

# **Prostitution**

  

# **as a matter of freedom**

PhD Thesis

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# Prostitution as a matter of freedom

Index

*Introduction*

*Chapter one*

## **Politics of prostitution**

Italy

- 1.1 Prostitution at the time of *Réglementation*
- 1.2 Post-Unitarian regulation
- 1.3 Merlin Law and the “open-pit” brothel
- 1.4 Prohibitionist revival

Austria

- 1.5 Historical Path
- 1.6 “Positive” regulation

Netherlands

- 1.7 A story of tolerance
- 1.8 From Napoleonic regulation to abolitionism
- 1.9 De Wallen and the Project 1012

The Arab model

- 1.10 Overview
- 1.11 The main tenets around “Beghaa”
- 1.12 Tunisian exception
- 1.13 Saudi Arabia
- 1.14 Punishment

*Chapter two*

## **Theoretical perspectives**

- 2.1 Premise
- 2.2 Black swan
- 2.3 False consciousness

- 2.4 Fatal conceit
- 2.5 A pinch of paternalism
- 2.6 Mill and the “third way”
- 2.7 Libertarian view
- 2.8 Defending prostitution
- 2.9 Porno dilemma

### *Chapter three*

#### **Exploitation**

- 3.1 Premise
- 3.2 Picture of a crime
- 3.3 Immigration and black market in Austria
- 3.4 The betrayal of regulation
- 3.5 The Dutch case
- 3.6 Harm reduction principle

### *Chapter four*

#### **The floor to sex workers**

- 4.1 Sex workers as an interest group
- 4.2 The Global Network
- 4.3 The French STRASS
- 4.4 The Italian Committee for Prostitutes’ Civil Rights

### *Conclusion*

### *Bibliography*

## *Introduction*

Can prostitution be conceived as a “desirable” profession, i.e. a profession people do voluntarily choose, like any other? If the reply was affirmative, sex working would deserve equal recognition and proper regulation within a liberal framework.

In recent years the relationship between female body and politics has raised a heated debate among politicians, commentators and civil society groups: the way in which government ought to 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. In the Nineteenth century prostitution turned into a political issue, when many European countries enacted regulations against the spread of STDs.

For a long while philosophers and thinkers have dealt with this delicate subject – the dividing line between voluntary prostitution and coercion – tracing a deep rift within the feminist arena. By contesting some “radical” feminist arguments against prostitution, I will try to demonstrate that being in favour of prostitution regulation does not mean being in favour of exploitation and marginalisation of sex workers. Prostitution as an act of will can be, already nowadays, a matter of fact. More importantly, even if we deny this possibility, could we theoretically exclude that one day someone would choose prostitution as a “convenient” job?

# Chapter One

## Politics of prostitution

### Italy

#### 1.1 Prostitution at the time of *Réglementation*

We will consider firstly the Italian case, not for a merely nationalist reason, but because the Italian regulation of sex working, in its historical path until its recent outcomes, is useful to better understand the difficult relationship between the struggle against exploitation and the struggle against prostitution itself. As we will see, the legislative initiative led by the Senator Lina Merlin was based on the substantial equation between these two aims, which were conceived as indivisible. This conception was evidently unfounded as it preemptively excluded prostitution as a free choice made by free women. In this cultural and theoretical horizon a “right to prostitution” is absolutely inconceivable. Nevertheless it is important to dwell on it, even in the light of diverse experiences we will examine later, particularly the Austrian and the Dutch ones.

Mrs. Lina Merlin was neither a bigoted woman nor a furious feminist, yet her name is linked to a law which marked a turning point in prostitution regulation in Italy. On the 20<sup>th</sup> September 1958 the so-called “Merlin law” went into force after a nine-year struggle led by the Socialist Senator with incredible perseverance (through three legislatures and eight governments). Mrs. Lina Merlin was driven by good intentions, her goal was the closure of ‘case di tolleranza’ (closed houses) which were awful places where prostitutes suffered ordinary abuses. However the end of legal indoor prostitution was bound to have unintended consequences.

The 20<sup>th</sup> September 1958 marks the transition from the post Unitarian regulation system to the substantial criminalization of the activity. Prior to 1958 prostitution regulation was modeled on the French Napoleonic system of *Réglementation* and of the *Bureau des Moeurs*. The state played a crucial role in granting licenses and taxing revenues. The strong involvement of the state was mostly justified on grounds of

public order and health issues. It is important to consider that in the Eighteenth century syphilis and venereal diseases were a major concern. Since 1810 prostitution control in Paris was entrusted to administrative acts aimed at the protection of soldiers from the spread of sexually transmitted diseases. When the Dukedom of Parma became one of the 130 French departments, a regulation was introduced following the Napoleonic model with the provision of an enrollment procedure made by police commissioners, and three compulsory medical checks each month; furthermore brothel-keepers had to denounce the presence of prostitutes, who were forbidden from looking out of the window or lingering on the street to make “impudent invitations” to pedestrians.

