you aware of that? are you aware that such is the case?

I am not aware whether it is so.

Is it your opinion that it would be right and just that those persons for whose safety these Acts were passed should pay for them?

It depends on who those are who are affected by the Acts.

Should you consider it more just that they should pay for it by licenses as on the continent, or that the British taxpayer, the poor man should pay for it?

It seems to me that all the objections which exist against the Acts, exist in an extreme degree against licenses, because they have still more the character of toleration of that kind of vicious indulgence, than exists under the Acts at present, or can exist in any other way.

I think on this point you will agree with me that licenses should be paid for by prostitutes themselves, and the brothel-keepers, rather than as in the present case by the English people?

If the thing was really justifiable on the ground on which it is defended, namely, as a great sanitary measure for the protection of all classes, I think it would be very fair that the English people should pay: but it is not professed, and could not be with truth asserted to be the object of these Acts, to protect persons in vicious indulgence

or to protect the class of prostitutes. The strongest argument for the Acts has been the protection of those who are liable to take the disease without any voluntary exposure to it on their own part.

But supposing the opposite to be the case, would not the hardship of the case be greater, that is, that the innocent should pay the cost of these Acts rather than the guilty?

I should think such considerations of such extremely small importance compared with the general bearing of the Acts, that I should think them hardly worth regarding. The very expense in any case would not be great.

But the expense would be very considerable if extended to other classes?

If applied to the whole population the expense no doubt would be very much greater.

Would you consider, if applied to the whole population, it would be a justifiable subject to tax the people for?

I think it would; I do not think it belongs to the class of measures which, if justifiable at all, it would be unjust to make a charge on the whole community. The health of the community is a subject now considered, I think with reason, to be within the province of Government. But I do not think this consideration material in comparison with the inconvenience that I see in the fact, that the expense could not be charged on the prostitutes themselves without in a manner licensing their profession. Moreover it is not the prostitutes themselves mainly who are protected, but their customers, and I do not see how you can get at them especially to make them pay. You can make prostitutes pay, but you cannot make those who frequent them pay.

Undoubtedly you can according to the principles of political economy, by making a prostitute recoup by charging a larger sum to customers, because we have heard in evidence that these registered women charge a higher price than the others. A gentleman said the officers gave a higher price to those licensed women than the others, so that you see in that case the cost would not fall upon the woman but upon her customers?

In that case this particular objection fails, but the objection is still unanswered that it involves special licensing of persons to practise that profession.

Do you think that evil is at all avoided by the present Acts?

By no means. I think one of the objections to the present Acts is that they do not avoid that evil, but still they are not attended with so much of it as the licensing system would be.

You are aware that a woman has an order to attend the next examination?

I am.

And that it is their custom to show their tickets?

Yes; that comes very near to the licensing.

Can you draw a distinction between it and licensing?

There is hardly any distinction. It makes some difference that it is not called a license. That makes a considerable difference in the feeling about it, not by the public, but by the women themselves.

We have strong evidence that they are considered equivalent to it?

That may very possibly be the case.

Do you see a substantial difference between medical examinations under these Acts, and the continental system?

I do not see any substantial difference. It seems to me that the same objections apply to both.

Except that it is applied to a smaller population here, and that on the continent it is applied to all?

More extensively.

Rev. Frederick Denison Maurice: *Supposing the whole of these Acts were repealed so far as regards the military and naval population, so that the whole purpose to supply prostitutes for them was taken away, would you then think that there might be hospitals for this purpose established by Government; would you see any objection to such hospitals being under Government control?*

I do not see any reason. I by no means wish that there should not be hospital accommodation for those cases to the utmost extent for which it may be required. But I think the objection that applies to the Acts would apply in some degree to having hospitals for this express purpose. The great defect now is that these patients are not admitted into most hospitals. It would be desirable that the restrictive regulations which exclude them from all except a few hospitals should be removed in some way or other, and hospital accommodation provided for this disease in the same way as for others, but not by Government taking that charge on itself, which would be liable to the same objection as licensing prostitutes.

Do you not think the Government ought to exert itself for the purpose of putting down this disease?

