

The Campaign against the Contagious Diseases Acts

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Focus

In 1864, in response to pressure from the War Office, the Government introduced a temporary piece of legislation designed to control the spread of sexually transmitted diseases among the armed forces. This law demanded the registration and examination of prostitutes working in and around 11 garrison towns and naval ports. Two further Contagious Diseases (CD) Acts, in 1866 and 1869, extended the province of the original legislation to cover 18 towns and cities, the majority in the south of England. Undoubtedly, the spread of sexually transmitted diseases among the British Army and Navy had reached alarming proportions (as

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evidenced by the statistics compiled by army doctors in attendance during the Crimean War a decade earlier). However, the Government's response was to treat the spread of syphilis purely as a sanitary issue. Moreover, the legislation applied to one sex only; the prostitutes themselves (or women the police believed to be prostitutes) were to undergo regular examination and, if necessary, quarantine while they underwent medical treatment. Similar examinations of their male clients were never seriously considered. Thus the legislation had the effect of a guarantee of security from disease to those men stationed in areas subject to state regulation: any male civilian living in or visiting these areas could also take advantage of knowing that registered prostitutes, or 'Government Women' as they became known, were 'clean'.

The CD Acts were, to a degree, modelled on a system of regulation already established in several European countries and which applied to the civil population, not just the armed services. Opponents were justified in their fears that the British Government might be persuaded to extend state regulation to the whole of the British Isles. As early as 1866 the Harveian Medical Society (with the backing of *The Lancet*) supported the extension of the CD Acts to cover the whole population.

A National Association for the Repeal of the Contagious Diseases Acts was founded in the autumn of 1869 at the Social Science Congress, but its leadership was exclusively male. Within weeks, a sister organisation, the Ladies' National Association (LNA), was launched in recognition of the fact that since the CD Acts punished women only it was crucial for women to publicly speak out on behalf of their own sex. The LNA was fortunate in its choice of leader: Josephine E Butler, the wife of a Liverpool headmaster, who for several years had rescued prostitutes and understood the economic causes of prostitution. Butler was one of the architects of the LNA manifesto, 'The Ladies' Appeal and Protest', signed by 124 women, including Florence Nightingale, which was published in the *Daily News* on 1 January 1870. A copy was eventually delivered to Parliament with an accompanying petition bearing the signatures of 2,000 women.

The political goal of the campaign was the unconditional repeal of the CD Acts. The case for repeal can be condensed thus: the Acts were ineffective in preventing the spread of disease, and were, moreover, immoral, unjust and unconstitutional. The CD Acts were impractical in a medical sense given that the soldiers and sailors who frequented brothels were not themselves examined (in other words, a diseased client remained at liberty to infect other prostitutes – even his own wife – unless he chose to seek medical treatment voluntarily). Repealers were able to argue that the European system of regulation had not reduced the spread of syphilis, nor had it raised morals – rather, regulation could be regarded as having actively encouraged immorality: prostitutes were denied the opportunity of reforming (if diseased, they were treated in order that they might continue their trade), and were therefore condemned to a life of sin. Furthermore, it became Josephine Butler's belief that state regulation, to use a modern term, de-sensitised men to prostitution and led some to seek out more dangerous pleasures and ever younger victims – hence the physical brutality shown towards Indian prostitutes used by the British Army in India (see below) and the rise in sexual assault cases involving children in Britain's cities.

However, early on, opponents of the CD Acts learnt that it was futile to depend on the support of medical men. In 1872 the National Association delivered a petition to the Home Secretary, Henry Austin Bruce, signed by 50 physicians and surgeons opposed to the CD Acts; medical men in favour of regulation responded with their own petition signed by 1,000 doctors. In fact, for campaigners the efficacy of the Acts in containing or reducing the spread of sexually transmitted diseases was not by any means a primary concern; they demanded that politicians look beyond prostitution as a sanitary issue and instead examine its root causes and the moral and constitutional implications of state regulation.

Repealers argued that the CD Acts were unjust in that they punished women only, and working class women specifically (since only they could be picked off the streets by the police). Moreover, the Acts failed to recognise that there were many moral gradations

between the chaste woman and the prostitute. The arresting police officer was only required to suspect a woman of being what was termed a 'common prostitute'. Campaigners tried to gain capital from publicising miscarriages of justice involving innocent women (single women were particularly vulnerable; so, too, those known to co-habit with men) who were coerced into signing the police register against their will and thus, unjustly, criminalised.

