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ASSOCIATION FOR PROMOTING THE EXTENSION OF THE CONTAGIOUS
DISEASES ACT, 1866, TO THE CIVIL POPULATION OF THE
UNITED KINGDOM.

AN ENQUIRY

INTO THE CHARACTER OF

The Contagious Diseases Acts

OF

1866—1869.

BY

ELIZABETH GARRETT, L.S.A.

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1851

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AN ENQUIRY

INTO THE CHARACTER OF THE

CONTAGIOUS DISEASES ACTS OF 1866—1869.

THE proposal to extend gradually to the civil population the principle embodied in the Contagious Diseases Act of 1866 has been, during the last few weeks,* so prominently brought before the general public that it can no longer be regarded as a matter for professional discussion only. English men and women, who have any influence whatever on legislation, are urged to use that influence to prevent the passing of a measure tending, as it is said, to encourage vice by making it safe and easy to one class while subjecting another to a cruel and demoralizing espionage. Those who feel that the relief of the physical suffering that follows the transgression of the moral law cannot be weighed in the scale against the more deadly evil of the transgression itself, must regard such a measure with anxiety. They will desire, before taking part either for or against it, to consider the question with a knowledge of the facts. But the facts bearing on the question do not lie within the range of ordinary experience. Much of the evidence is supplied by the medical profession, and can only be fully appreciated by those who have had medical experience. Much also of the less strictly professional evidence is buried in Blue books, or mixed up with repulsive details which it is not essential to go into in order to form a fair judgment.

* January, 1870.

To those, therefore, who desire to form such a judgment, a brief statement of the provisions of the Act and an inquiry into the value of the objections brought against it may not be useless.

The Acts of 1866—1869, though very limited in scope, may be briefly described as an attempt to diminish the injury to public health which arises from prostitution. It has long been known that one of the most serious plagues of modern times, the most important of preventible diseases, is communicated mainly by fallen women. The terrible importance of this class of disease has been most clearly seen in the army, and to all conversant with the facts it had long been evident that some measure of preventive legislation was urgently needed.

In 1864 the first attempt was made by passing an Act empowering certain garrison towns to provide hospitals for the cure of prostitutes when the subjects of contagious disease. It was, however, found that the permissive character of the measure rendered it nugatory. The majority of the women would not enter the hospital early enough, or stay long enough, and therefore no appreciable benefit resulted to the community. In 1866 a much more stringent Act was passed. It was applied only to a small number of garrison towns. The experience of nearly three years showed that some of the details of the Act might with advantage be altered before it was extended to other towns, and accordingly in 1869 an Amended Act was passed. Of the Act, as it now stands, the following are the more important provisions. A superintendent of police is appointed, whose duty it is to warn public women that the law requires them to undergo periodical medical inspection, and to obtain a magistrate's warrant to compel them to do so if they do not submit voluntarily. Those who are found to be the subjects of contagious disease are sent to a certified hospital, where they may be detained three months if necessary. Should they

then be not cured, and a certificate to that effect being made out, they may be again sent to the hospital for two successive periods of three months. Even when free from contagious disease they remain subject to periodical inspection as long as they continue to practise their trade.

The objections lately raised against the Act are these:—that legislation is unnecessary, the disease being much less prevalent and less serious than the advocates of the measure declare it to be; that it would be useless, as the disease has not been and would not be checked by any such interference; that such legislation is opposed to the principle of freedom, and to the sentiment of Christian pity for the fallen; and, finally, that it is immoral. It will be well to look at each of these objections separately.

Is legislation necessary? This is strictly a professional question, upon which the opinion of trustworthy medical witnesses ought to be accepted as final. It is enough if unprofessional persons know what that opinion is, together with some of the principal facts upon which it is based. Without assuming a degree of unanimity which is not likely ever to be found in a profession so large and heterogeneous as that of medicine, it may fairly be asserted that the verdict of an immense majority of the profession has declared legislation to be necessary. The weight of this opinion is increased when it is seen that on this side appear the names of almost every physician and surgeon of the first rank in the profession. Mr. Paget, in his evidence before the Committee of the House of Lords, says that he thinks
 “it would be very difficult to overstate the amount of
 “damage these diseases bring to the population, as
 “regards not individuals, of whom a considerable number
 “in the lower classes are damaged in health for life,
 “but still more as regards the number of children born
 “subject to diseases which render them quite unfit for