I think the Government ought, so far as it can, to exert itself in putting down all diseases—this among the rest, but I certainly do see some degree of objection to anything special being done by the Government distinguishing between this and other diseases in that respect.

Then if the Act really fulfilled its purpose, and was for all contagious diseases, by there being one department in each hospital, you would not think that objectionable?

No. Supposing the opinion of Parliament was that contagious diseases generally, all sorts of infectious and contagious diseases, were proper subjects for the Government to take in hand administratively, and to provide proper means for curing, I should say there was no objection in including this among the others.

You would not think it bad legislation?

No, because it would not single out diseases of this kind to meet with particular favour.

Dr. John Henry Bridges: *I understood one of your objections to the Act was that the State thereby gave security for the consequences of committing an immoral act?*

It facilitates the act beforehand; which is a totally different thing and always recognized in legislation as a different thing from correcting the evils which are the consequences of vices and faults. If we were never to interfere with the evil consequences which persons have brought upon themselves, or are likely to have brought upon themselves, we should help one another very little. Undoubtedly it is quite true that interfering to remedy evils which we have brought on ourselves has in some degree the same bad consequences, since it does in the same degree diminish the motive we have to guard against bringing evils on ourselves. Still a line must be drawn somewhere, and a marked line can be drawn there. You may draw a line

between attacking evils when they occur, in order to remedy them as far as we are able, and making arrangements beforehand which will enable the objectionable practices to be carried on without incurring the danger of the evil. These two things I take to be distinct, and capable of being kept distinct in practice. As long as hospitals are not peculiarly for that class of diseases, and do not give that class of disease any favour as compared with others, they are not liable to objection, because their operation consists in remedying the effects of past evils: they do not hold out a special facility beforehand to practising illicit indulgence with a security which it would not otherwise enjoy. The interference is not preventive but remedial.

By attacking the evil after it has occurred, you would, I presume, prefer dealing with a woman after she is diseased?

Yes; I mean having hospitals, and taking means of curing people of diseases either of this kind or other kinds, which they have brought upon themselves by their own fault.

You are probably aware speaking of the country generally that there are not a very large number of hospitals, for the treatment of these diseases?

I believe there are not.

And that it is excluded to a very large extent from our provincial hospitals?

Yes.

Now would not the effect of having wards for the admission of venereal disease in all our hospitals scattered about the country have the effect which you deprecate, that is, of making fornication more secure from the chance of disease than it is at present?

No doubt it would. No doubt everything you do to relieve people from what may be the consequence of their own fault, does in some degree diminish the motives to refrain from that fault. Still if we are to help one another at all, we must not stretch this argument to its full extent. Relieving people who are in danger of starvation is liable to the same objection. All poor laws, all relief whatever to the indigences or distresses of our fellow creatures are liable to it, since the people themselves are often very much to blame for bringing themselves into a position in which they require relief, and no doubt the relief does in some not inconsiderable degree diminish the prudential motives for abstaining. But still all our experience, and the consideration given to the question by thinkers and legislators, have ended in the recognition of this, that we ought not to abstain from helping one another through the evils of life, provided we do it in such a way as that it shall not provide facilities beforehand, but only deal with the evil when it has been incurred.

Apart from the existence of venereal disease, will you be prepared to lay down as a principle that the State should not take cognizance of the existence of prostitution?

Of course a good deal will depend on the sort of cognizance, but I do not think that prostitution should be classed and recognised as such by the State. It seems to me there are inconveniences of many kinds in that.

You do not see your way to any improved legislation, for instance, with reference to brothels?

That is a different question and a very difficult one. The question of the regulation of brothels, whether they should be systematically put down, or let alone to a certain degree, enters into very wide reaching considerations as to the degree in which the law should interfere in questions of simple morality, and also how far it should attack one portion of the persons who conspire to do a particular act, while it tolerates the

others. I have always felt it very difficult to lay down a general rule on the subject, and I am not prepared to do so now, but I do not think it material to the consideration of these Acts.

