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Racialized Legalities: The Rule of Law, Race, and the Protection of Women in Britain's Crown Colonies, 1886–1890

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This article enquires into colonial officials' invocations of the "rule of law" and the persistence of racial difference in the modern British Empire. To unravel this contradiction, I examine the debates over the freedom of women during the repeal of the Contagious Diseases ordinances in the directly ruled Crown Colonies of Hong Kong and the Straits Settlements (Singapore, Penang, and Malacca) between 1886 and 1890. Although the apparent purpose of these laws was the containment of venereal diseases, officials employed them to police prostitution and subject working-class, "native" women to medical surveillance. Despite the repeal of the Contagious Diseases ordinances across the empire, officials in both colonies continued to regulate prostitution in the name of native women's freedom, invoking the rule of law. Through the historical ethnography of the rule of law, I demonstrate how the language of this ideal rendered an evocative frame of beneficence, legality, and protection against which officials articulated social difference in racialized, and intersectional, ways—what I call racialized legalities. In comparing the colonized in terms of racialized legalities, officials designed a differentiated sovereignty in determining the protections granted to native women. Expressing the cultural power of law, the rule of law was a constitutive myth.

INTRODUCTION: THE "RULE OF LAW" AND COLONIAL DIFFERENCE

Why did officials in the modern British Empire recurrently invoke the "rule of law" in colonial lawmaking while insisting on the racial alterity and inferiority of their subjects? How did the universalistic ideal of the rule of law, as derived from the rights of

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individuals, affect the colonial governance of difference? Taking this historical conjuncture as "neither a theoretically dictated necessity nor a mere occasional happenstance" (Mehta 1999, 49), this study enquires into colonial officials' invocations of the rule of law and the production of racial difference in a self-avowed liberal empire. To bring to light the "grid of intelligibility" that allowed for such amalgamations of rights and exclusion (Foucault 1990, 93), I focus on the debates over the regulation of prostitution across Britain's directly ruled Crown Colonies in the late nineteenth century as white, male officials were confronted with competing claims over the protection of "native" women's freedoms.

To begin, colonial officials could, and did, take their commitments to the rule of law seriously and often sought to translate English ideals of legality and individual freedoms into colonial law. No less a figure than Sir James Stephen, the permanent undersecretary of state for the colonies during the transformative period of emancipation might be described as "someone with an intense conscience and spiritual belief who was a critic of British colonialism" (McBride 2016, 7). Similar things might be said of George William Johnson, a clerk in the Eastern Department of the Colonial Office toward the end of the nineteenth century. Johnson was a key ally to the English social reformer Josephine Butler in her campaign against the regulation of prostitution across the empire—a struggle that sought to remove women from the intrusive surveillance of officials. Although colonialism rested on foundational acts of conquest and recurring acts of violent reassertion, colonial administration also spoke the language of beneficence, legality, and protection, invoking the rule of law as officials wrestled with problems tied to racially different subject populations. From the "long-distance advocacy" of religious activists against slavery to Butler and her allies' like-minded fight to abolish the regulation of prostitution in the colonies, examples abound of how officials and elites sought to steer the empire toward what they considered moral ends (Levine 2003, 90–119; Stamatov 2013).

To understand the significance of such promises of legal protection in an empire marked by racial difference, this article turns to the regulation of prostitution, which "intruded the bedroom into the boardroom" and placed sex at the heart of imperial control (Levine 2003, 91). The puzzle posed by the debates over the imperial regulation of prostitution lies in the peculiar resonance of the rule of law in disagreements over the protection of native women.[1] By the 1880s, when the Contagious Diseases (CD) ordinances that targeted women as carriers of venereal diseases were subject to a growing well of criticism, debates between elites across the empire centered on the question of whether native prostitutes were "free agents" who needed to be protected from the regime of compulsory medical examination imposed by these laws. Even as abolitionists and their allies emphasized the potential for officials' abuse of power, those who desired the regulation of prostitution insisted on native women's inability to be free without state intervention. Framed by the rule-of-law cast of individual rights and

1. I placed "native" in quotation marks because the term in the modern British empire was often used as a synonym for nonwhite populations rather than an accurate reference to indigeneity. For example, in the Straits Settlements, the term, "natives," could also be used in reference to migrants from China, British India, or the larger Malay Archipelago. In this article, my use of the term "native" reflects its usage in official correspondence, meaning "nonwhite," and does not indicate the indigeneity of the subjects or practices in question.

freedoms, this moralistic discourse marked the repeal of the CD ordinances across the empire. This was particularly visible in the colonies where debates over regulation were most extensive and heated: the Straits Settlements (Singapore, Penang, and Malacca) and Hong Kong.

This article demonstrates how such tensions over the individual liberties of subjects were constitutive of the "rule of colonial difference"—long regarded by scholars as a defining feature of the colonial state—as applied to the controls imposed on native women (Chatterjee 1993; Kolsky 2005; Steinmetz 2007).[2] Delving into the story of the CD ordinances, I argue that the production of a racialized and gendered structure of imperial control in the form of laws that established the colonial state's protective role vis-à-vis native women was driven by the ways male officials and elites infused their commitments to the rule of law and the protection of native women with varying understandings of race—what I call *racialized legalities*. Whereas local officials and elites positioned themselves as self-professed experts on the workings of prostitution in the racialized and gendered order of the colonies, the Colonial Office was charged with the task of evaluating the former's claims and ordinances in creating imperial policy. Articulated against these distinct preoccupations, the ideal of the rule of law provided an evocative framework of sovereign obligation and benevolence through which officials could define and compare subject populations. Rendered in this manner, such debates determined the legal protections granted to native women based on dominant views of their racial character.

The rule of law was, in practice, central to the governance of colonial difference, making it possible not only for lawmakers to compare and justify racial difference but also enact the empire's custodial role and policies toward native women, whose voices went unheard in these proceedings. Rather than debate the rule of law as a rhetorical façade or a Common Law transplant, my argument takes it as a myth of modern law (Fitzpatrick 1992; Bottici 2016). The workings of the rule of law as myth enabled officials and elites to conceive the unfamiliar in terms of the familiar and invest their desired images of difference with moral weight and authority. In this light, the native prostitute was not only a symbol of moral abjection whose seeming licentiousness proved racial backwardness but also a subject with freedoms under the colonial rule of law. The rule of law formed part of the "fluid vernacular" of the "imperial constitution" of Britain's empire (Benton and Ford 2016, 3), and its use as a frame of comparison in debates over the protection of subject populations enabled the establishment of racial and gender hierarchies in law. Preceding the proliferation of technocratic rule of law indices in the present (Rajah 2015; Urueña 2015), the rule of law undergirded the language of social classification and ranking in Britain's liberal empire.

2. As Steinmetz (2007, 36) states, the "rule of colonial difference" is founded upon "the assumption of an unbridgeable difference between [the colonizer and the colonized] and of the [latter's] ineradicable inferiority." In Chatterjee's (1993, 18–22) original take, the recognition of colonial difference in practice vindicates the truth of universal principles like the rule of law. Simply put, it is the colonial exception that proves the rule. Whereas Steinmetz (2008, 593) also argues that the violation of the "rule of colonial difference" is an indicator of a state's exit from colonial status, Chatterjee (1993, 33) is more circumspect, noting that it is the specificity of the colonial state that "reveals what is hidden in the universal history of the modern regime of power." In other words, the "rule of colonial difference" can, and has been, employed in contexts that are not colonial.

This article begins with the genealogy of the rule of law to identify its uses and meanings in tempering sovereign power. Next, I explain the concept of racialized legalities and its intersectional workings in the imperial control of native women. I then turn to outline my method, focusing on how I traced officials and elites' invocations of the rule of law. Finally, my narrative begins by situating the interconnected cases of Hong Kong and the Straits Settlements in the imperial politics of the regulation of prostitution. This is followed by an account of how the repeal of the CD ordinances by the Protection of Women and Girls ordinances, which was initially directed at trafficking and related sexual offences, continued the surveillance and control of native women in a new guise. I close with the past and present entanglements of the rule of law with race and gender in (post)colonial contexts and reflect on its enduring power as myth.

ON SOVEREIGN PROTECTION AND THE RULE OF LAW

> As the ligatures or strings do knit together the joints of all the parts of the body, so doth ligeance join together the Sovereign and all his subjects, *quasi uno ligamine* ... for as the subject oweth to the King his true and faithful ligeance and obedience, so the Sovereign is to govern and protect his subjects.[3]

The main theoretical point of this study is that the rule of law, as myth, formed a comparative lens of evaluation integral to colonial lawmaking, enabling officials to articulate and justify the differential treatment of subject populations. Aligned with Krygier's (2016, 223) proposal that social scientists examine why "people have clamored and we might still clamor for the rule of law," I probe how this ideal lay in the background of debates over the colonial state's surveillance and control of native women. To know why the rule of law has retained its pull, we have to study what historical actors did in invoking it, whether directly or indirectly.

