

## Chapter 4

# Mill's Feminism: Marriage, Property, and the Labour Market

If nature has not made men and women unequal, still less ought the law to make them so.

—J. S. Mill, *On Marriage*, p. 42

Chapter 2 focused on how Mill balanced a desire for social reform with a presumption in favor of individual choice. Chapter 3 considered how Mill recognized that in his time some groups were not allowed much scope for the enjoyment of pleasure. Here, we examine Mill's views on "the woman problem," as commentators called it in the nineteenth century. We will see that Mill was a thoroughgoing feminist before the emergence of a feminist movement. Long before it was fashionable to do so, he advocated for equal labour market and educational opportunities for women. As part and parcel of his utilitarian presumption that people be treated equally under the law, Mill advocated for women to obtain the legal right to leave marriages and the ability to own property outside of marriage. More than this, he insisted that women obtain education to the same degree as men and compete on equal footing with men in all aspects of the labour market. Throughout, we again find Mill articulating the controversial position that institutional arrangements rather than natural inferiority frequently destined women to outcomes of poverty, violence, and dependence. The implication was that if these arrangements were reformed, women would advance to much different and improved outcomes and that men, too, would benefit.

## Mill and Harriet Taylor

As Chapter 2 noted, these controversial positions cost Mill dearly, both professionally and personally. So, too, did Mill's unusual (for the time) relationship with Harriet Taylor. Friends and family alike followed convention and judged Mill and Taylor accordingly. Indeed, correspondence between Mill and Taylor presents a stark story of real or perceived hurt and rejection (Peart, ed. 2015, "Friends and Gossip: 1834-1842"). As detailed in the Introduction, John and Harriet were isolated from family and friends in the ensuing years.

Some commentators question Mill's originality, too, because of Taylor's supposed influence. Indeed, F.A. Hayek attributed Mill's interest in the subjects of marriage and divorce and the broader topic of women's rights at least partly to Taylor's influence on him and the difficult situation in which the two found themselves. Yet Mill's early manuscript on the subject—reprinted in full as chapter three of *The Mill-Taylor Friendship* (Hayek, 1951)—confirms Mill's statement in the *Autobiography* that it was "so far from the fact" that his views on the equality of the sexes were in any way influenced by Harriet Taylor. On the contrary, Mill asserted that his own views on the subject attracted Harriet to him (*Autobiography*, p. 253).

## Marriage

More than thirty years before the publication of *The Subjection of Women*, Mill railed against the custom of educating women for (and only for) marriage:

It is not law, but education and custom which make the difference [between men and women]. Women are so brought up, as not to be able to subsist in the mere physical sense, without a man to keep them: they are so brought up as not to be able to protect themselves against injury or insult, without some man on whom they have a special claim, to protect them: they are so brought up, as to have no vocation or useful office to fulfil in the world, remaining single; for all women who are educated for anything except to *get* married, are educated to *be* married, and what little they are taught deserving the name useful, is chiefly what in the ordinary course of things will not come into actual use, unless nor until they are married. (*On Marriage*, p. 41)

“All this” Mill attributed to the current state of marriage laws, which were determined by a yet larger question: “what woman ought to be.” Mill’s radical egalitarianism prevailed: “If nature has not made men and women unequal, still less ought the law to make them so” (*On Marriage*, p. 42). Keeping in mind Mill’s notion that one learns to choose prudently by experiencing a life filled with choices (Chapter 1) and his concern that over the course of a highly circumscribed life one might lose the ability to appreciate higher pleasures (Chapter 3), this institutional failure imposed substantial costs on society.

Thus, as we saw in Chapter 3, Mill’s utilitarianism led him to question legal arrangements characterized by partiality that placed groups on different footings in terms of their ability to develop the capacity to enjoy higher pleasures. Marriage laws, in his time, were one area ripe for reform. The “legal state” of women, as he and Harriet Taylor Mill put it in the 1869 *Subjection of Women*, left women dependent on the good graces of their husbands. While this sometimes worked out, often it did not. Moreover, women frequently were not offered the choice of partners—as in the case of arranged marriages. Since women who *were* allowed to choose frequently did so at a very young age, with little to no education or experience in making choices of any sort, let alone one of such importance, Mill and Taylor opined that it was no surprise that women often got the decision badly wrong.

What could women do if they did get the choice badly wrong? Since women could not own property outside of marriage, they had no means to support themselves and no recourse to leave the marriage. Such an imbalance of legal, economic, and physical power left a woman in a position of “slavery as to her own person.” In extreme cases, they were subject to physical abuse, including marital rape.<sup>15</sup> A century and a half before the #MeToo movement, the Mills were candid in their assessment of the situation: “however brutal a tyrant [the wife] may unfortunately be chained to—though she may know that he hates her, though it may be his daily pleasure to torture her, and though she may feel it impossible not to loathe him—he can claim from her and enforce the lowest degradation of a human being, that of being made the instrument of

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<sup>15</sup> Mill compares the situation of women in such marriages to that of slaves as early as his 1832/33 essay *On Marriage*.

an animal function contrary to her inclinations” (*Subjection of Women*, p. 285). Even worse, there was no way for women legally to remove children from an abusive relationship. Women had no legal rights with regard to their children independently of the husband: “Not one act can she do towards or in relation to them, except by delegation from him. Even after he is dead she is not their legal guardian, unless he by will has made her so” (*Subjection of Women*, p. 285).