Sir John Somerset Pakington: *Am I right in inferring from the evidence you have been so good as to give us, that you would not consider the fact of a very large proportion of the crews of our men-of-war and the soldiers of our army, being incapacitated for rendering service to the State by this terrible disease, an adequate reason for legislation of this kind?*

Not for legislation of this kind; but it might be for legislation of other kinds. I cannot say that I have considered the subject much, but I do not see why the State should not subject its own soldiers and sailors to medical examination, and impose penalties on them in case they are found diseased. I would not undertake to say that it might not, by measures directly acting on soldiers and sailors, in a very considerable degree discourage that kind of indulgence. It is certain, at least I have understood so, that the impression on the minds of soldiers and sailors, is that it is not discouraged, that it is considered by Parliament a necessity which may be regulated, but which must be accepted, and that Parliament does not entertain any serious disapprobation of immoral conduct of that kind. Now the State might exercise an influence opposite to that, by making the being found diseased a ground for military penalties in the case of soldiers and sailors. I do not pretend to have made up my mind on the subject, or to have anything definite to propose. I only throw that out as a possibility.

Are you aware that in the case of soldiers, the very thing you recommend has been now in practice for many years, and is still in practice?

I have understood that soldiers are examined.

Under those circumstances the remedy you suggest can hardly be regarded as a fresh security?

Not an entirely fresh security, certainly. I have mentioned that I have not considered or studied that part of the subject.

I infer from your answer that the fact to which I have adverted of the known suffering in the way I have described must be regarded as a great public evil?

No doubt it is a great public evil.

Do you think it is an evil which the State would not be justified in endeavouring to avert?

If the State endeavours to avert it by any means which are not objectionable in a greater degree than the evil itself.

Do you think that the State had better rather continue to suffer from the evil than to pass such Acts as these for its prevention?

I think the State had better continue to suffer as much of that evil as it cannot prevent in other ways, by the application of military discipline and the correction of these practices among the soldiers.

Can you suggest any way other than that already adverted to, and which I have told you is already in exercise?

You mentioned that the soldiers are liable to examination, but you have not mentioned, and I am not aware, to what degree, if the result of that examination proves them to be diseased, they are liable to penalties.

I cannot describe the exact penalty, but the principle has been in action. I do not say with regard to the whole army, but can you suggest any other description?

I have not considered that part of the subject, but certainly I am not prepared to suggest any other.

And I understand you to be of opinion that in no case should the State resort to such a remedy as is found in these Acts?

Exactly. I do not think that the State should resort to any remedy which operates by taking means beforehand to make the indulgence safe.

I think you told us that you have only a general knowledge of these Acts, and no practical experience of their working? T

That is so.

You spoke of the violation of personal liberty, and I think you also, if I took down your words correctly, objected to the power of apprehending women on suspicion. Do you think, as far as you know the Act, that the expression "apprehend the woman on suspicion" is an expression taken in its ordinary sense, which is applicable to the powers which these Acts give?

It seems to me that it is applicable as far as I understand the subject; inasmuch as when women have not voluntarily declared themselves to be prostitutes, they may be, as I understand, watched by policemen, and if the policeman thinks a woman is practising prostitution, although not registered, he has it in his power, on any grounds of suspicion which appear to him to be adequate, to require the woman to enter into an undertaking to submit herself to examination, or to take her before a magistrate, who will make her do so.

I am glad I asked you the question, because it is very clear you are under a misapprehension. There is no such power calling on a woman to make a declaration compelling her to be examined. The only power of the police in this case is where they have good reason to suppose a woman to be practising common prostitution, if she does not voluntarily sign a paper stating she is willing to be examined, to lay an information before a magistrate, and proceed in the ordinary course before that magistrate. You would hardly call that apprehension on suspicion, would you?

Certainly, I should call that apprehending a woman on suspicion. It is apprehending a woman on grounds which, in the opinion of the policeman, place her under suspicion of practising prostitution without acknowledgment. I am aware that policemen have no power of using any compulsion for making a woman enter into an engagement subjecting herself to examination. I am aware that that can only be done before a magistrate, and after such inquiries as he might hold; but the policeman has it in his power, whether he uses the power or not, to use threats to induce the woman to enter into this engagement.

