

Prostitution as a matter of freedom

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This dissertation aims to demonstrate that prostitution can be conceived as a profession like any other and thus it deserves equal recognition and a proper regulatory framework. From a philosophical point of view I will review the main positions in favour of and against prostitution regulation by dwelling on certain rifts within the feminist movement. I aim to demonstrate that being in favour of prostitution regulation does not mean being in favour of exploitation and marginalisation of sex workers. By dwelling on some “radical” feminist arguments against prostitution, we will see that their reasoning mostly relies on the social construct of female identity in a male-dominated society. Though admitting some premises of their discourse, I will point out women’s autonomy and capacity of deliberation. If we hold - like some feminists do hold - that women are the product of a male-dominated culture and they are unable to make free choices (due to the “false consciousness” pervading them), we pave the way to a potentially tyrannical state paternalism. In other words, if we accept that women lack capacity of deciding for themselves we should prohibit the sexual intercourse itself, as well as pornography and the exposure of female body in advertising. In this case our country would become more similar to a totalitarian regime than to a liberal democracy.

In recent years the relationship between the female body and politics has raised a heated debate among politicians, commentators and civil society groups: the way in which the state must deal with prostitution has become a major concern in many countries, as a consequence of the increasing size of the phenomenon and its connection with public order issues and migratory flows.

The debate over the responsibility of the political class toward women and, particularly, prostitutes has become extremely polarised: the constantly recurring question is how politics should manage “the oldest profession in the world”, or rather,

how far ought the state to intrude into that private exchange of sex or sexual services in return for money? Is prostitution to be considered as a vice or, rather, a crime?

Prostitution has always existed. In some periods in history, it assumed a sacred character: for example, in *The Histories* the Greek author Herodotus was the first to describe what happened in the Ancient Near East along the Tigris and Euphrates rivers, where temple prostitution was a common practice. However, it was not until the Nineteenth century that prostitution turned into a political issue, where many European countries enacted regulations against the spread of STDs. Within such framework sprung out Abolitionism, a movement willing to eliminate regulation of prostitution and prostitution altogether.

With regard to policymaking, there are at least three approaches a state can adopt in relation to prostitution (Thompson, 2000):

- ✓ Criminalisation, which makes all laws and activities related to prostitution a crime, thereby producing a clear-cut prohibition;
- ✓ Legalisation or regulation, which enacts laws and regulations dealing specifically with prostitution;
- ✓ Decriminalisation, which eliminates laws and regulations associated with prostitution, thereby aligning its status with any other legal occupation or activity.

Prostitution regimes vary in Europe according to different countries: from the full prohibition of Sweden, where buying or trying to buy sexual services is illegal and prostitution is considered as a part of sexualised violence, to the Dutch scenario where the sector is vastly liberalised, with brothels and advertising being allowed and prostitution considered a profession like any other and subject to taxation. However the Dutch model has been recently put in question due to the rising trafficking of women. Therefore in 2008 the mayor of Amsterdam launched the “Project 1012” (named after the postal code of the “red light district”) aimed at the reduction of the supply of prostitution by fifty percent (through the closure of two hundred brothels). The crusade against money laundering and criminal organisation (mostly from

Bulgaria and Ukraine) contemplates also the reduction of coffee shops by seventeen percent and a vast plan of urban requalification.

In Italy prostitution is formally legal, but in fact the activity is widely criminalised through an approach which has passed from being prostitute-targeted (through the crime of solicitation) to being client-targeted. The 1958 Merlin law (named after its main author, the socialist MP Lina Merlin), still in force today with little change, revoked the regulation system (going back to the post- Unitarian regime), closed the “case chiuse” and established a new offence called “exploitation of prostitution” with the aim to punish pimping. Specifically it provides penalties for “any person who in any way promotes or exploits the prostitution of others”. The law lists places where prostitution is prohibited, such as houses, hotels, dance halls, entertainment clubs or other areas open to the public. This schizophrenic legislation has brought about an increase in street prostitution by exposing sex workers to human rights violations and violence (often on the part of police officers).