“the work of life.” The same witness had seen five surgeons die, and fifty suffer more or less severely, from the infection received from patients. Nurses are also frequently infected by children who are the subjects of hereditary disease. Sir William Jenner says, before the same Committee, “I cannot express too strongly my conviction of the gravity of syphilis at the present time. I have arrived at the conclusion that it is one of the most fatal diseases we have in this country—at least it stands very high among them and every day’s advance in our medical knowledge raises its position in that respect. I think it is a disease entirely preventible. I think that children and other persons suffer largely from it without any sin of their own, and therefore I think it ought to be prevented.” Mr. Prescott Hewett is asked by the Committee if he finds the effects he has described to any great extent among children. He answers, “To a great extent.” “Can you say whether it is an evil existing to such a degree as to require, if possible, legislative remedy?” “Certainly, if possible. I do not know any disease that is more terrible to my mind than this.”

Considering the question from another point of view, hospital statistics are seen to furnish strong confirmatory testimony as to the extent of the evil. Among the surgical out-patients at Bartholomew’s, one-half suffer from this cause. At Guy’s the proportion is 43 per cent. At other hospitals the proportion varies from a third to a fifth of the number admitted. At the Moorfields Eye Hospital it is a fifth. At the Hospital for the Throat it is nearly a fifth. Of the patients thus affected, a very large proportion are innocent women and children. At St. Mary’s Dispensary I have found that two-thirds of the whole number of patients treated for this class of disease are suffering from no fault of their own; and though it is obvious that this proportion is higher than it would be in a dispensary which received men as well

as women, I believe it would not be an exaggeration to say that, among the poor, the number of innocent people who suffer from the worst and most lasting forms of the disease is greater than the number of the guilty.

The objection that legislation would not succeed in checking the evil is one of more practical importance. It must be admitted, moreover, that it cannot be completely removed by an appeal to the effects of the working of the Act of 1866. Statistics showing the amount of disease before and after the Act came into effect are not so conclusive as the friends of the Act could desire. A decided diminution is observed in all but one case—where the failure of the Act was due to special causes—but the diminution is less than that which a hasty observer might have expected. The explanation of this fact is found in the conditions under which the experiment has been made, conditions which rendered it impossible fairly to apply the statistical test. The fact that the protected districts, those in which the Act was enforced, were easily accessible to the inhabitants of neighbouring towns, and were constantly receiving regiments from unprotected stations, is sufficient to indicate the mode in which the statistical result would be affected without any real failure of the Act itself. Success has everywhere been in proportion to the size of the area over which the Act could be brought into operation, and to the consequent isolation of the protected district. At Malta, Sir Henry Storks, being able to command these conditions, succeeded in completely stamping out the disease. The same success was obtained at Sheerness, from the accidental isolation of the station. In places less fortunately situated, statistics of the results of the Act are probably almost worthless as a test of the value of preventive legislation. More serviceable evidence is gained from the testimony of officers in charge of the stations before and after the Act came into effect. They assert emphatically that the Act has

produced great good in every one of the protected places, and that, but for the constant influx of disease from the other stations, the statistical results would have been all that could have been anticipated. This is corroborated by the result of legislation on the Continent; all competent authorities agreeing that it would be a great mistake to imagine that the evil is by any means so rife there as it is in this country. The truth of this opinion is confirmed by comparing the proportion of the household troops in hospital annually from this cause in London, Paris, and Brussels. According to Mr. Acton, the proportion is 1 in 4 in London, 1 in 33 at Paris, 1 in 56 at Brussels. This surgeon whose great Continental experience renders him the first English authority on such a point, considers that among the civil population the disease is at its maximum in London, its minimum at Paris. He "cannot understand how there could be a more complete success than has been attained at Paris." The English Act differs from the Paris system in many important points, notably in being only prohibitory in character, and giving no sort of sanction to the women with whom it deals; but there seems to be no reason why, if applied to the whole country, it should be less successful. Further experience will doubtless suggest improvements in the Act; it may even be hoped that when prejudice subsides, and when its restrictive character is generally known, it may be found possible to go a step further, and make street solicitation a criminal offence.