The rule of law gained prominence in the second half of the nineteenth century. In the classic formulation of Victorian jurist A.V. Dicey (1889, 189–90; italics mine), the concept comprised three facets of England's political and legal institutions: one, "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;" two, "equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts;" and, three, "the fact that *with us* [Englishmen] the law of the constitution ... [is] not the source *but the consequence of the rights of individuals*, as defined and enforced by the Courts." Since Dicey's canonical take has been subject to critique, my purpose is not to add to this discussion by suggesting a new conceptualization (Tamanaha 2004, 63–65; Ohnesorge 2007, 102; Rajah 2012, 37–42; Krygier 2016, 200–5; Lino 2018). Rather, I highlight the

3. *Calvin's Case* [1608] 7 Co. Rep. at 4b. The case dealt with the problem of whether the Scottish subjects of James VI of Scotland could claim the same rights and protections as his English subjects in England after his accession as James I of England. Detailed analyses of the case and its implications for imperial jurisprudence are found in Hulsebosch (2003, 454–58), Rana (2010, 31–33), and Tomlins (2010, 82–89).

rootedness of Dicey's definition in the historical self-understanding of the English.[4] In its third sense, the "rule of law" meant that judges determined the validity of state actions based on preexisting conceptions of the rights of individuals; thus, in Dicey's ethnocentric formulation, Britain's constitutional laws were grounded in the distinct rights of Englishmen.

Nevertheless, when set against its jurisprudential genealogy, Dicey's definition reveals the historically defined basis of English personhood and identity. Specifically, in explaining how courts—not formal constitutions—were the institutional basis of rights already inherent to those within jurisdictions under the Crown, Dicey (1889, 182–83) referred his readers to a series of cases, the most notable of which was *Calvin's Case* [1608]. Although *Calvin's Case*, which granted the Scottish subjects of the Crown legal protections in England, certainly demonstrated the pivotal role of judges in determining the rights of subjects, Dicey's citation of Sir Edward Coke's foundational opinion elided the fact that it established how individuals' rights were rooted in a framework of sovereignty, faith, and obligation. Simply put, ligeance—not one's identity as an Englishman—was the basis of an individual subject's protection and rights. Revisiting Coke's dicta, we find that law's protections are based on the "ligeance, faith, and obedience of the subject to the Sovereign" and that such ligeance, as "qualities of the mind and soul of man," is "due by the law of nature."[5] Averting Coke's attempt to ground ligeance on "natural" principles, I contend that instead of being seen as a constitutional arrangement derived from rights peculiar to Englishmen, the rule of law is better grasped as the politically negotiated product of the submission to sovereign power, as tempered by judicially enforced obligations to the governed. As Krygier (2016, 203) states of the problem that rule of law traditions seek to solve, "the focus is on power and how it is exercised. That is the place to start."

Yoked onto the historical project of tempering sovereign power, the rule of law can be understood, respectively, as the basis of the legitimacy of those in positions of command, or as a guarantee that induces social actors to place valued resources—that is, bodies, labor, and capital—at the mercy of rulers. To illustrate, in the late eighteenth-century empire, the Crown's promise of the rule of law and representative government were seen as important undertakings for drawing private capital and settlement to the colonies. As Lord Mansfield opined on the Crown's decision to call an elected legislative assembly in Grenada in *Campbell v. Hall* [1774], "With what view is this [Proclamation] made? It is to invite settlers and subjects: and why to invite? That they might think their properties, &c. more secure."[6] Here, British officials and elites' claims of the rule of law can neither be dismissed as ideological cover nor taken as an institution "transplanted" across an "empire of liberty" (Greene 2010; Mancke 2010).

4. The salience of understandings of English identity in Dicey's definition is underscored by its circularity: The rights of individuals exist insofar as they are established by the courts, which, in turn, may only act on the basis of individuals' rights. What secures this juridical alchemy of rights are underlying notions of identity tied to the rights of *Englishmen*. I owe my recognition of this tautology to Nick Wilson (personal communication with author).

5. *Calvin's Case* [1608] 7 Co. Rep. at 7b and 13a–b.

6. *Campbell v. Hall* [1774] 1 Cowp. 204 at 213. This case dealt with the Crown's powers to levy duties on Grenada's inhabitants after the grant of an assembly; Lord Mansfield ruled against the Crown. Dicey cited this case along with *Calvin's Case* to illustrate the role of courts in determining individuals' rights under the rule of law.

The rule of law emerged with the projection and negotiation of sovereignty, as those in power seek to bind their subjects through promises of protection (Adams and Steinmetz 2015; Reed 2020).[7]

Therefore, across an expanding empire with "diversities of experience and life forms across virtually every relevant register of reckoning" (Mehta 1999, 9), officials' concerns with legality shaped how they defined the Crown's differential and unequal relations to subjects in law. Under the promise of protection, colonial laws extended the reach of empire across growing domains and populations. Thus harnessed, the rule of law formed the constitutive framework for the articulation of the "rule of colonial difference," the representation of "the 'other' as inferior and radically different, and hence incorrigibly inferior" (Chatterjee 1993, 33). To elaborate, the following section outlines how colonial difference was cast in lawmaking through the form of racialized legalities.

RACIALIZED LEGALITIES AND THEIR INTERSECTIONS IN IMPERIAL CONTROL

The fluidity of race as a concept, its ceaseless transformations, and the constancy of its internal contradictions find ballast through law, even in the circumstances of imperial expansion. But, what makes law *the* imperial infrastructure that consolidates notions of racial difference in the face of changing, often contradictory notions of race? Although critical race theory exposes the myriad processes of the legal construction of race (Haney López 2006), what is unexplained is the articulation and adjudication of conflicting racial knowledges through law and its ideals. Given the "heterogeneity of [race and] state racisms" across colonial contexts (Mawani 2009, 21), we need to analyze how law, or the rule of law, mediates the unstable categories of race, providing fixity and imposing duress (Stoler 2016; Wilson 2018). The answer centers on the racialized legalities through which actors invoke both the rule of law and race in lawmaking.

Racialized legalities stem from "background understandings" tied to race that are expressed when social actors seek to establish how differing populations should be subject to, or denied, legal protection (Abend 2014, 28–32).[8] Such background understandings, which typically comprise ethnographic representations of the governed (Steinmetz 2007), become salient when the malleable, figurative language of legal ideals and their vision of a just order is applied to socially divided contexts, as in colonial rule. And, whereas legality encompasses "the meanings, sources of authority, and cultural practices that are commonly recognized as legal" (Ewick and Silbey 1998, 22), racialized

7. The language of protection, as Benton and Ford (2016, 90) highlight, could be coupled with a range of imperial interventions that "reinforce the legitimacy of British imperial jurisdiction." However, analysis of "protection," as Dua (2019, 482) notes, should not assume a teleology of state formation. Claims to protect can be turned against agents of empire to limit state power.

8. My conceptualization of the term, "racialized legalities," ties Ewick and Silbey's (1998) theorization of legal consciousness to critical race theory's focus on the mutual constitution of race and law (Gómez 2010). Whereas a prior, but distinct, usage of the term appears in Bickford's (2010, 53) work on the parallels in extralegal lynching and spectacular trial in the US South as responses to perceived violations of white womanhood, her brief mention of the term serves more as a critical commentary on the criminal legal system's construction of racialized "others." In contrast, my study sets out the first theoretical elaboration of "racialized legalities" as concept.

legalities consist of the diffuse categories, narratives, and structures of difference, particularly race and its intersections with other social divisions like gender, that permeate justifications of law's differentiated reach over governed populations. Articulated as racialized legalities, the rule of law possesses constitutive weight in the making of race because it offers a common language and narratives of social commensuration, moral ordering, and governance that allows for the adjudication of heterogeneous claims of colonial difference.

Embedded in processes and rhetoric of lawmaking, racialized legalities account for the mutual constitution of law and race, particularly though the invocation of the rule of law in debates over the rights of the governed. Drawing on Fitzpatrick's (1992) insights into the mythology of modern law, we may better understand racialized legalities in terms of the workings of myths. The myths of racialized legalities not only "set the limits of the world, of what can be meant and done" but also mediate the tensions between law and race through "the coherence or conduct of the mythic story [for example, of the roots of the rule of law in the rights of Englishmen] or ... through placing contradictory elements in distinct but related myths" (16). Racialized legalities in the colonial context join the rule of law to the racialized narrative of the "civilizing mission" (Merry 2000, 20). As modern myths premised on universalism, racialized legalities sweep up the racially profaned into what is held sacred—the rule of law—"as a project and a progression" toward the fulfillment of the ideal (Fitzpatrick 1992, 36).

Such narratives matter due to the shared sense of significance, or common grounds of understanding and feeling, they cultivate (Bottici 2016). Coupled to schemas of race and "progress," the rule of law is brought to life in the drama of legal politics. Whether performed in the denial of rights to religious "fanatics" or the exercise of mercy toward native murderers (Kolsky 2015; Evans 2021), colonial officials and the governed could get at the rule of law (or its absence) in practice. As myths, racialized legalities address how the racial exclusion works, paradoxically, to establish the rule of law as an ideal to be realized in a different time or place.

Racialized legalities come into view through lawmaking, as rule-of-law notions are tied to the making of difference in the formulation of legal rules. Building on Kolsky's (2005) discussion of the "rule of colonial difference" and codification, Cheesman (2015, 61–62) notes,

> Nothing about the procedural model for the rule of law was inherently incompatible with the rule of colonial difference. The one could accommodate the other precisely because British colonial law created categories of people from whom ordinarily available protections could be withdrawn via the mechanical application of procedure ... The differential treatment of colonial subjects via the procedural interstices was not exceptional, but mundane.