In a few years similar regulations were introduced in numbered towns: in Bologna in 1814, in Sicily in 1823. It is worth mentioning the work entitled “De la prostitution dans la ville de Paris, considérée sous le rapport de l’hygiène publique, de la moral et de l’administration”, written by a French doctor Alexandre Jean-Baptiste Parent Duchatelet who stressed again the link between syphilis and prostitution. In his words there is a harsh criticism against prostitution considered as a “social sewer”, while sex workers are blamed of “forswearing our society and our common rules”. Syphilis is the most terrible and dangerous disease, a true plight for humankind, therefore prostitutes must be kept under strict control and, if necessary, they can be made object of “segregation”. According to the French physician, those who have chosen to live on the margin of society, are not allowed to claim the respect of individual freedom. The prominent interest is social defense and public health. There are two remedies against this category of women: jail and hospital. Prevention methods are seen as useless against harlots as they would reduce illness risk by incentivizing immoral behaviors. It is the fear for syphilis epidemic which spurs a number of European nations to adopt some forms of regulation between the 1860s and the 1870s. Prostitution is still seen as a “necessary evil” to deal with.

## **1.2 Post-Unitarian regulation**

The first regulation in Italy was enacted in Piedmont in 1855. Following the rising spread of STDs in the army of Savoy, Count Camillo Benso di Cavour entrusted the physician Casimiro Sperino with the charge to frame a “Regulation for the surveillance service of prostitution”, which was formally enacted on the 15<sup>th</sup> February 1860. In this way Count di Cavour wanted to limit the contagion risk also for the French army supporting the Piedmontese against Austria. After the accomplishment of the Unification in 1861 the Regulation was extended in the southern provinces of the Kingdom.

Initially conceived for health purposes the Regulation turned into an effective tool to control women. The state granted licenses to open brothels, the state imposed tariffs and the state collected taxes. Prostitutes had to undergo medical checks twice a month. Police officials were endowed with an arbitrary power: they could arrest “suspect women” and force them to compulsory medical visits. Prostitutes had to be enrolled on public registers, so there was no safeguard for their privacy. Sometimes the enrollment was used as a tool for blackmail or persecution, prostitutes could be enrolled as a matter of course, for instance following anonymous letters or rumors. The age limit for prostitution was sixteen years old, prostitutes had to comply with some rules concerning their behavior in public places, and they were forbidden from going out after eight p. m. There were two types of brothels: those where prostitutes lived and worked, and those where women just worked. There were high-level brothels, where the entry fee was about five liras or more (the so-called “case di lusso”), those where the sum was between two and five liras, and finally the “case popolari” where the price was less than two liras. In the first-class brothels 3/4 of the revenue went to the keeper, the rest to the sex workers; in the other two categories the division of profits was 2/3 to the prostitutes and 1/3 to the keeper. On the 8<sup>th</sup> January 1861 a further decree introduced the arrest for those women who prostituted in violation of the existing regulatory regime.

The system was modified in March 1888 by two decrees signed by the Italian patriot and Prime Minister Francesco Crispi<sup>1</sup>. Against the flaws of the regulation in force Crispi aimed at moving the control from single prostitutes to the hygienic surveillance of brothels, which could be hit by a closure ordinance (admitting no appeal). The surveillance was entrusted to public officials who could enter houses at any time, day and night; they were obliged to wear the uniform and, to prevent episodes of abuses, they could act at least in couple. The age limit was raised at twenty-one. The government prohibited the selling of food and drinks in closed houses, as well as dances and songs; moreover it imposed that shutters should always be kept closed (hence the name “closed houses”) and it was forbidden to open brothels near places of worship, schools and kindergartens. The regulatory framework was integrated by a further amendment in 1891 by the Minister of the Interior Giovanni Nicotera, who strengthened the police control on women providing, in case of refusal to a sanitary check, the same treatment reserved to “infected people”, i.e. segregation in specific structures. The age limit was reduced again to eighteen. The same regulation modified the tariffs (those fixed by Cavour were too high): since a worker gained three liras per day, the tariff was brought to one lira, 50 cents for soldiers and 70 cents for noncommissioned officers; for high-level houses prices were modified upward.