A further interesting case is Austria where prostitution is legal and regulated. Prostitutes are considered to be self-employed, and since 1986 they have been required to pay taxes. Sex workers are subject to numerous duties: they must register, undergo weekly medical checkups and comply with a great number of restrictions as specified in the laws of the federal states. The underlying idea of the Austrian approach is that a regulated and controllable market that takes account of its specific risks for sex workers will also help to better identify and support possible victims of trafficking as well as of other forms of (sexual) violence and coercion.

In order to have a complete framework of the main policy options, a brief glance will be given at the Arab model in Saudi Arabia where women are forbidden from driving and any legal act (including travelling) needs the consent of a “male guardian” to be valid. In this country prostitution is strictly illegal. The activity is punishable by prison and flogging. Indeed all sexual activity outside of a lawful marriage is illegal. Hence, a prostitute and his or her client can also be charged with adultery, fornication and sodomy. The same prohibitionist approach characterizes the

United Arab Emirates where sex working is illegal, even though it attracts so many foreign businessmen that the UAE is slowly gaining the reputation as one of the Middle East's sex tourism destinations.

The comparison among the main regulatory regimes in the first chapter serves to cast light on the public debate which accompanied lawmakers' initiatives in each country. We will wonder whether more rigid regulatory regimes ensure better outcomes in combating prostitution. Interestingly it has been found that, on the one hand, those countries with stricter anti-prostitution laws did not succeed in either reducing crime or discouraging prostitution. On the other hand, regulation is not a panacea and, as some experiences display, it does not allow to eradicate exploitation and trafficking in human beings. Even liberalization, as in the Dutch case, is not a magic stick able to eliminate illegal prostitution, and this happens because there is always a portion of sex workers escaping registration and fiscal obligations. Therefore, the issue is far more complicated than it seems. If policymakers decide to manage this social phenomenon in some way, without resorting to the prohibitionist option, what would be the best policy to be implemented? According to my thesis, mostly based on empirical data, the most effective means to allow an informal commerce of sex to emerge is a licence-based system, along the lines of the Austrian "positive" regulation model. Deprived of any punitive intent, it is primarily aimed at providing sex workers with the same rights and duties as any other professional category.

In the second chapter devoted to "Theoretical perspectives", I will give a wide array of feminist standpoints with regard to prostitution. Some radical feminists argue that those women believing to have freely chosen sex working delude themselves as what they consider a "free choice" (an act of their willing) is in fact the product of the social construct a male-dominant society imposes on them. The roots of the domination theory lie not in law or politics, but in male-female sexual relations. Taking heterosexual sex as their basic paradigm, radical feminists assert that sex is an

act of physical domination by men invading women. The theory goes on to assert that the social construct “feminine” draws its definition and staying power directly from this picture of sex; woman looks like submissive, vulnerable and available to be acted upon. In this sense radical feminism reduces society’s conception of “woman” to the female role in sex, and further reduces that role to one of submission and passivity. For radical feminists these social stereotypes take on political significance because they operate to deprive women of equality in all spheres of life (social, economic and political). Legal rules help ensure that women’s identities are constructed to fill that role. Liberal feminists instead accept the key tenets of liberal philosophy, especially a belief in individual rights and autonomous selfhood, and they consider existing inequalities as the product of a flaw in the execution of those principles as they have been applied to women. In the meantime liberal feminists refuse “groupness” as a collectivist enemy of individualism (and enhancer of women’s inequality). Whereas liberals assume that basic social equality already exists and they seek simply to assure that equal rights are not denied to women by government simply because of their gender, radical feminists reckon that inequality runs far deeper as gender is pre-eminently a disease produced by social domination.