Because the construction of difference in colonial law was routine, studies of colonial law need to enquire into how invocations of the rule of law in the course of lawmaking normalized difference. Theorized as mythology, racialized legalities provide a multivalent frame for struggles over the status and rights of differentiated populations in the making of law in a liberal empire (Figure 1).

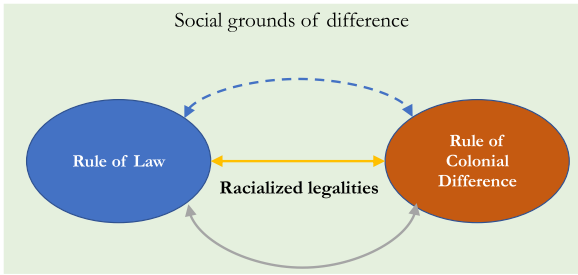

FIGURE 1.
Racialized Legalities and their Multivalence.

Racialized legalities characterized lawmaking in the modern British empire, as the Crown's officials turned from the routinized grant of elected assemblies to preserve their control over colonial lawmaking in a multiracial empire that extended its reach across Africa and Asia. Officials devised new constitutional arrangements, such as "direct rule," "indirect rule," and "self-government," to oversee colonies.[9] In their wake, crosscutting modes of imperial control over socially different populations also emerged, for officials' articulation of racialized legalities in colonial lawmaking responded to, and reinforced, existing structures of intersectionality.[10] Imperial control racialized subject populations even when the target was, as in the regulation of prostitution through the CD ordinances, sex and gender.

With growing state intervention into social life by European imperial powers like Britain (Walkowitz 1980, 3), the intersections of race, sex, and gender surfaced vividly in the regulation of prostitution. In the industrial metropole of Britain, the working-class "prostitute was [seen as] the conduit of infection to respectable society," representing the "perils of social intercourse between the 'Two Nations'"—that is, the poor and the Victorian middle classes (Walkowitz 1980, 4). While denoting class distinctions at home, such characterizations echoed the racialization of the capacious figure of the "prostitute" in the colonies, where "woman-native-prostitute was an easily assimilable equation that encouraged regulation as an urgent and rational defense against a range of tropical dangers" (Levine 2003, 182). Caught in restless series of representations and regulation, the sexual deviance of the "prostitute" did not only index the "queer and uncivilised" (Levine 2003, 193); it was also a "primary object" of social knowledge, legal classification, and control along the intersecting lines of race and gender (Mitra 2020, 67).

Therefore, the significance of racialized legalities in the regulation of prostitution was not incidental. Rather, colonial rule fostered, and depended on, depictions of the deviant "woman-native-prostitute" that called for her protection under law. Prior accounts of the regulation of prostitution in Britain's nineteenth-century empire have highlighted how struggles to categorize and control gender norms and sexual practices

9. Although the opposition between "direct rule" and "indirect rule" gained prominence in Lugard's (1922) administration of Nigeria, both models emerged earlier in the post-1865 turn to the Crown Colony system in the West Indies and the post-1857 reorganization of British rule in India, respectively (Holt 1992; Mantena 2010). "Self-government" developed in Canada and Australia, settler colonies granted governing forms like Britain's (Curthoys and Mitchell 2018).

10. "Structural intersectionality" refers to "the ways in which the location of women of color at the intersection of race and gender" renders their experiences of gender violence and subordination "qualitatively different from that of white women." (Crenshaw 1991, 1245)

were integral to the maintenance of empire, its patterns of exploitation, and its epistemic structures (Walkowitz 1980; Warren 2003; Levine 2003; Howell 2009; Mitra 2020). Shaped by Walkowitz's (1980) path-breaking study that focused on the politics of class and gender in Victorian Britain and Levine's (2003) magisterial history of prostitution and its production of gendered and racial hierarchies in the colonies, histories of the regulation of prostitution have placed the marginalized figure of the prostitute at the heart of our understandings of state power and social domination—a mode Mitra (2020, 4) calls "the politics of recuperation." Even though this approach still bears attending to, these foundational studies tended to treat law as an instrument of control or object of contention without exploring how the law and its myths enable regulation and its intersectional workings.

Taking a leaf from Mawani's (2009, 85) critical insights into the anxious production of heterogenous racisms and law in colonial contact zones, this study begins from the premise that the "prostitute was a more ambivalent figure saturated by competing racial truths." Confronting the need to explain how varied claims of colonial difference were framed in and reconciled with the rule of law, my contribution lies in setting out racialized legalities as a lens through which we may trace the debates over the CD ordinances through the myths and language of this ideal.

METHOD: TOWARD HISTORICAL ETHNOGRAPHY OF THE RULE OF LAW

In its method and interpretive approach, this article answers and builds on the recent call for "rule-of-law ethnography" (Cheesman 2018). To do so, it develops the historical ethnography of the rule of law, tying the study of the significance of ideals in social action to the tracking of social processes and relations in the warp and weave of the archives. To elaborate, whereas the *subject* of the historical ethnography of the rule of law is the ideal, its meanings, and its forms, the *object* of this method is the critical recomposition of the imperfect documentary flows that allow those in the present to access the past. And, in tracing the to and fro of colonial lawmaking that bound the empire together, I established the order and meanings of officials and elites' correspondence by reconstructing the fragmentary narratives expressed through their letters.

"Rule-of-law ethnography" is committed to "following the rule-of-law idea or some other idea with which it is related through observable arrangements of meaning that change over time" (Cheesman 2018, 172). Applied to colonial lawmaking, this entailed the reconstruction of how the rule of law ideal was invoked, starting from when an aspect of this mythic ideal was raised to its translation in legal forms. The historical ethnographer then sketches the figurations, connotations, and oppositions of the rule of law in rhetoric. However, this does not mean that my analysis of officials and elites' writings rested only upon their utterance of the rule of law. Instead, I interpreted their claims against the broader background of ideas that belongs to the rule of law ideal, as established in my readings of Dicey and *Calvin's Case*, and the concept of racialized legalities.[11] The success

11. I am indebted to the thoughtful, astute suggestions of an anonymous reviewer for this framing of my interpretive approach.

of my hermeneutic strategy is based on whether the rule of law, particularly its focus on the sovereign protection of individual rights, allows us to thread together the litany of laws and letters on the CD ordinances and understand how the "protection" of native women became integral to the *project* of Britain's self-proclaimed liberal empire.[12]

My historical-ethnographic tracing of the sequences of colonial lawmaking was based on the bureaucratic organization of the modern British Empire and its documentary practices. By the mid-nineteenth century, the British Crown and its executive agencies were central to processes of colonial lawmaking: besides exercising the sovereign power of disallowance over legislation, they supervised the proceedings of colonial legislative councils. In doing so, the Colonial Office, the central organ of empire, kept "meticulous records, copying both sides of all correspondence, including the minutes of legal argumentation and all other documentation or rationale that was consulted in the formulation of given policy" (McBride 2016, 48). I accessed such records—colonial correspondence, legislative council proceedings, and legislation—at the National Archives of the United Kingdom and the digital repositories of the libraries of the University of Hong Kong and the National University of Singapore; the parliamentary papers that printed the Colonial Office's correspondence on the repeal of the CD ordinances were another primary source.[13]

In tracing the paths that the repeal of the CD ordinances took across the empire, I focus on the regulation of prostitution across the directly ruled Crown Colonies of Hong Kong and the Straits Settlements between 1886 and 1890. My selection of these interconnected cases derives from the fact that the deliberations over their regulation of prostitution were the most prolonged of the dependencies under the Colonial Office.[14] Indeed, the interlocking, extended debates over regulation in both colonies allow us to examine in depth how officials and elites drew on the rule of law in the form of racialized legalities to articulate the colonial state's powers over the bodies of native women. Because regulation took contrasting, but relatively short-lived, paths elsewhere, the next section situates this study in the broader imperial politics of regulation.

12. My use of the term "project" draws from Reed's (2020, 34) illuminating exposition of the way human action is oriented along temporal dimensions toward the fulfillment of an idealized world.

13. See subsequent footnotes for references to the Colonial Office (CO) files accessed at The National Archives of the United Kingdom; *Hong Kong Government Reports Online (1842-1941)*, The University of Hong Kong Libraries, accessed September 1, 2020, https://lib.hku.hk/hkgro/; *Singapore Primary Sources: Executive Government (1867–1965)*, NUS Libraries, accessed September 1, 2020, https://libguides.nus.edu.sg/c.php?g=145666&p=956445; House of Commons, Contagious diseases ordinances (British colonies), 1886, C. 247; House of Commons, Contagious diseases ordinances (British colonies), 1887, C. 20; House of Commons, Contagious diseases ordinances (colonies), 1887, C. 347; House of Commons, Contagious diseases ordinances (colonies), 1889, C. 59; House of Commons, Contagious diseases ordinances (colonies), 1890, C. 242; House of Commons, Contagious diseases ordinances (colonies), 1894, C. 147.

14. In the parliamentary papers printed on the repeal of the Contagious Diseases Ordinances (see fn13), the correspondence between the Colonial Office and the Straits Settlements or Hong Kong amounted to more than half of the 130 individual dispatches. Not including a dispatch sent to both colonies, there were forty-five entries for the Straits Settlements alone, whereas dispatches to and from Hong Kong accounted for twenty-nine entries.