Under this system prostitution was fully legal with a central role played by the state. A system of “sifilicomi” (hospitals for sex workers) was created as a way to avert the spread of venereal diseases. In its concrete application this system revealed many flaws and since the latest Nineteenth century a movement for its abolition grew up. The regulation modeled on the Napoleonic system was considered a failure by leftist and feminist groups, often for different reasons, and it is not a case that in the Twentieth century the abolitionist label was used with various purposes: the abolition of regulation as well as the abolition of prostitution itself. The state-managed brothels had at least three disadvantages: the sexual services were decided by brothel-keepers;

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<sup>1</sup> Crispi was Italy's Prime Minister for six years, from 1887 until 1891 and again from 1893 until 1896.



sex workers spent almost all their revenues for food, accommodation and other services (sheets, cleansing, medicines) to the brother-keepers who raised the tariffs on the excuse that they were over-taxed by the state; in spite of medical controls prostitutes became ill, got older more rapidly and usually they left the brothels to end their life in hospitals or hospices. The only exception was for those prostitutes who got married with their client or for those who tried their fortune as clandestine or wanderer. As we have already pointed out, this system was characterized by an active role of the state which gathered part of the revenues from brothel-keepers. They were granted with licenses by the central police stations in execution of a Interior Minister order. Theoretically prostitutes were not obliged to live in brothels provided that they were in possession of a certificate attesting their activity and the enrollment in the police registers. The reality was quite different. Sex workers underwent vexations and abuses from the police (at that time “the police of the costumes”) in order to live and work in the same place. This situation made prostitutes more and more dependent on brothel-keepers to such an extent that women were forbidden from going out without pimps’ approval.

To understand the cultural climate of the time, we have to consider that in 1893, in spite of the reduced epidemic risk due to improved sanitary conditions and medical breakthroughs, Cesare Lombroso and Guglielmo Ferrero wrote a book where they stated that on the basis of anthropological studies “the natural regression of women is prostitution, not criminality, as the primitive woman was a prostitute rather than a criminal”<sup>2</sup>. In their view the origin of prostitution was rooted in “moral craziness” intended as lack of decency and insensitivity to “the infamy of vice”; women were attracted by what is forbidden and prostitution was “the best way to gain money without working”. However, giving vent to male sexual desire, prostitutes should not be rashly repressed, but rather “contained” to avert social scandal and damages.

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<sup>2</sup> Lombroso, C. e G. Ferrero, *La donna delinquente, la prostituta e la donna normale*, Feltrinelli, Milan, 1893, p. 73.

### **1.3 Merlin law and the “open-pit” brothel**

The regulatory regime remained almost unaltered until the inception of the Republic. During the two world wars the legislator continued to provide controls to counter hygienic and sanitary problems, even more in wartime due to the increase of extra conjugal intercours. The attitude did not change in the Fascist regime which introduced the “sanitary card” and compulsory medical checks twice a week. However, in spite of the overall improved sanitary conditions, statistics measured an increase in mortality rate for syphilis and blennorrhoea passing from 3.1 (out of 100 thousand people) in 1930 to 4.9 in 1938, arguably due to the economic crisis.

1948 is a crucial year. The entry into force of the national Constitution and the first democratic elections in Italy mark the victory of the Christian-Democrats and the defeat of the socialist and communist front. Prime Minister Alcide De Gasperi appoints as Minister of the Interior Mario Scelba, who stops license-granting. The “closed houses” pass from 724 with four thousand bed places (and nearly the same number of sex workers) in 1948 to 560 houses with 353 bed places in 1958. In 1955 Italy gets the UN membership signing the “Universal Declaration on human rights”, which obliges member countries to struggle against “the slaughter of human beings and the exploitation of prostitution”. Clearly the Napoleonic regulation of “case di tolleranza” is incompatible with UN obligations. A dedicated bill is requested.

Lina Merlin was not enthusiastic to deal with this matter. She preferred to represent the interests of the peasant and working class of her constituency in the Polesine, but despite her will she had become a symbol for a number of feminist associations of various origin, Christian-democrat as well as communist, all united to abolish the regulation. In the Constituent Assembly she supported the introduction of the word “sex” in article 3 of the Constitution concerning the denial of any discrimination on grounds of race, language, religion, etc. Before this experience Merlin was one of the few teachers who lost their job after the refusal to pledge to the Fascist regime and thereby she was sent to the “confino” in Sardinia; then she fought as a partisan until the Liberation. She was the first woman to take a seat in the Senate.

Moreover, she was one of the most vocal advocates for the admission of women in the judiciary; Merlin obtained the repeal of the so-called “spinsterhood clause” who authorized employers to dismiss women who decided to get married; she stood in favor of the reduction of discrimination between natural and legitimate children, as well as between blood-related and adopted ones.

The Merlin Law brought about the closure of the “case di tolleranza”, but it did not foresee a bad consequence, namely the transformation of Italy in an immense open-pit brothel. On behalf of female dignity and against a “pimp” State prostitution was deregulated: enrollment procedures and mandatory health checks were repealed. Therefore, instead of what happened in Austria or in the Netherlands, as we will see in the next paragraphs, in Italy there was a substantial deregulation and a disengagement on the part of the state, in the belief that the abolition of exploitation would have led to the abolition of prostitution. In fact, apart from the public order and health reasons abducted by the Merlin Law defenders, their real goal was to abolish prostitution itself, seen as a violation of female dignity and inevitably connected to exploitation. Sex workers were victims of exploitation, none of them was seen as a potential free-choice maker.