The key question – whether prostitution can be conceived as a voluntary choice - has animated the debate among feminists giving rise to a deep rift within the feminist movement. For instance, in the “radical” front, the American feminist Catherine MacKinnon excludes the possibility of voluntary prostitution also waging a crusade against pornography as “an arm of prostitution”. Melissa Farley maintains that legalizing prostitution is a way to ensure impunity to sexual exploitation and violence, and to normalize predatory behaviors of men. In her view prostitution is inevitably connected with coercion and assault. She goes so far as to state that prostitution is “an institution of inequality of the sexes” and a subterfuge “to tolerate sexual harassment”. Andrea Dworkin instead faces the issue from a sociological point of view, her analysis is based on the category of dominance: we live, she argues, in a male-dominant society, where every woman is treated like an object, but prostitutes

are treated like a specific kind of object, i.e. a target. In her words, woman is reduced to “a few of sexual orifices”. Male power determines a sex hierarchy, where prostitutes stand at the bottom beneath which there is no bottom. Quite inexplicably men, who are prostituted, are above that bottom.

Among the liberal feminists there is the self-described “dissident feminist” Camille Paglia who views the prostitute “as one of the few women who is totally in control of her fate, totally in control of the realm of sex”. The libertarian Wendy Mc Elroy distinguishes between gender feminism and I-feminism where the former, of Marxian origin, considers both genders as two opposite and rival classes necessitating a range of “affirmative actions” (e.g. anti-prostitution laws, quotas and preferential treatments in the workplace) as an appropriate instrument for women’s progress, and the latter, of anarchic-libertarian origin, is based on the theory of natural law and the belief that all human beings own themselves. Not too dissimilarly, Peter de Marneffe makes a distinction between progressivism and civil libertarianism, with progressivism admitting a certain degree of state paternalism and civil libertarians, inspired by John Stuart Mill’s harm principle (that is, that the government is justified in limiting a person’s liberty only to protect others from being harmed), rejecting any sort of paternalism as an illegitimate imposition by the government majority: in the latter’s view, the government is only entitled to prohibit an activity where this violates someone’s rights. Since voluntary prostitution consists of a voluntary and reciprocal exchange, there is no room for prohibition, unless the government aims at imposing a “proper” sexual conduct.

Someone may wonder whether in an open society paternalism is to be totally rejected or a certain degree of it can be accepted. Following a kind of “third way”, De Marneffe relies on some empirical assumptions that have nothing to do with morality but that nevertheless justify prostitution laws. Unlike radical feminists, De Marneffe recognizes the existence of voluntary prostitution but, in the meantime, he underlines its harmful consequences for sex workers’ health as a basis for regulatory restrictions (for instance, sex workers are often affected by loss of control, feelings of

worthlessness, self-hatred, post-traumatic stress disorder, difficulty with intimate relationships).

MacKinnon wages a crusade against pornography defined as “a form of trafficking in women”. In her view pornography is detrimental to women due to a double reason: on the one hand, it entails the sexual subordination of women; on the other hand, it produces attitudes of coercion and violence (the philosopher goes so far as to say – quite disputably - that “consumers become increasingly unable to distinguish between rape and sex”). In other words, pornography constructs women’s status as unequal and their reputation as inferior. It is no surprise since, as we have seen, radical feminists’ theory relies on the role of passivity and submission entrusted to women in the sexual relation with men. In their view, pornography perpetuates this hierarchy acting as a mass instrument, its influence on popular culture is paramount. According to radical feminists, liberal feminism protecting instruments of female subordination such as pornography ensures that while a few women might become “similarly situated” so as to successfully demand “equal treatment”¹ under liberal law, the vast majority of women will never rise to that level and will thus remain unaffected by liberal promises of equality. Some radical feminists go so far as to say that liberal feminism may have made women’s situation worse by encouraging women via the “sexual revolution” to become more available for male sexual aggression. Their reasoning is coherent as it starts from the concept of male supremacy and the female lack of consciousness. It is worth noting that, if we accept these tenets as such, we should forbid women from taking any decision concerning the use of their own body. We should impose, for instance, an outright ban on pornography (which instead nowadays is socially and legally admitted in most countries), and in the same way we should repeal abortion laws. The same discourse can be extended to the exposure of female body in advertising: women are requested to show some parts of their body naked but, the radical feminists maintain, they do not know to be an instrument of male sexual desire. Are we sure that models and

¹ MacKinnon, C. (1989), *Toward a feminist theory*, pp 163-164.

soubrettes do not own this kind of awareness? Is it fair to allow some self-described feminists, who consider themselves as a sort of “enlightened elite”, to restrict the freedom of other women who have chosen different jobs and lifestyles? Applying the Lockean self-ownership principle, liberal feminists maintain that woman has an absolute right to decide whether and to what degree third persons can use (or accede to) her own body.