Repealers also made the case that the CD Acts were unconstitutional in that accused women were denied trial by jury. A woman suspected of being a 'common prostitute' could be arrested and forced to sign the police register and so-called 'voluntary submission' form (in other words, such women were *required* to incriminate themselves) and undergo a fortnightly examination. Any woman who denied that she was a prostitute and/or refused the examination could be imprisoned on the say-so of a single magistrate until she did sign. Furthermore, a registered prostitute found to be diseased was effectively imprisoned in the local lock hospital where she would undergo a course of treatment for a maximum of nine months; she could only be released on the authority of the police surgeon. As Butler herself put it, the repeal campaign was becoming 'more and more a fight on the part of us women for our *bodies*'. Butler would dedicate her legal analysis of the CD Acts, *The Constitution Violated* (1871), 'to the Working Men and Women of Great Britain'.

Contention

The repeal campaign drew attention to the central premise of the CD Acts, which was legislation underpinned by an adherence to the *sexual double standard* – that is, the notion that gendered difference is inseparable from sexual (i.e. biological) difference. Thus, male sexual infidelity, even promiscuity, came to be regarded as natural (a forgivable, venial sin), whereas female sexual desire was deemed unnatural (unpardonable) unless legitimised by and contained within monogamous marriage and child-bearing. Indeed, the sexual double standard underpinned pretty much all legislation affecting married women under British law. Applied to

prostitution, the sexual double standard led to a central paradox: in industrialised Britain, prostitution had come to be perceived as a very real social necessity given the rising age at which aspiring middle class men chose to marry, yet it was also conceived of as the ‘Great Social Evil’, and prostitutes themselves were feared as the carriers of contagion (literally and morally). It is, though, important to recognise that Abolitionists by no means preached moral laxity. The LNA in particular argued that *both* sexes should lead morally pure lives. One key element of the repeal campaign was the moral education of young men and the promotion of sexual abstinence before marriage.

Another significant aspect of the LNA campaign was its breaking down of the artificial barriers which separated the pure and the fallen, and which required women of the middle and upper classes to know nothing of their degraded sisters. Feminist campaigners challenged the mid-Victorian feminine ideal, entering the public sphere to discuss a taboo subject by speaking out against the examination by speculum as ‘surgical violation’ or ‘instrumental violation. Josephine Butler not only had to speak in public, but speak about a subject unmentionable among women of her own class. Yet she never ceased to urge her fellow women to take their place in the foremost ranks of the repeal movement, convinced as she was that women were ‘called to exercise a bold self-assertion’ – again, a loaded expression given that the feminine ideal was precisely *selfless*. Even more importantly, Butler’s leadership of the LNA claimed for British women a public voice in political debate, and a public presence in the Houses of Parliament. In 1883 she issued a circular to every MP in the country, defending her right to listen to the debates in the Commons (see below): ‘I say that as long as any woman is obliged to *suffer* [the] foul outrage [of being forcibly examined] I should be ashamed to speak of the pain to myself of *hearing* it’.

Methods

The 16-year campaign to abolish the CD Acts was primarily a parliamentary campaign, and as such utilised familiar methods:

petitions, including what repealers referred to as their 'Monster' petition (like the Chartist petition a generation earlier); processions and delegations to the Home Office; circulars to MPs; and, when repeal was in sight, occupation of the Ladies' Gallery in the Commons. Repeal leaders also gave evidence to a number of committees, including a Royal Commission, called to examine the efficacy of the Acts. One innovation was to hold prayer meetings (open to people of all faiths) at Exeter Hall in order to support their MPs in debate in the Commons. Their earliest and boldest tactic was to contest by-elections, putting up their own candidate to split the Liberal vote if need be, even to support the Tory candidate in preference to a Liberal proponent of the Acts (as with Hugh Childers in Pontefract). In October 1870 the sitting Liberal MP for the garrison town of Colchester died and the party approved the candidature of Sir Henry Storks, a veteran and former Governor of Malta. Storks was a vocal advocate of the CD Acts and the National Association put up their own candidate to stand against him. The repealers who campaigned in Colchester required police protection from local thugs, but Storks was ousted and the Conservative candidate won by more than 500 votes. At the Pontefract by-election two years later, repealers campaigned against the Liberal candidate Hugh Childers, a former First Lord of the Admiralty who had overseen the working of the CD Acts in Plymouth and Portsmouth. Again they faced violent opposition and again they managed to dent the Liberal vote. However, their experience suggested that they needed salaried electoral agents working for them. By the close of 1872, two new committees were formed: the Northern Counties League and the Midland Counties Electoral Union; a third Political Committee was formed in 1883. The movement's first parliamentary representative, William Fowler, lost his seat at the 1874 General Election, but he would be succeeded by James Stansfeld MP, the Radical Member for Halifax who had served in the first Gladstone administration (1868-74), and it would be Stansfeld's motion that led to the suspension of the Acts in 1883, prior to their abolition in 1886 (see below). But it was a treacher-

ous course. At the General Election of 1880 it was estimated that the repeal movement lost more than 150 sympathetic MPs.