I have no wish to raise any question on the narrow meaning of the word "apprehend," but as you have said it is a violation of personal liberty, I will ask you whether you are aware that the liberty of such women, as of all other persons, is protected by law, until interrupted under the authority of law?

Yes, I did not make that distinction as I ought to have done. I admit its relevancy.

When you said that a prostitute ought to have the power of defending herself before the ordinary tribunals, I think you would admit that she has that power, because she is brought before the magistrate, and that magistrate is not only free but bound in duty to hear everything that a woman has got to say, and judge of the evidence before deciding her case as he would in any other?

That depends on whether it is explained to her that she may be defended by counsel.

The attack on personal liberty is subject to those usual grounds of protection which the law gives to all parties?

It may be so.

In the case, which is not only a possible case but I fear from the evidence we have had the not very uncommon one of disease being communicated to innocent wives and innocent children, would you really trust to the power of divorce as the only remedy in such a case? Should you not endeavour at least to resort to prevention as being better than trusting to so uncertain a cure?

I think that if prevention is to be applied at all, it should be applied to the man, who alone has the power of committing this offence in a direct way. When a woman infects anyone the man must always be a consenting party to running the risk: it is only a man who having been infected himself can communicate infection to an innocent person, and therefore if there is any argument for prevention, it should be for preventive measures applied to men who infect these women, and not to the women themselves.

Do you know or have you ever thought of any process by which prevention could be applied to men?

I think that it could. No doubt it would fail very often; but inasmuch as it certainly does happen frequently that women are brought under the operation of these Acts through being watched by the police, and its being ascertained that they frequent certain houses along with men, the police can equally ascertain who the men are who go 'with them; and when they find that men have been seen to frequent along with prostitutes houses of this description, those men might be compelled to undergo examination for a certain period afterwards.

Am I to understand you seriously to propose that in this country we should adopt a system of espionage over every man seen going into a brothel, and that men seen to go into a brothel should be subject all alike to personal examination?

I am not suggesting espionage; but if it is already in practice on women who go to brothels, with a view of ascertaining whether a woman is a prostitute by her being seen there, I think the woman should not be singled out to be subject to examination, but the men should be subjected to it also, or even if the women were not subjected the men might be, but if the one is, certainly I should say both.

Therefore you do, as I understand, recommend such a system of espionage as I have described?

I do not recommend it, because I do not recommend the Acts at all; I do not recommend that there be any espionage practised upon women, and therefore not on men either.

Do you not recommend it to this extent, if any remedy is attempted for the evils complained of, it should be done in that shape?

If any preventive measures are to be taken I should say it should be in that shape. But penal measures, or remedial measures by means of hospitals, could be adopted independently of that, increasing the hospitals, and increasing the facilities for admission of those who are diseased, and laying severe penalties on the man who communicates this disease to an innocent woman.

If the Legislature did enact with a view to preventing such cases as this, that the woman affected should have the remedy of divorce, would your knowledge of human nature lead you to the conclusion that that remedy would be resorted to in one case in a hundred, or one case in a thousand?

A good many more than that, though probably not the majority.

William Nathaniel Massey: *Are you aware that for a man to give his wife a disease of that description would be adjudged cruelty by the Court of Divorce, and would be a ground for a divorce, at all events a mensa?*

Yes, but not complete dissolution of the matrimonial tie.

Sir John Pakington: *Would you make it so?*

Yes.

William Nathaniel Massey: *You would make it a vinculo?*

Yes, *a vinculo*, accompanied with heavy pecuniary damages for the benefit of the sufferers, the wife or children.