During the greater part of the Twentieth century, prostitution was deemed to involve coercion; therefore, it is not surprising to see how in 1949 the United Nations Convention called on all states to suppress trafficking as well as prostitution, regardless of the consent of the woman involved. Only in the late 1970s was there a revival of prostitution as a political issue, following the spread of AIDS, where renewed worries about the health hazards of unprotected sex dragged prostitution back to the very top of the political agenda.

Then, and for the first time, new definitions began circulating, with prostitution seen as a work to be regulated as any other type of labour: this was a major turning point, the consequences of which are still alive today. As long as sex workers formed their interest groups, giving rise to a prostitutes’ movement in many countries, a profound division emerged between those advocating the abolition of prostitution as a way to protect women who, in their view, were inevitably victims of exploitation; and those supporting various forms of legalisation and regulation on the grounds that voluntary prostitution did exist and deserved recognition from the state.

Exploitation is arguably the most effective argument against prostitution regulation, and the third chapter is focussed on it. Trafficking in human beings is a great concern worldwide due to the huge size of this phenomenon. According to the data provided by the EU Commission, it involves almost 21 million people, 79 percent of these are women. The annual income from human trafficking is around 32 billion dollars, representing the second source of money after the illegal drug trade.

At EU level 76 percent of victims trafficked are employed in sex industry, with Bulgaria and Romania being the main countries of origin.

Exploitation is an evil to be eradicated, and to this end a European strategy to prosecute cross-border trafficking cases is needed. However from the existence of exploitation we cannot infer the denial of voluntary prostitution. Making this kind of deduction would be logically inconsistent: it is sufficient to observe just one woman, who declares to have freely chosen to be a sex worker, to falsify once and for all the idea that all prostitutes are victims of social and economic constraints. Moreover, even if we admit that all prostitutes are victims of exploitation, we cannot exclude the possibility that one day someone would voluntarily choose prostitution as a desirable activity.

While we are quite used to hearing philosophers and commentators speaking of prostitution, sex workers are hardly listened to. Therefore in the fourth chapter I will interview some self-organised prostitutes' groupings which are engaged in acquainting the policymakers with their real needs and priorities. In particular I will deal with the French experience of the "Syndicat du travail sexuel"; the Italian Committee for prostitutes' rights; the Sex Workers in Europe's Manifesto; the Global Network of Sex Work projects.

In conclusion, even admitting certain concepts of radical feminism, my thesis is that sex working can be a voluntary choice and, as such, it deserves recognition and a well-defined regulatory framework. Being against exploitation does not mean being against prostitution regulation. From a liberal point of view state restrictions to individual freedom are legitimate only insofar as they are aimed at preventing harm to third persons. Any other prohibition falls outside of a liberal framework. Therefore state bans in matters that depend on individual freedom without any harm for third persons seem hardly compatible with the principle of self-determination and finally an illegitimate intrusion into individual freedom. Regulation is neither a panacea nor

a magic stick, as there is always an irreducible portion of sex workers who prefer to escape registration and fiscal obligations. Exploitation is a deplorable plague which demands strong efforts to be eradicated through a transnational action. It is often used as a rhetoric argument against prostitution as such, but this is a misleading attitude. Prostitution and exploitation are separate phenomena, the latter being featured by coercion. Even if we dislike sex working or we consider it morally reproachful, experience displays that a merely repressive policy plays into exploiters' hands. Governing the phenomenon is paramount to improve sex workers' conditions and to encourage collaborative responses on the part of sex workers (and possible victims of exploitation). Some experiences reported by direct actors show that voluntary exchange of sexual services for money does exist. More importantly, from a purely theoretical point of view, we cannot exclude *a priori* the possibility that a person chooses prostitution as a free choice, unless we deprive that human being of his or her self-agency. From a feminist viewpoint, this would be a step backward with unforeseeable consequences.

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