Repealers were largely drawn from the Non-Conformist element within the Liberal party (Quakers, Methodists, Baptists) based in the North of England, many of them newly enfranchised by the 1867 Reform Act. They used the rhetoric of the Abolition movement, referring to themselves as ‘New Abolitionists’. Josephine Butler’s father had been an anti-slavery campaigner in Northumberland and was a distant cousin of the Prime Minister Earl Grey whose Liberal Government was responsible for bringing in the Abolition of Slavery Act in 1833. One of the great strengths of the repeal movement was the campaigning profile of the LNA, in particular the personal contribution of their charismatic leader, Josephine Butler. Butler had impeccable social connections and a spotless reputation. She also had valuable experience of soliciting public support for issues such as women’s access to higher education. A feminist and an evangelical Christian, Butler was convinced of women’s right to equality with men and was personally responsible for encouraging hundreds of women of her own class to join the repeal movement in Britain and throughout Europe – through impassioned written appeals and public speaking (her speeches were recorded in the campaign newspaper, *The Shield*). Butler’s political vision was grounded in her experience of working on small-scale efforts to rescue and rehabilitate prostitutes in Liverpool where she established a refuge and training home funded by charitable donations. Thus she was a trusted figure to prostitutes on the police register from whom she gathered evidence in the garrison towns of Kent at the start of the campaign.

Outcome

While repeal bills continued to be obstructed, on the night of 20 April 1883 a majority of 72 MPs voted to support James Stansfeld’s simple motion that ‘This House disapproves of the compulsory examination of women under the CD Acts’. The Commons vote had the immediate effect of suspending all those clauses relating

to the 'voluntary submission' and examination of women, and thus repeal had been achieved in effect if not in name. The Government's response was to propose a compromise. The Secretary for War, the Marquis of Hartington, began to prepare a bill that would make the examination of prostitutes truly voluntary rather mandatory, but Hartington himself began to doubt the medical effectiveness of the Acts and withdrew his bill. Momentum grew, and a total of 261 pro-repeal MPs were returned at the November 1885 General Election. When the Liberals again took office in February 1886, Stansfeld took the opportunity to introduce a bill calling for total repeal which passed into law on 15 April.

Even though the CD Acts were repealed in Britain, the practice of forcibly registering, examining and detaining prostitutes used by British soldiers posted abroad continued unabated in Britain's Crown Colonies. Documentary evidence that regulation continued in India was collected by the Quaker Alfred Dyer. A member of the Gospel Purity Association, Dyer had previously worked undercover to investigate white slave trafficking (involving British girls trafficked to Paris and Brussels). He now managed to intercept what became known as the 'Infamous Memorandum'. This document not only proved beyond doubt that the British Government in India continued to enforce the CD Acts but that officials actively colluded in the system, authorising funds for the procurement of Indian girls 'sufficiently attractive' to satisfy the demands of British soldiers stationed there. The publication of this document was a great embarrassment to Parliament, and when the repeal of the CD Acts in India was debated in the Commons on 5 June 1888 the vote was carried unanimously. From Simla, the Commander-in-Chief of the British Army in India, Lord Roberts, argued that the situation in India was very different from that at home: British soldiers serving abroad were surrounded by temptation; moreover, prostitution was regarded as a trade among the Indians, and 'shame, in a European sense, does not attach to it'. The following year the CD Acts were reintroduced in India in everything but name under the Cantonment Act of 1889. Further outrages against Indian women were publi-

cised in repeal newspapers. Butler herself followed the sensational story of a 14-year-old widow and Christian convert sold into prostitution (many of the 'Government Women' in India were young widows sold to the British Army by their families). But it required the undercover investigation of two members of World's Women's Christian Temperance Union (one a woman doctor, the other the widow of a Methodist missionary) to provide comprehensive evidence that the army continued to provide troops with 'clean' prostitutes. As a consequence of their findings, Lord Roberts was called to appear before a Parliamentary Committee in London in August 1893. Roberts's claim that regulation had been repealed in India back in 1888 was refuted by the army's now retired Quartermaster-General (author of the 'Infamous Memorandum'). The Cantonment Act of 1889 was finally replaced by India Act No.V (passed February 1895), which prohibited the forcible registration and examination of prostitutes – nine years after the repeal of the CD Acts in the British Parliament.

Once repeal had been achieved, many members of the LNA were now free to labour on behalf of Female Suffrage, but campaigners from the various repeal organisations also migrated towards the cause of social purity. Many joined the National Vigilance Association founded by WT Stead (editor of the *Pall Mall Gazette* and a prominent Liberal Non-Conformist) in the wake of the passing of the Criminal Law Amendment Act in August 1885 which raised the age of consent for girls and brought in new measures to tackle procurement and trafficking. That a split emerged between suffragism and social purity is characteristic of the mixed motives of the repealers, but key figures such as Butler felt that the repressive ideology of the NVA (with its focus on the suppression of brothels and pornography) was essentially at odds with the ethos of the repeal campaign which had sought to defend the civil liberties of prostitutes not to punish them.

Further Reading

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