Sir John Pakington: *We have received very strong evidence before this Commission, that at one, at least, I think more, but at one of the most populous places to which these Acts apply, one result has been that whereas there were previously hundreds of children—when I say children, girls under 13, 14, and 15 years of age—practising habitual prostitution, that since these Acts have passed that class has almost, if not quite, disappeared; now, assuming that evidence to be correct, would it reconcile your mind to the operation of the Acts producing so blessed an effect as that?*

It would not remove the objections by any means. I have not examined into the statistics of the question, which I have no doubt are very contradictory, because very opposite results are stated at different places, with the effect of creating very great distrust in statistics altogether on that subject. In the experience of those countries where Acts similar to these have been very much longer in operation, it is certainly found that a vast quantity of prostitutes escape the operation of them altogether; that the process to which women are subjected by it is so extremely offensive and odious, that there is a great quantity of clandestine prostitution; and therefore it may well happen—I do not pretend knowledge on the subject—that the introduction of these Acts in places where they have not prevailed before, may be attended with a considerable diminution of avowed prostitution, without any diminution of real prostitution. I may now say, as I did not say it before, that another reason which appears to me very strong against the system of these Acts is, that they have a decided tendency to increase the class of prostitutes. Even if it is only by the fact that a considerable number of them are withdrawn from their profession periodically, the vacancy or gap that is thus made, as the demand calls forth a supply, has a natural tendency to be filled up by additional prostitutes being brought into the profession. That is independent of another argument, which may also be urged, that in so far as the Acts are supposed to afford increased security to the men who frequent these women, it is liable to produce an increased demand for prostitutes, and therefore bring forth in that way an increased supply. But independently of that, which is an argument I have no doubt the Commission are perfectly familiar with—the mere taking away forcibly from the competition of a certain per-centage of the prostitutes for a certain time, naturally tends to have that vacancy filled up by healthy persons from other quarters.

I think I may ask you whether that is not rather a fear than any fact established by proof?

As I have already mentioned, I have not studied the details, and cannot say that I know as a matter of fact that it is so, though accounts I have read, and which appear to me reliable, as to what takes place on the Continent, appear to me very strong evidence that that is actually the case there. Whether it is the case here may be matter of dispute. It may perhaps not be the case yet—it may be the case hereafter, though not the case already, or it may be the case without being detected. I know nothing

practically about the matter, but it appears to me that there is the tendency, and that the law which produces it is as strong as any law in political economy.

Excuse me saying that I think your answer to my question about children did not quite meet the question. I asked you whether, assuming such to be the case, having first told you the strong evidence we had, whether that fact would reconcile you in any degree to the operation of the Acts, and your answer was that you distrusted such statistics. I did not ask you that, but assuming those to be accurate, whether such an important fact would reconcile you in any degree to the operation of the Acts?

If we are to enter into one part of the question only, the degree of efficacy of the Acts for their professed purpose, of course any increased efficacy furnishes an additional argument for the Acts. But no argument that can be produced of that kind, or I believe ever has been produced, would seem to me to overbear the very strong arguments of other kinds against the operation of such Acts, therefore my opinion would not be favourable to the Acts, supposing the circumstances you mention to be finally confirmed.

If the existence of such a fact would not reconcile you to the principles of the Acts, would it not at least make you thankful that such a result had ensued?

Of course anybody must be thankful for such a result, from whatever cause.

In following up the same part of the subject, may I ask you whether you think it would be inconsistent with due regard to the liberty of the subject, if such young creatures as I have referred to, and you must be aware that such must be the case in all our crowded populations, if the law authorised the detention of such young creatures as I have described, when once convicted of prostitution, in homes or refuges for their subsequent reclamation?

I am not prepared to say that might not be a good measure. I perhaps would go further for the protection of extremely young persons than most people would. I should not be adverse to strengthening and extending the laws which at present exist against intercourse of any kind with girls below a certain age. I should not be at all adverse to raising considerably the age below which it should be prohibited.

We have had strong evidence with regard to the moral effects of these Acts, and a number of cases in which through the agency of these Acts, by first being taken into a hospital, where moral effects are produced as well as physical, and then being sent to a refuge, numbers of young women have been reclaimed from vice and restored to a virtuous life, and in many instances married. Would such a fact as that reconcile you to the operation of these Acts?

I think these effects might just as well be produced by the mere existence of hospitals, by receiving them into hospitals, having proper hospital accommodation for them, and when there having them attended by those benevolent and excellent people who undertake their reclamation.