Are the provisions of the Act inconsistent with the principle of freedom? Are they also unjust in dealing more severely with women than with men?

In reference to the first point, the restriction put on personal liberty, it is generally recognised that the State is bound to protect the public, even if in doing so it interferes with the liberty of individuals. But it may be said that though the intervention of the State is justifica-

ble when the individual is powerless to protect himself, as *e.g.*, in the case of measures for checking the spread of pestilence, the present case is one in which such a principle does not apply, the individual indulging himself at his own risk, and being safe from infection unless he puts himself in the way of it. But it is essential to remember that this is only true in a very limited sense. To say nothing of the children to whom such a fearful heritage descends, wives are in the present state of the law powerless to defend themselves, and are therefore in a position to require legislative protection.

Stress has also been laid on the apparent injustice of imposing restrictions on women that are not imposed on men. There would be force in this objection if there were any parallel class among men, but in the absence of any such class it cannot be said that men and women are treated unequally. Not only are respectable women altogether outside the scope of the Act, but women who are leading immoral lives are equally with men exempt from its operation as long as their immorality is not publicly practised as a trade.

Another and most serious charge brought against the Act is that it might endanger the liberty of all women and place them all in the power of the police. It has been said, indeed, that "practised police spies will cajole and terrify innocent women into declaring themselves to be common prostitutes." It is difficult to believe that any one can seriously credit women with such a degree of helplessness. Is there any appreciable risk that any woman not bereft of reason would be capable of such folly? Surely it is incredible.

With reference to the power given to the police, it should be remembered that the Act is not enforced by common constables, but by superintendents of police, men of tried character, of long standing in the force, almost invariably of middle age, and married; and that they have no power over any but notorious sinners. In

the immense majority of cases (690 out of 700, as estimated by one witness) the police have only to warn the woman of the existence of the law, and she at once submits; here the police make no charge at all—the woman is aware that her employment is perfectly well known, and she does not think of denying it; in the rare cases where this is insufficient the superintendent gets a magistrate's warrant against her by swearing that he knows her to be a common prostitute. It is no doubt somewhat startling to an ordinary member of English society to think of the police knowing enough about individual women to be able to bring with certainty such a charge against them. But it is obviously much more easy for the police to recognize those to whom vice is the business of life, and who for carrying on that business frequent constantly the same localities, than it would be for them to know ordinary citizens. It has also been shown by Mr. Berkeley Hill, that women of this class are compelled by the pressure of society to live very much together, and this materially aids the police in knowing them. Though only one doubtful instance of mistakes having occurred is contained in the evidence, the possibility of their arising has been carefully provided for. No woman can be summoned at all until a magistrate is satisfied, by an information on oath of a superintendent of police, that the woman is a notorious prostitute, and, if summoned, she can escape subjection to the Act, either by leaving the district or by giving her own recognisances to the magistrate of her good behaviour during three months.

An argument which it is even more important to consider is that the Act is opposed to the instinct of pity which every one, and especially every woman, ought to feel for the fallen. It is argued with great truth that those who from youth have been shielded from all temptation, who have been surrounded by associations of purity which, even apart from principle, are sufficient in

all but exceptional cases to make immorality impossible, ought not to dare to judge the amount of guilt implied in even the grossest immorality practised by women brought up amid temptations so infinitely greater. It is also urged, and again with truth, that in the majority of even the lowest class many traces of a better nature continually show themselves, and we are asked—Would you chain these poor women to their vileness? Would you say that for them there is no hope of return? Would you condemn them to perpetual slavery for the benefit of men? To those conversant with the provisions of the Act, it cannot but be surprising that these questions should even be asked, so distinctly merciful and Christian is its whole tenor in relation to the class with which it has to deal. Every member of the medical profession knows only too well how terrible are the sufferings of this class, and how difficult it is for them to get out of their life of vice, or even to discontinue it for a time when in a state of urgent bodily suffering. Till they are too ill to move about they must continue to follow their trade, or starve. Hospitals do not as a rule admit them, dispensaries cannot cure them; even soup-kitchens for the sick will not help to feed them; missions and refuges reach but few of them; they are without health, without character, without habits of industry and self-control, without friends, without money. Could the position be more forlorn? To a woman thus circumstanced the Act provides a hospital to which admission is given without delay, as soon as she needs it; in the hospital she is separated as far as possible from those yet lower than herself; she is treated with kindness; she is put into communication with those who make it their constant effort to help her back into a decent life; if she permits it her friends are asked to receive her again when she is well enough to leave the hospital, or she is offered a home in a reformatory or refuge. When cured, her expenses home are paid by Government, and home is taken