PATTERNS OF IMPERIAL CONTROL: ON THE SPREAD AND REPEAL OF CD LAWS

At first glance, the diffusion of CD ordinances across the empire seemed symptomatic of the workings of centralized imperial control. Similarly named colonial laws were mostly passed after Parliament's enactment of the CD acts, which tackled the increase of venereal diseases in the military and targeted individual prostitutes found in designated districts, between 1864 to 1869. In reports presented to Parliament in 1886 and 1887, seventeen out of forty-five colonies sent measures that applied the "principle" of the CD Acts.[15] Passed between 1861 and 1885, many of them resulted from top-down control—for example, in Jamaica, provisions for the medical examination of individual women identified by the police as "common prostitutes" in its 1867 CD Ordinance, as enacted under the direction of the Colonial Office, followed Britain's 1866 CD Act.[16]

However, some colonial ordinances preceded the acts of Parliament. Levine (2003, 40) observes that the earliest law directed at the spread of such diseases in the empire was enacted in Hong Kong in 1857—*before* the first CD Act of Parliament.[17] Unlike Parliament's CD acts, Hong Kong's Ordinance for Checking the Spread of Venereal Diseases controlled prostitution through the inspection of brothels and their "inmates" (40).[18] This law designated a "prostitute" as "any woman who shall live or reside in a registered or a declared brothel," and the definition of "brothel," whether registered or declared by the authorities, included houses where women lived, resided, were kept, or merely *frequented* for the purposes of prostitution.[19] Thus defined, brothels and their inmates were subject to registration and, notably, medical examination.[20] Hong Kong's intrusive, wide-ranging mode of regulation derived from officials' views of the organized nature of prostitution in the colony's mainly Chinese population. Also, the targeting of brothels meant that the expenses for the law's implementation could be sourced from the fees—for example, for registration and the medical treatment of women—levied on brothel keepers. In contrast, in Britain and the colonies that followed its approach, the state bore the expenses of policing and treatment.[21] As a solution to the problem of prostitution linked to the influx of Chinese labor, Hong Kong's law had the

15. Out of these colonies, six were white settler colonies that possessed greater autonomy in matters of colonial legislation. Another was Gibraltar, which regulated prostitution indirectly; see footnote 17. The remaining ten colonies were later asked to repeal their respective CD laws. House of Commons, 1886, C. 247; House of Commons, 1887, C. 20.

16. Compare sections 13 and 14 in Contagious Diseases Law, 1867, Jamaica Law no. 29 of 1867 and sections 15 and 16 in Contagious Diseases Act, 1866, 29 & 30 Vict. C.35.

17. Although British India, Gibraltar, and Malta also instituted measures that regulated prostitution, Hong Kong's ordinance was the first instance of a CD statute in the empire (Levine 2003, 40). To clarify, the regulation of prostitution in Malta and Gibraltar relied on other legal and customary means that subjected prostitutes to medical surveillance (Howell 2009, chap. 5). Also, even though a series of regulatory measures—for example, lock hospitals where diseased women were confined and treated—existed in British India since at least the late eighteenth century, they had been introduced in a piecemeal fashion (Levine 2003, 38–40; Tambe 2009, 35). A formal system of compulsory medical examination was only established by the Cantonment Acts of 1864, which was enacted before Parliament's CD Act of 1864 (Tambe 2009, 30).

18. An Ordinance for Checking the Spread of Venereal Diseases, 1857, Hong Kong ordinance no. 12 of 1857.

19. Hong Kong ordinance no. 12, section 1.

20. Hong Kong ordinance no. 12, sections 7 and 11.

21. See Section 4 of Contagious Diseases Act, 1864, 27 & 28 Vict. C. 85.

Colonial Office's "enthusiastic support" with the view that regulation would ameliorate conditions for women sold into "brothel slavery" (Howell 2009, 200–1).

Hong Kong's model was later adopted in the Straits Settlements on the grounds of their similar social conditions. As noted by a Select Committee of the latter's Legislative Council,

> [it] would appear from the evidence obtained, that the Chinese women [prostitutes] are *not free agents*, in many instances. They cannot leave their houses unattended, and every impediment is placed in their way to prevent them laying any complaint of detention or ill-treatment before a Magistrate. Moreover, most of, if not all the Chinese Brothels are under the protection and control of the Secret Societies, and heavy sums of money are obtained from the inmates in support of the principal Hoeys [Secret Societies].[22]

Recognizing prostitution as a Chinese practice, Thomas Braddell, the colony's attorney general, noted that the new ordinance was "framed principally on that in operation in Hong Kong."[23]

Presented as a necessary response to the exploitative practices of Chinese brothels and criminalized secret societies, the regulation of prostitution in the Straits Settlements was, like in Hong Kong, seen as a panacea for the moral ills of brothel slavery. The sympathetic figure of the unfree Chinese woman who could not seek the protection of the law stood in the foreground of colonial lawmakers' justification of the ordinance. This was an orientalist mode of regulation premised on officials' apparent knowledge of oppressive non-European practices and the desire to establish the rule of law—witness the invocation of the Magistrate's duty to protect the vulnerable in contrast to the coercive practices of the Hoeys.[24] It also rendered and racialized Chinese society in gendered ways: while working-class Chinese men appeared as members of criminalized secret societies or, implicitly, as the clientele of these brothels, Chinese women were sexually exploited and, importantly, not free agents.

With the passing of the CD laws in Britain and various colonies, the regulation of prostitution as an imperial project took on patterned forms, directed at either common prostitutes or brothels and their inmates as the main objects of medical surveillance. Critically, the spread of the CD ordinances across Britain's dependencies dramatically expanded the powers and reach of the colonial state over native women. Likewise, the extension of the Crown's authority through the CD acts was manifest within Britain, provoking the opposition of a growing abolitionist movement that was quick to frame their critiques of growing state power in terms of "the traditional defense of the rights of freeborn Englishmen" (Walkowitz 1980, 108)

The leading abolitionist Josephine Butler (1871, 112) argued that the problem of the Acts lay with their centralization of authority and the "establishment of a system of

22. *Report of the Select Committee on the Contagious Diseases Bill*, Appendix 28 of the *1870 Short-Hand Report of the Proceedings of the Legislative Council of the Straits Settlements*, NA, CO 275/12; italics mine.

23. Contagious Diseases Ordinance, 1870, Straits Settlements ordinance no. 23 of 1870; Ord to Kimberley, December 15, 1870, NA, CO 273/41.

24. In this aspect, the colonial ordinance echoed the magistrate's role as the "ultimate referee" in the parliamentary acts (Ogborn 1993, 44–45).

police espionage" that these laws "introduced" into English life—a violation of the rule of law. Furthermore, the spread of the CD laws did not only impose a double standard in targeting women rather than the male clientele of prostitution; these measures also subject them to a regulatory regime without procedural safeguards. At the center of the abolitionists' concerns lay the rules for the compulsory medical examination of women, which they found repugnant. Such sentiments were founded on a striking equivalence between Victorian notions of female dignity and liberty. As Butler (26–27; italics mine) contended in her essay *A Constitution Violated*, by placing "the determination of the fact as to *a woman's honour* solely in the hands of a single justice of the peace," the CD Acts infringed upon the bodies and constitutional rights of women.

As the movement to abolish regulation gained political support, their characterization of these laws gained ground across the imperial control apparatus as officials at the Colonial Office were soon compelled to respond to the abolitionists' criticisms. Indeed, after Parliament's repeal of the CD acts in April 1886, the abolitionist movement turned its attention to the colonies and their officials, who were singled out for their violations of women's liberty. Extending to the colonies their moralistic concerns with the governmental bureaucracy's role in the regulation of prostitution, Butler (2003, 18–19) issued a clarion call to the Ladies' National Association, one of the central groups in the abolitionist movement, about "the establishment of this accursed system of regulated vice" across the empire:

> We must seek by every means to bring justice to the relief of those dependent races, and that weaker sex who have suffered and been tormented during the past, through the fault of England; and we must endeavour to expose and get rid of this network of bureaucracy beneath which these crimes [of the "enslavement and oppression of women"] have been fostered, and those secret officials at home and abroad . . . have industriously worked for their evil ends.

The tides had turned, as the abolitionists sought to question imperial policy in Parliament. Even so, when the secretary of state for the colonies wrote to Crown Colonies with CD laws, asking to be "furnished with any special reasons" for their continuance, the replies were mixed (Table 1).[25]

Of the ten directly ruled colonies that received and responded to the secretary of state's instructions in 1886, four reported the repeal or lapsing of their ordinances by the end of 1887. Six offered grounds to maintain the regulation of prostitution—reasons that were typically rejected. Nevertheless, the Colonial Office's insistence on ending the medical surveillance of women allowed for exceptions: Fiji, Hong Kong, Malta, and the Straits Settlements. Although repeal failed in Malta after constitutional changes in 1887 limited the Colonial Office's control of colonial legislation, the secretary of state tentatively accepted claims that the CD ordinances protected native Fijians from the venereal diseases carried by immigrant workers. However, Fiji's ordinance was subsequently repealed, leaving Hong Kong and the Straits Settlements as the only Crown Colonies where regulation continued in the form of the Protection of Women and Girls Ordinances—a legal transformation to which we turn.