Are you now contemplating voluntary hospitals or hospitals supported by the State?

Either. I have already stated I should object to hospitals supported by the State for this particular disease exclusively, but if contagious diseases generally were considered a proper subject for the State to take under its charge, I should not object to those being included.

Supposing these abandoned women did not go into them, what would you do then?

Suppose they did not go in, I do not see how anything could be done.

Then your remedy would fail?

Yes; but the women who would not go in would be those on whom the remedy would be the least likely to be effectual.

Supposing they did go in and would not stay when they were there, what would you do?

I should not be prepared to give any compulsory power to detain them.

You would let them come out and spread disease right and left, rather than do good?

I do not think it is the business of legislation of this kind to take special care either of the women who practise this profession, or of the men who frequent them. I apprehend that the real object for which these Acts are most defensible, if defensible at all, is the protection of the innocent, and as long as people are not liable to be infected without exposing themselves to it, I should say you do enough for them if you offer them the means of cure provided they accept it.

We have very strong evidence before us to this effect, that the Acts in certain localities have greatly diminished the number of common prostitutes, and have had the effect of raising the lowest and most demoralised portion of that class to a comparatively more decent and more respectable state of life—would not you acknowledge that to be a good effect?

Stated as you have stated it, any such effect, however produced, is good *pro tanto*.

I am only putting to you that which we have before us in evidence.

Precisely so, but I should consider, if any effect of that sort is produced, it is produced by a process, not applicable specially to prostitution, but to the criminal and vicious classes, the dangerous classes altogether, all of whom may have some amount of good done them if attention is paid to them by benevolent persons, or, it may be by persons employed by the Government. It would not be beyond the proper function of the State to take means of making these persons understand that they are not considered as totally unworthy of any kind of regard or consideration by the rest of their fellow-creatures, but that it is the object to reclaim them, and do them as much good as their condition makes them susceptible of. Such measures, at all events, might be applied to the dangerous classes generally, much more than ever has been done yet. I should not see the least objection to applying such measures to prostitutes also, but that would not require Acts of this description.

We have before us evidence of such a nature as I think hardly you or anybody else whose attention has not been called to it can imagine, with regard to the state not only of degradation but of physical disease, amounting to absolute rotteness, that the women have been found in in the neighbourhood of our camps, I think if I remember right such a state as almost to lead to the idea of falling to pieces; now looking at the fact of a human being in such a horrible state as this, would you leave those women to rot and die under the hedges, rather than pass such Acts as these to save them?

I do not think it is quite fair to put the question exactly in that manner, because I am inclined to think that I should approve very much more decided measures of that sort with regard to the destitute classes generally than are now in practice. I should say, if you found a person in this last stage of consumption, or any other very wretched disease, it might be advisable and right to lay hold of that person and give him or her relief or proper medical treatment, and under proper medical regulation, and whatever relief of that sort I gave to others I would give to these women. What I object to is having special legislation for those women, which would have the effect of singling them out for a special cure, to which persons with other equally bad diseases are not subject.

I apprehend that I may take your answer as being in effect in the affirmative. You would rather leave these women to die and rot under hedges than pass these Acts and save them?

I do not think that a fair way of putting the question, because I think they could be just as well saved without these Acts. I would do a great deal for the purpose of affording relief to persons who were found in an extremely bad state of disease, and in a state of destitution. I would not do more for those than others; and certainly the fact that there are such persons would not reconcile me to these Acts, because I think these Acts do a great deal of mischief in other ways, which is not at all necessary to be done for the sake of affording relief to those people, without giving it in common to all others who have an equal claim to it.

I apprehend that I can take that as an affirmative answer. My inference is that you would trust in such a case to the ordinary operation of the poor law?

I have not such a very high opinion of the administration of the poor laws as not to think it admits of great improvement in that respect as in others, and such improvement I should be glad to see, though I am not prepared to say exactly what it should be.

But the poor law has long been in operation and has not had the effect of rescuing these poor creatures from suffering, therefore is it not a fair inference that they are insufficient to meet that case?