to mean—if she wishes it—where her parents are. In this case a suitable escort is provided for her at the expense of the Government. Even when still at large, though liable to periodical inspection, if she forsakes her evil pursuit the surgeon is empowered to release her from liability to examination without referring her to the magistrate. That this description of the manner in which the Act is carried out is not overdrawn will be plain to any one who will go through the evidence contained in the Parliamentary papers.* It would be indeed no exaggeration to say that the Act is scarcely less beneficent in its moral bearing on the women it concerns, than it is in its physical bearing on the health of the community. From the hospital at Chatham, twenty-three per cent. of the patients admitted have permanently returned to decent life. From the Devonport hospital, in the first four months of 1869, seventy were sent to asylums out of a total of 700; since the Act was first enforced at this station, 550 women have left the streets, and are known by the police to be living respectably. This evidence is confirmed by the testimony of many witnesses from all the other stations. The reclamation of individuals has, moreover, not been balanced by the entrance of an equivalent number of fresh women. The total number has everywhere greatly diminished. At Devonport, for instance, where in 1864 there were 2,000 women of this class, there are now but 770.† The amount of other crime, such as stealing, committed by these women, has also, by the evidence of many witnesses, been everywhere remarkably reduced. The clergy of the various towns to which the Act has been applied bear witness strongly in its favour.

* See especially Rev. J. G. Bailey's evidence, pp. 94—97, Lords' Report; Mr. Sloggett's evidence, pp. 5—7, Commons' Report; Mr. Parson's evidence, p. 14, Commons' Report.

† These numbers are quoted on the authority of the Police Register.

It is further to be remarked as bearing upon the moral influence of the Act that, beneficent as it is in regard to the fallen class, it has the advantage of not wearing that aspect. It is probable that it has a distinctly and powerfully deterrent influence upon girls who might, but for its salutary check, allow themselves to sink into a life of sin. It acts in this way by imposing an immediate and certain penalty, a penalty which the most ignorant understands, and which is felt more severely at the time when the girl still retains sensibility and a certain amount of modesty. The dread of disease and of ultimate degradation is not likely to be strongly felt by an ignorant girl of sixteen or seventeen, to whom the danger seems but a distant one. But if she knows that prostitution places her immediately under the special observation and control of the police, and subjects her, as long as she practises it, to periodical inspection, and to the certainty of losing her liberty for a time if she becomes the subject of contagious disease, she feels there are very heavy drawbacks to the immediate attractions of vice.

Finally, it is urged that legislation, even if it could stop or diminish the physical evils resulting from vice and exert a reforming influence on some of the women now degraded by it, would do so at the expense of inflicting serious moral evil on men; that it would in effect aim at making vice safe, and that thus a double restraint would be removed, the restraint of fear and the moral restraint which is imposed by the general tone of society and by the discountenancing attitude of the State. It is rightly felt that if physical gain is to be had at the expense of moral loss the gain will be too dearly bought. But is there, in this question, any such alternative? Of the two restraints mentioned, consider first the restraint of fear. How much is that worth? how much of its influence, supposing it to be worth anything, would be lost by the action of the measure? A youth knows, as he enters manhood, that certain bodily evils may result

to him from leading a vicious life. But he sees that these are not by any means the inevitable result; the experience of his companions shows him it is not so, he gets to think the danger has been exaggerated, and by a natural reaction he thinks the risk less than it really is, and ignores it altogether. He is moral or immoral from influences other than that of fear, unless caution is with him a far more marked characteristic than it usually is with English lads.