25. Stanhope to Governors of Crown Colonies, October 25, 1886, House of Commons, 1887, C. 347.

TABLE 1.
Outcomes of the Repeal of the CD Ordinances, 1886–1893

Colonies	Targets of regulation (Brothels/Individuals)	Immediate repeal without protest?	Title and year of ordinance used to repeal forced physical examination	Maintenance of regulation in other statutory forms?
St. Helena	Individuals	Y	Original law lapsed in 1879.	N
Trinidad	Individuals	Y	An Ordinance to repeal "The Contagious Diseases Ordinance 1869" (1887)	N
Barbados	Individuals	Y	An Act to repeal "The Contagious Diseases Act, 1868, and all other Acts altering or amending the same." (1887)	N
Labuan	Brothels	Y	An Ordinance to repeal Ordinance, No. I. of 1880 (1887)	N
Jamaica	Individuals	N	The Contagious Diseases Laws Repeal Law (1887)	N
Ceylon	Individuals	N	An Ordinance repealing Ordinance No. 17 of 1867 (1888)	N
Straits Settlements	Brothels	N	The Women and Girls' Protection Ordinance, 1888	Y
Hong Kong	Brothels	N	The Protection of Women and Girls Ordinance, 1889	Y
Fiji	Individuals and employers of immigrants	N	An Ordinance to repeal the Contagious Diseases Ordinances, 1882 and 1885 (1893)	N
Malta	Individuals	N	None. Repeal ordinance was rejected in Council in 1888	N.A.

Sources: House of Commons, 1887, C. 347; House of Commons, 1889, C. 59; House of Commons, 1890, C. 242; House of Commons, 1894, C. 147.

MAKING LAW, MAKING RACE: REGULATION AND ITS TRANSFORMATIONS

The Straits Settlements: From the CD Ordinance to the Protection of Women

In the campaign to repeal the CD Ordinances, metropolitan actors were called to evaluate and act on the arguments of local elites and officials. Interspersed across different sites of administration, the sovereign power to determine the rights of colonial subjects was, in practice, distributed across officials who were tasked to evaluate the formulation of colonial legislation and their enforcement. Taking place in the shadow of the authoritarian mode of government in directly ruled Crown Colonies and the Crown's powers to disallow colonial legislation, moments of bureaucratic judgment shaped the repeal of the CD ordinances in the Straits Settlements and Hong Kong. As officials in the colonies transmitted their views to Whitehall, the Colonial Office judged the veracity, political feasibility, and propriety of their claims. The Colonial Office also had to contend with the claims and demands of the abolitionists, many of which were expressed by George William Johnson, an ally of Josephine Butler and, importantly in a practical sense, clerk in its Eastern Department that oversaw the administration of Britain's Asian colonies.[26]

As the Colonial Office's request for reasons to maintain the regulation of prostitution initially faced strong opposition from Hong Kong before communication on the matter lapsed, the repeal of the CD ordinances by the Protection of Women and Girls ordinances first took form in the Straits Settlements where officials were responsive. There, the debate over regulation was shaped by Protector of Chinese William Alexander Pickering, whose enterprising efforts to broaden his powers were instrumental in framing the problem of prostitution in terms of the protection of native women. When Governor Sir Frederick Aloysius Weld answered the Colonial Office's request for "special reasons" to keep the colony's CD Ordinance, he presented Pickering's report on the ordinance's implementation, stressing the protector's express view that the law was "absolutely necessary for the protection of women and children, and that to abolish them would be to relegate a very large number of females to a state of slavery."[27] As Pickering asserted,

> 26. . . . it is because an experience of five years [of administering the law] has shown me that the Contagious Diseases Ordinance, judiciously carried out, does to a great extent what I wished, and that, *with the addition of the new Ordinance for the protection of women and children*, the Government will be able to do everything possible towards abolishing altogether sad abuses [. . .]

26. Johnson was first appointed as a second class clerk in the Colonial Office on March 28, 1881 (Fairfield and Anderson 1886, 14). Johnson, like Butler, was a member of the British, Continental and General Federation for the Abolition of Government Regulation of Prostitution, later known as the International Abolitionist Federation. Notably, in subsequent years, he coedited Josephine Butler's posthumously published autobiographical memoir.

27. Protector of Chinese to Colonial Secretary, December 9, 1886, enclosure 1 in Weld to Holland, April 2, 1887, House of Commons, 1887, C. 347.

> 28. Before the Ordinance was brought into force, the prostitutes were obliged by their owners to carry on their profession in spite of sickness or contagious disease, and when thoroughly worn and too bad for this colony, they were sold off to die … Take away the power to enforce medical examination and these unfortunates will be left again to this sad fate.[28]

Pickering's impassioned argument for the enhancement of the law was also an argument for the imposition of beneficent, protective legality. However, his was not the only opinion among the colony's officials. Dissenting views were voiced in the Executive Council, a cabinet-like advisory body to the governor. Even though Pickering's call for the continuation of the law received support from most of the Executive Council, some were opposed. This group included Attorney General J. W. Bonser and Commissioner of Land Titles W. E. Maxwell. The opinion of the legally trained Maxwell, son of the colony's first chief justice, was significant, for it echoed, in part, the abolitionists' concerns for the abuse of power.[29] To Maxwell, Pickering was "wide of the mark," missing the "real question" of the protection of women and children:

> All that he [Pickering] says about the special protection needed by *ignorant women and children*, who are used as so much merchandise by people of their own race, can perfectly well be met by legislation having nothing to do with the suppression of venereal disease. The registration of brothels and their inmates, their periodical [non-medical] inspection, &c., seem to be essential if we are to avoid the worst kind of slavery from flourishing in a British possession. I can see no difficulty in keeping all these safeguards and still giving up the principle of the Contagious Diseases Ordinance. To maintain the liberty of the subject here we shall very likely want special means and powers unknown in England, just as we want gunboats to put down the slave trade on the coasts of Africa.[30]

By accepting the need for registration while rejecting the medical examination of women, Maxwell's dissent was premised upon the distinction between the social and medical aspects of regulation. Even so, he was not opposed to it: in an inversion of the abolitionists' arguments, regulation would "avoid the worst kind of slavery" and uphold the "liberty of the subject."

Regulation, from Maxwell's utilitarian perspective, needed to be justified by its efficacy and carried out in a way that avoided the abuse of the powers granted to officials. In this respect, he argued that there was no evidence that compulsory medical examinations had reduced the incidence of diseases among soldiers and in the wider population. Furthermore, in noting the varied racial mix of peoples in the colony, Maxwell pointed to how the law enabled misconduct by informers, and worse officials, in their targeting of non-Chinese, particularly Malay, women.

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28. Protector of Chinese to Colonial Secretary, C. 347 (italics mine).

29. Before being called to the bar (Inner Temple) in 1881, Maxwell served in various roles in the courts, from clerk to judge, in the colony (Fairfield and Anderson 1886, 425).

30. Maxwell to Colonial Secretary, January 29, 1887, enclosure 2 in Weld to Holland, April 2, 1887, House of Commons, 1887, C. 347 (italics mine).

> Section 41 defines a "brothel" to mean "any house or place occupied or used by any woman for the purpose of prostitution." This has been the means of placing women (Malay and others) who lead irregular lives, but are not necessarily prostitutes, at the mercy of a set of informers who threaten them with open shame in the police court if they do not give them money or *yield to their solicitations*. I have reason to believe that this law has been the means of great cruelty to women of a class [i.e. prostitutes] against whom the Ordinance was more directed, while enabling inspectors and informers to practice *gross immorality*.[31]

Associating prostitution primarily with the Chinese, Maxwell's legally minded concerns lay with the non-Chinese women who could be falsely accused and blackmailed. In highlighting the law's apparent dysfunction given the colony's complex racial mix, his argument pointed to the limits of Pickering's claimed expertise in Chinese affairs and brought into view the heterogeneity of racialized narratives in debates over the protection of women in this "plural society" (Lee 2015).

Nevertheless, despite his criticism of the protector of Chinese's views and his wariness of abuses of power under the cover of the CD ordinance, Maxwell's stance on the colonial state's relation to native women did not differ by much. Both men saw native women and children as vulnerable subjects whose liberties needed protection under law; their disagreement lay in how this protection, which symbolized the reach of the rule of law, should be enacted.

At their core, the moral concerns over the consequences of the repeal or continuation of the CD Ordinance expressed by Pickering and Maxwell were derived from like-minded notions. Echoing the rule of law ideal, the liberties of these subjects were to be guaranteed in one way or another: it was either necessary to secure the physical freedom and welfare of the inmates of brothels through compulsory medical examination, or it was critical that native women no longer suffered the abuses wrought by corrupt informers and officials armed with powers to subject native women to such intrusive procedures. This was more a conflict over the appropriate means to protect the rights of vulnerable native women—that is, a dispute over the racialized legalities of regulation—rather than one about the necessity of intervention. As suggested by Maxwell's analogy of the deployment of "gunboats to put down the slave trade on the coasts of Africa," liberty and the rule of law in the British Empire were founded upon the projection of masculine sovereign power. The freedoms and rights of colonial subjects could only be constituted by the colonial state's extension of its legal authority over native society. However, given officials' conflicting assessments of the racial difference of native populations and the practice of prostitution, questions remained over the legal protections that were needed.