That is a defect in the poor law, but some other means should be in practice for the relief of disease. Disease is a proper subject for a special branch of administration.

You would suggest that some remedy should be afforded for so horrible an evil, but you would rather it should not be the remedy we are now trusting to?

Precisely.

Though that remedy has been proved signally successful?

Yes, but if it has been signally successful, I think it has been by means and in a manner which ought equally to be applied to other diseases, if applied at all, and it would be equally effectual without the Acts.

We have before us evidence to the effect that from the fear of coming under the cognizance of the police, these Acts have had the effect of deterring young women from practising that clandestine prostitution which they previously did. Now assuming this evidence to be consistent with the facts. I would ask you whether you do not consider, that whatever your objections to the principles of these Acts are, they have produced good results?

Undoubtedly that result taken by itself, must be considered a good result by every one. It is, however, to be weighed against the probability that in other cases an opposite result might be produced, for which also strong presumption can be shown.

You stated an opinion, and it is an opinion which other witnesses also strongly stated, that the examination of the persons which is authorised by the Acts is very degrading to those women, that is your opinion?

I dare say there are some of them to whom nothing is degrading, they are so degraded already, but there is reason to believe that there are many of them who have a considerable quantity of modesty left, and to whom therefore it is degrading.

Your answer rather anticipates the next question I was going to put to you, which is whether taking the case of a woman who submits herself daily to prostitution in three or four instances, and lives that miserable life, which do you think is the real degradation to that woman; is it the life that she

leads, or the fact that she subsequently undergoes examination in order to cure the evils which have arisen from that disgraceful life?

I think both are degrading, but degradation for degradation, that which is compulsory seems to me always more degrading in its effects on the character than what is done voluntarily.

Am I to understand from that answer that you think the fact of such an examination is more degrading to such a woman than the debauched life she leads?

I think it adds considerably to the degradation already caused by the debauched life.

Sir Walter James: *It is an additional degradation?*

An additional degradation.

Anthony John Mundella: *If we have evidence before us that many young people have been removed from prostitution in the streets by the operation of the Acts, are you not of opinion that we might also remove those young persons from the streets without subjecting them to this examination and making them healthy for prostitution?*

Certainly I think so. I think that what removes them from the streets is the moral effect which is produced in their minds, and the chance of producing this effect is likely to be lessened by subjecting them to an offensive and what must be considered a tyrannical operation by the force of law. I should think that must tend in some degree to counteract the good effect which no doubt was produced by the moral influences that were brought to bear on them during their detention, which are no doubt the real cause of reclaiming them so far as they are reclaimed, and therefore they might be applied more effectually without the machinery of the Acts.

You are familiar with the compulsory education which exists on the continent and elsewhere, and have written a good deal on the duties of the State towards young children. Should you think it any interference with personal liberty, if girls under a certain age found practising prostitution were taken up and put into some industrial home?

I certainly do not think there would be any objection to that. I think the objection to the interference with personal liberty begins when the age of education, properly so called, ceases. Where a person is under age, and in a position which must counteract very much all the good influences of education, and substitute bad ones, it is always open to the consideration of the State whether they cannot withdraw young persons from those bad influences. I have already mentioned that I would go still further, and be inclined to extend very much the operation of the penal laws which now exist against intercourse with girls under age. I would raise the age below which that is an offence by law, very considerably, though I have not considered up to what point.

I was going to ask you up to what age you would think the State would be justified in interfering to prevent prostitution?

I should think certainly up to 17 or 18, up to the age when what is commonly called education ordinarily finishes. Possibly it might be extended with propriety until the girl was legally of age, but on that I would not undertake to give an opinion.

Do you think it any interference with the liberty of the subject to prevent solicitation in the streets?

No; I think that is the duty of the police, in order to preserve the order of the streets.

Sir John Pakington has referred to the wretched women who haunt the camps. Do you see any means of clearing the camps from those wretched women, without subjecting them to these examinations and healing them for the purpose of prostitution with soldiers?

That is a matter of police and the military discipline of camps, which I am not conversant with. I should think much stronger things than that are justified by military discipline.