### **Women and property**

Property laws exacerbated the situation since a woman could not hold property outside of marriage: “If she leaves her husband, she can take nothing with her, neither her children nor anything which is rightfully her own. If he chooses, he can compel her to return, by law, or by physical force; or he may content himself with seizing for his own use anything which she may earn, or which may be given to her by her relations” (*Subjection of Women*, p. 285).

Nothing short of equality under the law would suffice for Mill. Those women who were fortunate enough, through inheritance, to bring property into the marriage and the few who were able to earn property during the course of the marriage were to have access to it if the marriage dissolved: “a woman’s inheritance or gains ought to be as much her own after marriage as before. The rule is simple: whatever would be the husband’s or wife’s if they were not married, should be under their exclusive control during marriage, which need not interfere with the power to tie up property by settlement, in order to preserve it for children” (*Subjection of Women*, p. 297). Mill was hopeful, pointing to legal arrangements in several states in America that secured to women the right to own property independent of marital status.

### **Labour market participation**

As noted above, Mill called for the reform of social arrangements so that women would have access to education to the same extent as men. Over the course of his long writing career, he vigorously opposed the custom of educating women to be wives and only to be wives. Mill insisted instead that women be offered the same educational and labor market opportunities as men. Indeed, Mill held that women were not only fit to vote—itsself still controversial in the mid-nineteenth century, but also to hold office! (*Subjection of Women*, p. 301).

Mill justified calls for reform of education and labour market arrangements on utilitarian grounds. First, such reforms would yield an increase in the productive capacity of the time. Mill anticipated that some—but not all—women would enter the labour force. Some would choose to work in the labour market and others would choose to stay in the home: in Mill’s view, the important thing was that they be offered the choice and educated so that it was a feasible one. In addition, as women were educated and offered expanded opportunities, they would be able to enjoy a wider set of pleasures and, as noted in Chapter 3, they would develop an improved capacity for enjoyment of “higher pleasures.” They would become able to improve themselves, via the learning that comes by doing. As Mill put it in his *Principles of Political Economy*, the end of “forced dependence” would lead to “moral, social, and even intellectual improvement”

The same reasons which make it no longer necessary that the poor should depend on the rich, make it equally unnecessary that women should depend on men; and the least which justice requires is that law and custom should not enforce dependence (when the correlative protection has become superfluous) by ordaining that a woman, who does not happen to have a provision by inheritance, shall have scarcely any means open to her of gaining a livelihood, except as a wife and mother. Let women who prefer that occupation, adopt it; but that there should be no option, no other carrière possible for the great majority of women, except in the humbler departments of life, is a flagrant social injustice. The ideas and institutions by which the accident of sex is made the groundwork of an inequality of legal rights, and a forced dissimilarity of social functions, must ere long be recognised as the greatest hindrance to moral, social, and even intellectual improvement. (*Principles of Political Economy*, p. 765)

Such a reform, Mill suggested, would also be associated with a decline in population growth, especially among the labouring classes. Present arrangements left women with no say in the size of their family and led to severe poverty. (One is reminded here of Mill’s own family with nine children born in

nine years.) Mill predicted that as women entered the labour force, they would choose to have fewer children:

On the present occasion I shall only indicate, among the probable consequences of the industrial and social independence of women, a great diminution of the evil of over-population. It is by devoting one-half of the human species to that exclusive function, by making it fill the entire life of one sex, and interweave itself with almost all the objects of the other, that the animal instinct in question is nursed into the disproportionate preponderance which it has hitherto exercised in human life. (*Principles of Political Economy*, pp. 765-66)

Mill's position on women is fully consistent with his position in *Utilitarianism*, that institutional reforms that better reflected impartiality and equality were the means to achieving the greatest happiness. More than this, he believed that moral improvement would follow institutional reform. The Mills concluded that the "sole mode" of rendering marriage consistent with justice to both sides "and conducive to the happiness of both" was to make the relationship between the sexes one of "equality before the law" (*Subjection of Women*, p. 293).

As things stood, mid-nineteenth century institutional arrangements were morally corrupting, both for those in power (men) and for those held in dependence (women). As constituted under nineteenth century law, the family was a school for the wielding of power, as opposed to placing parties on an equal footing: "If the family in its best forms is, as it is often said to be, a school of sympathy, tenderness, and loving forgetfulness of self, it is still oftener, as respects its chief, a school of wilfulness, overbearingness, unbounded self-indulgence, and a double-dyed and idealized selfishness..." (*Subjection of Women*, pp. 288-89). Institutional reform to place women on the same legal status as men was the only means by which the household might instead become "a school of moral cultivation" (*Subjection of Women*, p. 293): "All the selfish propensities, the self-worship, the unjust self-preference, which exist among mankind, have their source and root in, and derive their principal nourishment from, the

present constitution of the relation between men and women” (*Subjection of Women*, p. 324).

It is important to keep in mind just how controversial, and how prescient, were Mill’s positions on women. Somewhat later in the nineteenth century, William Stanley Jevons worried about married women working in factories. Unlike Mill, however, Jevons questioned the decision-making capacity of working women and he wondered if the option of working in factories increasingly induced women to make poor marriage choices. These worries led Jevons to speculate that the State might be justified in restricting the ability of married women to work in factories. By contrast, writing several decades before Jevons, Mill foresaw that with additional labour market opportunities population pressures would be reduced because working women would choose to have fewer children.