In light of officials' concerns with the protection of native women and children, how were their overlapping, but discordant, views translated into legislative proposals? For one, Britain's 1885 Criminal Law Amendment Act had established the protection of women and girls as a potential subject for colonial legislation, providing a legislative

31. Maxwell to Colonial Secretary, C. 347 (italics mine).

form that colonial officials could, and did, use.[32] In this light, Pickering's long-standing attempts to influence legislation proved pivotal, as his prior efforts to introduce a bill for the protection of women and girls shaped officials' lawmaking strategies at this point. Pickering's earlier legislative proposal, modeled after a similarly named bill in Hong Kong, would not only bolster his powers but also tackle the problems of the trafficking of women into the colony "for the purposes of prostitution" and the keeping of children in brothels for "immoral purposes."[33]

Because the measures that targeted the protection of women and girls came under consideration in the Legislative Council while officials in the colony discussed the CD Ordinance, supporters and opponents of the latter addressed this conjuncture in varying ways. Even though Pickering stated that the application of both laws together would be necessary to curb the ills of prostitution, the connection between the two was reformulated by Attorney General Bonser. Echoing Maxwell's views, he recommended instead that the benefits of regulation "could be better secured by legislation on the lines of the Bill ... to make further provision for the protection of women and girls."[34] While acknowledging Pickering's insistence on the imperative to protect native women and girls with legal measures, Bonser's proposed alternative rejected the colony's maintenance of its CD ordinance and, significantly, the compulsory medical examination of women.

Upon their receipt of the Straits Settlements' response, the Colonial Office debated the colony's special reasons for its CD Ordinance. As the Eastern department's clerk, Johnson was first to respond. Contrary to Pickering, he saw the compulsory examination of women as unnecessary, insisting that "we must I think use other means ... gradually to convince the women that they are free to come and go when they like (including the hospitals)."[35] As an abolitionist, Johnson's target was the entire system of regulation, including brothel registration. Linking the abolitionists' arguments about the abuse inflicted by the *Police des Moeurs* in continental Europe to Maxwell's claims of colonial corruption, Johnson emphasized "the abuses thereof occurring in the Straits Settlements as everywhere else, where it [registration] has been tried."[36]

> Mr, Pickering ... cannot perform the whole duties of visiting brothels, and receiving visits at his Office by himself, but must depute a great part of his work to inferior officers, and it has been found in all countries, where the Police des Moeurs [the moral police] exist, that these officials become more the friends of the brothelkeepers (who are rich and can bribe them with money *or with the pick of the inmates of their establishments*) than of the

32. Criminal Law Amendment Act, 1885, 48 and 49 Vict. c. 69. The full title of this law was "An Act to Make Further Provision for the Protection of Women and Girls, the Suppression of Brothels, and Other Purposes." This act also "gave police greater summary jurisdiction over poor workingwomen and children"—for example, by allowing for the detention of prostitutes while placing restrictions on sexual conduct (Walkowitz 1980, 247).

33. Pickering to Colonial Secretary, January 19, 1886, enclosure 2 in Weld to Stanley, March 18, 1886, NA, CO 273/139.

34. Bonser to Colonial Secretary, January 10, 1887, enclosure 2 in Weld to Holland, April 2, 1887, House of Commons, 1887, C. 347.

35. Minute by Johnson, May 21, 1887, in Weld to Holland, April 2, 1887, NA, CO 273/144.

36. Minute by Johnson, CO 273/144 (emphasis [underline] in original).

> prostitute class. The arbitrary powers conferred on these Inspectors may possibly in some cases ... be used to diminish the slavery of the women to the brothelkeepers, but only by substituting another slavery, viz. *slavery to the police*.[37]

Johnson concluded his case for the complete repeal of the CD Ordinance by pointing to the likely opposition and agitation of the abolitionists against the law, however modified. Thereafter, he wrote that the secretary of state answer that he "concurs with the attorney general [Bonser] ... that the benefits claimed by the Ordinance can be better secured by legislation on the lines of the Bill for the protection of women and girls."[38] But, in a sleight of hand, his minute elided Bonser and other officials' support for the continued registration of brothels.

The higher-ranking assistant undersecretary of state, John Bramston, opposed Johnson's proposal for a complete repeal. Even though Bramston agreed that "medical reasons are not sufficient grounds" to continue the examination of women, he insisted on registration:

> If registration is abolished, no brothel will be open to the police and it will be practically impossible to get at the girls *for their own protection* ....
>
> Vice is of course not necessary, but until human nature changes it will continue to exist, especially among *these Eastern peoples who do not look upon it in the same light as Christians do*, and who form the great preponderance of males in the Straits.[39]

Taking native immorality as a vice to be curbed, Bramston's position conflicted with, but also superseded, Johnson's insistence on deregulation in toto. This meant that although the secretary of state's instructions to the governor called for the end of the compulsory medical examination of women and repeal, it allowed for brothel registration under a new law. The abolitionists' push for repeal were, in consequence, obscured by what officials felt as their greater duty to protect native women, whose freedoms lay at the heart of officials' extended debates over regulation.

Failed Protestations: Official Indignation and the Tactics of Delay in Hong Kong

Could native prostitutes be free agents? To Governor Weld of the Straits Settlements, the Colonial Office was veiled by its indifference to Chinese customs and believed wrongly that diseased prostitutes would be willing and able to seek treatment of their own accord if compulsory medical examinations ceased. But, in the view of the Colonial Office, and particularly Johnson, the problem lay with local officials' failure to

37. Minute by Johnson, CO 273/144 (emphasis [underline] in original; italics mine).
38. Minute by Johnson, CO 273/144.
39. Minute by J. Bramston, June 15, 1887, in Weld to Holland, April 2, 1887, NA, CO 273/144 (italics mine).

carry out the secretary of state's instructions that they "bring to the knowledge of the women that they can make complaints without fear of consequences, *and to make them feel that they are free agents*."[40] Given such divergent understandings, the Colonial Office's instructions were not immediately implemented but were met with the governor's outrage:

> The Protector of Chinese does what he can … [but] without the doctors he is helpless … he cannot change the relations which exist between the mistresses and the girls under a system where girls are brought up in China to be prostitutes, and are then bought by their mistresses, who bring them here. *Here by law they are free, but they have no where to go*; they have no money till they have earned it in the brothels; they are dependent on the brothel-keepers for food and clothing, and, in fact, call her "Mother" … in fact, any one going into one of these places … would … find nothing in their appearance or manner to indicate that they are prostitutes, nor would he see any signs of discontent or unhappiness, *so readily do the Chinese accept any custom or position which is in accordance with traditionary usage*.[41]

As Weld's portrayal of the practices, organization, and culturally ingrained nature of prostitution indicated, local officials linked prostitution to long-standing Chinese customs and claimed that their habitual docility and traditional practices prevented women from seeking treatment.[42] Racialized in this way, Chinese women could not be free agents, and, in Weld's view, the end of compulsory medical examination would render them helpless in an exploitative system.

Convinced of the need for medical supervision to prevent diseased women from working to death, Weld refused to carry out the secretary of state's orders.[43] Johnson replied swiftly, noting that such intransigence showed "more clearly what I had suspected before that the [colony's] Protector of Chinese, with the best intentions and with theoretically excellent rules, has hitherto failed to make these women realize that they *are* 'free.'"[44] Preoccupied with the free agency of Chinese women, the debate over repeal pivoted upon how the colonial state could ensure the liberties of these racially different subjects. Translated to the context of the colonies, abolitionists' concerns for

40. Holland to Weld, July 2, 1887, House of Commons, 1887, C. 347.

41. Weld to Holland, September 10, 1887, House of Commons, 1889, C. 59 (italics mine).

42. As an anonymous reviewer noted, another interpretation of Weld's commentary might focus on his attribution of Chinese women's conduct to their material circumstances, highlighting how "they have no money till they have earned it in the brothels; they are dependent on the brothel-keepers for food and clothing." In this alternate reading, the women's seeming acceptance of their situation has more to do with their dependence on the brothel system to survive—culture or race would be ancillary. Despite this possibility, this is not the approach that Weld adopted when he concluded his observations on Chinese women's acceptance of "any custom or position which is in accordance with traditionary usage." The racialization of Chinese women's circumstances and conduct was not contradicted by Weld's statements on their material dependence; the latter was encompassed within a racialized narrative about "custom" and "traditionary usage."

43. Scholars have misunderstood Weld's refusal as grounds for his replacement in October 1887 (Warren 1990, 370; Levine 2003, 101). In fact, Weld knew of the plans to replace him before expressing his disagreement. See Telegram to Weld, July 26, 1887, in Holland to Herbert, July 26, 1887, NA, CO 273/149.

44. Minute by Johnson, October 27, 1887, in Weld to Holland, September 10, 1887, NA, CO 273/146 (italics mine).

the freedom and rights of women became a central bone of contention because it was not clear if and how such liberties existed for native women.

Wedded to the foundational object of individual rights, the rule-of-law ideal provides the interpretive key to elucidate the "landscape of meaning" behind the clashes over the issue of repeal (Reed 2011). To recall Dicey's formulation: in the liberal political imaginary of the rule of law, individual liberties preexist the state and are to be protected in law. Set against this background, Johnson's point was that local officials had failed the sovereign duty to protect native women's freedoms, whereas Weld asserted that there was no free agency to speak of in the first place—prostitution was part and parcel of Chinese custom and tradition. Also, rearing the ugly head of the rule of colonial difference, Weld and other local officials understood Chinese women as not only different due to their perceived traditions but also inferior persons whose freedoms could not exist without the colonial state's intervention.