As I have understood your evidence, from what I heard in cross-examination, I gather that you would attack this evil of prostitution rather in its cause than deal with its consequences?

I would deal with the consequences by means of hospitals, and combat the disease after it has been contracted, only taking care not to do this in such a way as would seem to take the persons who have that disease under the special protection of the State in a degree in which others persons equally diseased were not taken.

If we have evidence before us that brothel-keepers are constantly communicated with by the police, and that beer-houses and public-houses are used as brothels in large numbers, and are well known to the local authorities, do not you think the State would be justified in interfering with that class of persons?

Clearly it ought to be a forfeiture of the license of a public-house or beer-house to use it as a brothel.

But suppose it is not a beer-house, would you prosecute brothel-keepers?

That is an extremely difficult question, and I would rather not give a positive opinion about it, because so many *pros* and *cons* have occurred to me when I have thought about it that I have found it very difficult to make up my mind.

Robert Applegarth: *You conceive it to be the duty of the State to deal with girls and boys up to the age of 16; may I ask you whether you consider it to be the duty of the State to insist that children should be sent to school up to that age?*

I cannot pretend to say exactly up to what age. I do think the State has a right, and is bound whenever circumstances admit, to insist on all children who are born into the community receiving education up to a certain point, and also to give facilities for educating them still higher.

And I suppose you consider that if the State did its duty in that respect, we should have in addition to better educated people, a higher standard of morality amongst the people?

That is one of the greatest reasons for desiring it.

And therefore we should probably have less prostitution?

I should think so.

Is it your opinion that sending children to work at a young age instead of to school leads to immoral practices, and ultimately prostitution?

I should think it extremely probable from what I have heard and read. I have no knowledge on the subject.

In your opinion, if the laws in existence against seduction and bastardy and in other respects were strengthened and made of real practical use, would it have a tendency to diminish prostitution?

I do not know whether it would have a tendency to reduce prostitution, but that is not the only thing to be considered, because it might have a tendency to increase other kinds of illicit intercourse. When the laws relating to bastardy made a greater attempt to enforce the obligation upon the seducer than is the case now, they did produce very demoralizing effects upon many women. I do not mean to give an express opinion as to how far the law might properly go on that subject. At present

my feeling is against any attempt, however much it may be agreeable to one's moral feelings, to restrain illicit intercourse in that way.

Whilst you are opposed to the Acts, I understand you are not opposed to an attempt being made by the State to diminish the amount of disease by providing hospitals?

Yes, providing always it is not done with special favour to this class of diseases, but forms part of a general system, such a system as it may be thought advisable by the State to adopt, with a view of getting rid of serious and especially contagious diseases, as far as possible, throughout the community.

And would you advise that there should be provided special Lock Hospitals, or that people suffering from this disease should be treated in lock wards in general hospitals?

I should prefer lock wards; because lock hospitals are a special provision for this particular class of disease, and that appears to me to be undesirable.

Do you think providing Lock Hospitals for the treatment of this disease would have a tendency to induce inquiries on the part of young children which parents would be ashamed to answer, and thus produce a bad moral effect?

That might be one objection; but the grand objection I have to it is to any measure taken specially with reference to this class of disease. The general impression it would make, however contrary to the intention of those who support it, would be that the State patronises the class of practices by which these diseases are engendered, since it considers those who contract these diseases as worthy of more attention, and takes more pains to remedy the consequences, than those who have other diseases equally serious.

Is it your opinion that these Acts have done any physical good at all?

I have really no means of judging. I am not acquainted with the details. No doubt the evidence taken before this Commission will be expected to throw light on this subject.

Is it your opinion that morally they have done harm?

I cannot tell whether they have actually done harm, but it seems to me their natural effect is to do harm.

You think that the tendency of them is to do moral injury?

I do think so, because I hardly think it possible for thoughtless people not to infer, when special precautions are taken to make a course which is generally considered worthy of disapprobation safer than it would naturally be, that it cannot be considered very bad by the law, and possibly may be considered as either not bad at all, or at any rate a necessary evil.

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