The second objection on the score of morality is, that the State will appear, by regulating prostitution, to sanction it, and that thus a moral restraint will be removed from the whole community, and more especially from its least educated portion.


In some cases, it is doubtless true that recognition implies less of active hostility than might be implied by an obstinate policy of non-recognition. But recognition which takes only the form of prohibition can scarcely be said to sanction, and the Act in question is, with regard to prostitution, entirely and simply prohibitory in spirit. The State has no right to enforce private morality or to punish private immorality, except where this immorality directly injures the community. In the case before us it cannot make a crime of prostitution considered apart from its effects, as it is the affair of individuals, not of the community; but it is bound to recognise the effects of private vice when these fall on the innocent members of the community as well as on the guilty. It is also bound to recognise the effects when they incapacitate servants of the State for the duties they have bound themselves to perform. Nothing in the Act itself, or in the way in which it has been enforced, justifies the accusation that it is intended for the security of vicious men. No certificate of health on her discharge from hospital is given to the woman; the Act has for its sole object to prevent her from carrying on her trade when in a condition to seriously injure the community in doing

so. Because the State has no power to make prostitution criminal, it does not follow that it ought to refrain from checking it as far as possible, when, by injuring either the health of the servants of the State or of innocent members of the community, it for the first time places itself within reach of the controlling power of the law. Moreover, as has been already shown, the Act does more than diminish the consequences of prostitution; by reclaiming some women and discouraging others, it distinctly checks the evil itself. It may also be fairly doubted if it would ever had occurred to the working classes to think that putting gross immorality under a certain amount of police control and restriction was giving it in any sense the sanction of the State. The word "policeman" does not suggest an idea of sanction so much as that of repression, and probably the popular imagination at first over-estimates the power actually in the hands of the police, and that therefore the new law not only is a check, but looks like one.

The assertion that periodical medical inspection still further demoralizes women who have adopted vice as a trade, is one which in the absence of confirmatory evidence it is very difficult to believe. It is no doubt probable that women of this class realize the shame of their position more in the presence of a medical officer than they do with their ordinary companions; but can it be urged that this momentary awakening of shame is an evil? Would it not be well if the shame became so great as to render continuance in the life intolerable? It should also be remembered that inspection on admission is compulsory in the case of all who apply to be received into reformatories, and that here it has never been thought demoralizing.

It is perhaps desirable to mention the alternative scheme proposed by those who oppose the present Act. Its more important features are—the establishment of hospitals to which women of this class shall be encouraged,

but not compelled, to come, when suffering from contagious disease; reformatories to receive them as they leave the hospitals; and a more earnest endeavour on the part of good men and women to get into friendly relationships with the class in order to reclaim all those of its members who are not utterly hardened and degraded. Early marriages are also advocated. Without wishing to discourage the efforts of private individuals, it is well to remember that these agencies have already been tried and that their success hitherto has been far short of that which would justify making them the basis of legislative action. By the Act of 1864, the voluntary hospital scheme was tried, without compulsory inspection or compulsory detention; it failed completely from the determination of most of the women to return to their ordinary lives long before their health was restored. Early marriages are all but universal among the London poor, and nothing is more certain than that in this class they do not prevent immorality. As to the effect of a crusade against vice undertaken by men and women filled with an ardent pity for the women degraded by it, those who see most of the ignorant classes are perhaps the least able to be sanguine as to the probability of any great or permanent good from such efforts. Degradation cannot be taken by storm, and the animal side of human nature will outlive crusades. There is no reason, however, why the Government scheme should not be greatly aided by private benevolence. Every hospital which receives this unhappy class ought to be associated with a refuge, and here, at least, there would be room for all the aid which, in the slow and difficult work of restoration, wise and sympathetic women would find it in their power to contribute.

A photograph showing the gutter of a book. A ruler is placed vertically along the gutter, with markings from 2 to 11. To the right of the ruler is a color calibration strip with various colored squares and the text ".COM". The book's pages are visible on either side of the gutter.

TIGHT GUTTERS

TEXT RUNNING INTO

GUTTER