Repeal in the Straits Settlements was only enacted after Weld stepped down. Under the Colonial Office's direction, officials created the Women and Girls' Protection Ordinance 1888, which provided for limited brothel registration and punished those who employed or used girls under sixteen as prostitutes and those involved in the trafficking of women for prostitution.[45] The law also enabled the protector of Chinese to detain girls and women suspected to be involuntarily involved in prostitution, thereby keeping the colonial state's control over native women under a different guise. Despite shedding its original form, the regulation of prostitution would persist.

How did Chinese women respond during this turn of events? The prolonged debate over repeal and their liberties took place with little or no input from those who were most affected by the change in policy. Even though we do well to keep in mind that the subaltern cannot speak given the ideological impositions of colonial rule and patriarchy (Spivak 2010), these women were not silent. If not understood in their own voices, they were heard with their feet. Soon after the end of compulsory medical examination in the Straits Settlements, the new governor reported that almost all the women detained in the colony's Lock Hospitals (Singapore: all 150 women; Penang: fifty-two out of fifty-four, with the remaining two departing about a day later) left right after the implementation of the secretary of state's orders. This occurred despite the fact that officers of the Chinese Protectorate and the Medical Department "did their utmost to persuade the women to remain there *of their own free will* until cured."[46] As the governor implied, the women's exercise of their agency revealed instead the confounding reach and influence of brothel keepers over women, and the outcomes of suspension would be disastrous for public health.

Upon receipt of this news, Johnson's response noted that this outcome "is to be regretted but is not altogether surprising as nearly the same thing happened in England."[47] In his minute to his superiors, Johnson made the case that women would likely seek treatment voluntarily at the Lock Hospital in increasing numbers over time, as was the case in England, and that the appropriate thing was to wait and not respond immediately. In a moment that might have given pause to assumptions about native

45. Woman and Girls' Protection Ordinance, 1888, Straits Settlements ordinance no. 14 of 1888.
46. Smith to Holland, January 30, 1888, House of Commons, 1889, C. 59 (italics mine).
47. Minute by Johnson, March 9, 1888, in Smith to Holland, January 30, 1888, NA, CO 273/151.

women's free agency (but did not), it is telling that officials continued to render the exodus from the Lock Hospitals in opposing ways. Whereas local officials saw it as evidence of the women's lack of free agency and a sign of the disastrous effects of repeal, Johnson maintained that this unfortunate situation would change as native women learned to exercise their agency.

Caught in their conflicting representations, Chinese women, as well as other women involved in the colonial sex trade, were made voiceless while their conduct took on meanings that hinged on the differing perspectives of male officials at Whitehall and the colony.[48] Indeed, months later, when Governor Cecil C. Smith wrote again to report on the negative effects of repeal, he sent the memorandum of the acting principal civil medical officer, who singled out Chinese women for their inability to seek treatment on their own: "they are merely grown-up children ... and ... they cannot be expected to take the least care of themselves or to have any compunction at spreading disease."[49] This report also noted the rising rate of sickness among women who were examined and the large increase in venereal diseases among male soldiers in Singapore's Tanglin Barracks over the past year. Unmoved, the secretary of state's response merely reiterated Johnson's previous minute that, the women would, over time, "be ready to come of their own accord for treatment," adding "it is to be hoped that the moral effects in the direction of discouraging prostitution will largely counterbalance the initial increase of disease."[50] Native women's free agency, to the Colonial Office, and especially Johnson, existed, but it would take time and officials' efforts to cultivate its exercise.

Using slightly different tactics but similar language, Hong Kong's colonial government resisted the Colonial Office's policy of repeal. In their strenuous responses to the secretary of state's request for special reasons to continue its CD ordinances, local officials based their arguments on the severity of venereal diseases in the past, while stressing the law's moral good:

> Perhaps the strongest argument in favor of the Ordinances is the means they place in the hands of the Government of coping with *brothel slavery*. If supervision is withdrawn, the personal freedom of the inmates of the house will be lost.[51]

Firmly opposed to repeal, Hong Kong's officials frustrated the Colonial Office with their lack of response on this legislative issue for more than a year. This proved to be a

48. In the discourses surrounding regulation of prostitution from its beginnings to its continuation under the Women and Girls' Protection ordinances, native women's voices were absent even when native testimonies appeared—for example, in a Committee appointed to inquire into the workings of the 1870 CD ordinance at the end of 1876, the only native testimonies were those of a Chinese interpreter and a Chinese tailor who claimed to have been inside a brothel. Both were likely men, and certainly not women subject to the regulation of prostitution. *Report of the Committee appointed to enquire into the working of Ordinance XXIII of 1870, commonly called the Contagious Disease Ordinance*, February 19, 1877, Appendix 7 of the *Proceedings of the Legislative Council of the Straits Settlements for 1877*, NA, CO 275/21.

49. Memorandum by the Acting Principal Civil Medical Officer, in Smith to Knutsford, September 3, 1888, House of Commons, 1889, C. 59.

50. Knutsford to Smith, November 30, 1888, House of Commons, 1889, C. 59.

51. *Report on the Expediency of retaining the Contagious Diseases Ordinances of the Colony*, January 6, 1887, in Marsh to Stanhope, January 10, 1887, House of Commons, 1887, C. 347.

problem down the road because they forfeited the chance to participate in the deliberations over repeal. In a reversal of its pioneering role in the making of the CD laws, Hong Kong was subsequently instructed to adopt the Straits Settlements' law. As Johnson urged, "we have had no reply from Hong Kong to the original despatch of July 1887 directing repeal of the C.D. Ordinance … I do not think that the Hong Kong Government will hurry at all in the matter, unless we press them."[52] Pressed to act, the governor reported the repeal of Hong Kong's CD ordinances months later; nevertheless, compliance came with protest from the Legislative Council.

Asserting their knowledge of local conditions and turning the principle of free agency on its head, Hong Kong's dissenting legislators declared, as compared with conditions in Britain, "a very large majority of the women [in Hong Kong] do not regard medical examination as degrading or otherwise than incidental to their unfortunate calling, and they desire the attendance of medical officers which to them is a safeguard."[53] There were some grounds for such claims. Just a month before, when Governor Des Vœux belatedly responded to the Colonial Office about the stoppage of Admiralty contributions toward the colony's Lock Hospital, he relayed the report of the acting registrar general, who supervised the regulation of prostitution, on the directive to suspend the practice of compulsory medical examination. Included in this report were petitions by Chinese and Japanese brothel keepers, as well as one from those who "voluntarily submitted" to examination (mainly European women), to continue the provision of medical examination.[54]

Likely worried that the termination of a compulsory policy would also conclude the colonial government's provision of medical examinations, the Chinese brothel keepers asked for weekly examinations to continue and sought to establish conditions for their conduct:

> 1st. That the examination be conducted by the Colonial surgeon.
>
> 2nd. That, after examination, Chinese women who are free from disease, may receive a certificate as Europeans do.
>
> 3rd. That inmates who are suffering from disease may be allowed to remain either in the Lock Hospital or go to another hospital to be cured.
>
> 4th. That inmates may be examined only once a week.[55]

Their petition's insistence on a certificate of examination for Chinese women "as Europeans do" indicated that these brothel keepers viewed medical examinations as beneficial in some aspects, particularly if they could prove the health of women (to their

52. Minute by Johnson, February 13, 1889, in Bonser to Colonial Office, September 17, 1888, NA, CO 273/157.

53. Unofficial Members, Legislative Council, to Colonial Secretary, June 29, 1889, in Des Vœux to Knutsford, November 2, 1889, House of Commons, 1890, C. 242.

54. Enclosures A, B, and C in Acting Registrar General to Acting Colonial Secretary, August 29, 1887, in Des Vœux to Knutsford, October 8, 1888, House of Commons, 1889, C. 59.

55. Enclosures A, B, and C in Acting Registrar General to Acting Colonial Secretary, C. 59.

clientele). This was also the case with the Japanese brothel keepers and those women in the sex trade who voluntarily submitted to medical examinations—although mostly European, some of the signers of this latter petition had Chinese names.[56] In response to these petitions, the acting registrar general sought to ascertain the wishes of the inmates of brothels. As he remarked of his attempts to explain to them their freedom to "act as she liked in the matter of medical examination": "while they quite understood they were free agents . . . they would prefer to be examined once a week as hitherto."[57] In these exchanges, officials and the women spoke at cross purposes, for the former were fixated on the issue of women's free agency and the latter focused on whether medical examinations would end. The women were not asking for examinations to be compulsory—only that they be offered.

Echoing debates in the Straits Settlements, the freedom of the native women and their identity lay at the heart of the views forwarded by Hong Kong's officials. But, instead of stating that Chinese women could not be free agents due to tradition, Hong Kong's lawmakers argued, by subtly recasting the petitions for the continuance of examinations, that women involved in prostitution were, in fact, "free" and wanted to keep the existing system. The abolitionists' concerns for the constitutional and bodily violations of medical surveillance in England were inapplicable because native women and other prostitutes did not see it as an intrusion. In this twist of logic, the rule of law, which to abolitionists justified repeal, was a malleable frame that rendered native women as persons who chose their mode of subjection freely. Simply put, there was no abuse of power or cause for repeal in the socially different society of Hong Kong. However, these claims were moot because repeal, as imperial policy, was a fait accompli.

Unable to justify their policies, Hong Kong's lawmakers had more to worry about when the Colonial Office deemed that their first repeal ordinance did not conform to orders—a product of the colony's last-ditch attempt at resistance. To the secretary of state for the colonies, the Protection of Women and Girls' Ordinance 1889 was "drafted on different principles" and required amendment.[58] Among the issues noted by the Colonial Office, the law omitted a subsection of the Straits Settlements' law that excluded brothels "occupied exclusively by women who are not Asiatic" from registration; this provision, which assumed that only "Chinese and other Asiatic women" needed protection through the system of brothel registration, encoded the racially differentiated treatment of women in law.[59] Because of its divergence from the policy established in the Straits Settlements, Hong Kong's ordinance was unacceptable. Having run out of options, Hong Kong's officials had to adopt the changes required by the Colonial Office in another ordinance.[60]

56. Similar concerns were found in the Straits Settlements. Warren's (2003, 141–46) account of the end of compulsory medical examinations in Singapore highlights the subsequent emergence of a private "brothel medical system" run "on the side" by mainly European physicians who previously administered these examinations under the CD ordinance.

57. Acting Registrar General to Acting Colonial Secretary, August 29, 1887, in Des Vœux to Knutsford, October 8, 1888, House of Commons, 1889, C. 59.

58. Protection of Women and Girls Ordinance, 1889, Hong Kong ordinance no. 19 of 1889; Knutsford to Des Voeux, January 3, 1890, House of Commons, 1890, C. 242.

59. Knutsford to Des Voeux, C. 242.

60. Protection of Women and Girls Ordinance, 1890, Hong Kong ordinance no. 11 of 1890.

CONCLUSION: RACIALIZED LEGALITIES AND THE RULE OF DIFFERENCE

In the legal transformations of the regulation of prostitution, this historical ethnography uncovers least three ways that officials invoked the rule of law ideal in their evaluations of racial difference in terms of racialized legalities. First, officials and elites could insist on the racially ingrained nature of prostitution and native women's lack of free agency, positioning the colonial state's intervention as the only way to ensure that native women would be free from the fetters of brothel slavery. There could be no basis for the rule of law unless the colonial state could place native practices under control and ensure women's liberty. Second, these lawmakers could instead highlight the abuses that occur when officials were empowered to inspect brothels and their inmates. Even though native women were, in principle, free to seek medical examination and treatment, they were also vulnerable to harassment or blackmail by corrupt informers or officials. Remove regulation and its temptations for the abuse of power, and British officials could educate native women about exercising their freedom to come and go as they wished in a territory under Crown rule. Applied as a universal principle of legality, the rule of law was counterposed to the practical irregularities of colonial governance, which could be reformed. Third, colonial elites could recognize that native women were free but assert that, in contrast to British women who possessed different notions of their rights and freedoms, native women desired compulsory medical examination and regulation. Grounding the rule of law in culturally differentiated conceptions of individual rights, this oddly Dicey-like view saw the rule of law as an Anglocentric notion that worked differently in the colonies.

Among these forms of racialized legalities, what resulted at the end of the period under study was a compromise between the first and second: whereas compulsory medical examinations were deemed to violate native women's bodily freedoms, colonial officials continued the practice of brothel registration on the premise that, absent any state intervention, Chinese and other native women would remain vulnerable to exploitation by brothel keepers. In the politics of imperial control, the abolitionists' efforts to uproot regulation altogether was repeatedly limited by colonial officials' sympathies toward native women who required law's protection, reifying a mixed body of racialized understandings about native prostitution in law. What is also striking in this uneasy political settlement is how prostitution remained, as colonial officials and elites saw it, a vice entangled in native practices. The supposed moral scourge of prostitution threatened to either stain officials' conscience if brothel slavery was not regulated, or become a source of corruption should Chinese brothel keepers or inmates offer bribes to avoid regulation. Even as they acknowledged the involvement of European women in the colonial sex trade—albeit in smaller numbers—officials and elites' contentions over the repeal of the CD ordinances in Straits Settlements and Hong Kong were transfixed on the fates and freedom of native women. Working within such figurative bounds, the issue of regulation continued to be a battleground for competing articulations of racialized legalities after repeal.

This détente between pro-regulations and abolitionist forces shifted toward the latter with the repeal of brothel registration across both colonies in 1894, but the practice of regulation and the protective role assumed by male officials and elites in relation to native

women continued. Given the persistent lobbying of local officials and their allies and the continued political activity of the abolitionists, the circumspect secretary of state for the colonies, Joseph Chamberlain, agreed to new measures five years later. Amending the Women and Girls' Protection Ordinance, they enabled the colonial government to "close a brothel or tolerate it, as a basis for maintaining an extra-legal system of publicly recognized houses" in the Straits Settlements (Warren 2003, 149). A similar "elaborate if semiofficial system of regulation" also took shape in Hong Kong at the turn of the century (Levine 2003, 126–27). This calibrated approach to regulation ended in the 1920s and 1930s, as the newly formed League of Nations sought to curb the trafficking of women and children through international conventions and conferences, channeling the debate over regulation into a global forum that extended beyond the empire (Levine 2003, 126–27; Kozma 2021).

Underlying the nineteenth-century imperial debates over regulation, the rule of law provided a compelling normative frame to arbitrate heterogenous evaluations of difference in the colonies: even those who saw the colonies as spaces of exception, where English legal principles did not apply, expressed arguments for the imperial control of native women through racialized legalities that rendered difference in the language of the rule of law. Nevertheless, such invocations of race, gender, and sex and the rule of law alone did not determine legislative outcomes. Colonial lawmaking was also shaped by other factors, such as officials' and elites' personal beliefs and affiliations, their rank or status in the colonial service, fiscal resources, British parliamentary politics, timing, etc. Racialized legalities matter not because they help to explain why certain laws were passed but for *how* they reconcile the seemingly opposed notions of the rule of law and the rule of colonial difference in the rhetoric and rationales of lawmaking: they mediate—that is, provide grounds for—the making of racial difference, in relation to gender and other intersections, in a liberal empire.

Defined in intersectional ways, racialized legalities are gendered insofar as the subjects of empire and colonial rule are interwoven with gender relations and sex: this was certainly the case in the regulation of prostitution where white, male officials used law to control native women in the name of their freedom. This is to say that such myths necessarily take shape in relation to existing structures of intersectionality and that sexual and gender relations, like other lines of social organization, are articulated to the making of race. The issue at hand is not whether racialized legalities are, by definition, gendered but rather how their narratives construct and realize asymmetries of sex and gender in the making of colonial difference. Like the workings of other legal universalisms—for example, the rule of evidentiary corroboration (Alyagon Darr 2019, 120), the rule of law incorporates prejudices and inequities that have significance in a given context.

As myths that bind the universal to the particular, the significance of racialized legalities is founded upon the constellation of historical circumstances and social conditions in which actors invoke elements of the rule of law. Such mythical narratives have limits to their appeal, and make sense as the language and grounds of lawmaking in some contexts but not others. Racialized legalities emerged as a common motif in colonial lawmaking across the nineteenth-century British empire because the rule of difference characterized colonial rule, whereas officials and elites also saw the rule of law as integral to the project of liberal imperialism, no matter how truncated (Hussain 2003). To wit, Dicey's (1889, 189–90) celebrated take on the rule of law was

contemporary with the expansion of Britain's empire, and his ethnocentric definition of the rights of individuals—see his uses of the qualifier "with us"—underlined colonial difference. This historical specificity means that, at other moments when the politics and discourses of social control, of which the regulation of prostitution is one example, shift away from the imperial metropole and its actors, the rule of law and its racialized legalities may be upstaged by other myths. As Bernstein (2012) shows in her account of prostitution in Mandate Palestine, the prostitute was painted primarily as a transgressor of boundaries of race, religion, and respectability in the burgeoning ideology of nation-building of the Jewish national community. The rule of law and racialized legalities provide but one source of myth for the articulation and governance of social difference, and their importance is an empirical question.

Turning to the ferment over rule of law in our present, we will do well to inquire into how invocations of this liberal ideal in lawmaking shape the governance of difference rather than take the rule of law as either a principle necessarily opposed to racism or a weapon of "lawfare" (Comaroff 2001). Instead, engaging the "cultural power of law" (Merry 2000), scholars might focus on what the rule of law meant to those who invoke it and the ways their appeals to the ideal produce "both a condition of rule and a cultural property" that differentiates the governed (Benton and Muth 2000, under "I was raised to tell the truth"). Expressed in narratives of personhood and practices that are rendered along racialized intersections and in terms of the rule of law, racialized legalities may be found in other imperial formations and times in recursive articulations of (post)colonial difference (Stoler 2016). As Chatterjee (1993, 33) argues, "invoking such differences are . . . commonplaces in the politics of discrimination, and hence also in the many contemporary struggles of identity." To illustrate through one present-day example, in the settler-colonial context of the United States, the implicit framing of the claim #BlackLivesMatter rests on the tenet of equal treatment under the rule of law, whereas the narrative of race it communicates is of the unequal policing and police brutality confronted by Black persons. Conversely, the counterclaim, #AllLivesMatter, calls on the same frame of the rule of law but recasts the story of race through the insidious ideology of color-blind racism (Bonilla-Silva 2018). Racialized legalities characterize the politics of rights in liberal imperial formations today, begging the question of the historical significance of the rule of law that emerges when we infuse the ideal with contemporary narratives of self and other.

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