It is worth noting that, with the exception of the Communist party, other political parties were divided on the subject and they resorted to dilatory devices to prolong the parliamentary route. To preserve the “decency of nubile women” the transcription of the debate was exclusively entrusted to married employees. How to forget the “outing” made by a Christian-democrat MP, Tartufoli Amor (nine children and six grandchildren), who confessed to his pairs: “I speak on behalf of the exemplum I’ve given by arriving at the marriage in a condition of perfect purity”. It is worth to read the words pronounced by Mrs. Merlin, taking into account that she had received a Catholic education:

“A wild life is a symptom of decadence. The proletariat is a class that has to advance. It does not need inebriation as a stimulus or as an exaltation. Self-discipline is not slavery, not even in love! Colleagues, this is the teaching that Lenin has given

to the youth of his country, and we should replicate in ours because it does not contradict our beliefs! (...) The clients are often corrupt men, married and not just bachelors”<sup>3</sup>.

Gaetano Pieraccini, a social democrat who opposed Merlin bill, in his speech cast light on the link between brothels closure and the spread of STDs. In his words, there are three categories of prostitutes: those who work in brothels under police and sanitary controls; those “wandering” who possess the sanitary card and undergo regular health checks; lastly there are those without card, who sometimes are arrested by police officials and who lack any kind of control. “These ones are the most responsible for contagion”, Pieraccini says, “After the closure of houses wanderers will increase proportionally to the spread of venereal diseases”. Pieraccini brings public order reasons as well: “In brothels women go out only to attend church or visit relatives, and they are always accompanied by the police of costumes. They live in houses with a single entry and shutters are always closed, they are never allowed to linger on the street, even in summer; by contrast free prostitutes wander soliciting men and young boys in many ways, showing their beauty and their senses”, the Senator continues listing the low-necked and provocative dresses, while “in the brothel the licentiousness is removed from the eyes of the public”. It is enjoying to notice that, in response to the claim of Mrs. Merlin regarding the “one hundred coitus per day”, Sen. Pieraccini rebates: “Hon. Merlin, one hundred sexual intercours per day are out of the possibility. Even calculating fifteen minutes for each performance, it would take twenty-five hours!”. It is always Sen. Pieraccini who stresses the inadequacy of the tool: cultural habits or alleged “vices” cannot be changed by a “leggina” which can do nothing against the spread of venereal diseases. The Christian-Democrat Sen. Mario Riccio brings the example of some countries where sailors, after a long period on cruise, are welcomed by sport matches, cultural and artistic events to reduce sexual stimulus.

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<sup>3</sup> Cirri L., *Stupidario Parlamentare – I Edizione*, Ed. del Borghese, Milan, 1959, p. 107.

It is also important to consider the image of prostitutes in the public debate. The recurring theme is the biological and anthropological deviation of prostitutes, their constitutive proclivity to delinquency and immorality. Lombroso who, as we have seen, is the author of a famous study on the normal and delinquent woman, is defined by a CD Senator as “a glory of the humankind”.

The parliamentary debate was focused more on the social defense from prostitution rather than on prostitutes’ civil liberties. The outcome is a law which introduces a schizophrenic regulation. Prostitution is not crime, but the law does not affirm a right to prostitute, rather the law takes cognizance of the existence of prostitution as a matter of fact, and it tries to regulate it with a number of prohibitions. The law recalls the constitutional articles: the equality between sexes, the prohibition of mandatory medical treatments as detrimental to human dignity, the inadmissibility of private firms damaging human freedom. On the basis of these tenets the law aims to prevent private pimping, any form of compulsory health check and enrolling procedure.

Theoretically prostitution is not a crime, but in fact its exercise is criminalized in a number of ways. Sex working is forbidden in a plenty of places, such as houses, hotels, dance halls, entertainment clubs or other areas open to the public. The law introduces two novel offences: the crime of “exploitation of prostitution” with the aim of punishing pimps, and the crime of “solicitation” (*adescamento*) against those who “in public places or in places open to the public, solicit in a scandalous or disturbing manner, or follow a person inviting them by acts or words” (art. 5). Article 7 prohibits registration, mandatory health checks and special cards. The Minister of the Interior will promote the creation of “institutes of patronage” under state control to give “assistance and reeducation” to prostitutes leaving the closed houses and willing “to come back to an honest life”<sup>4</sup>.

As one can easily understand, at the same time prostitution is theoretically allowed and concretely forbidden. The Merlin law seems to be traced on an image of

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<sup>4</sup> Law n. 75 for “The abolition of prostitution regulation and the struggle against exploitation of others”, which was passed by the Italian Parliament on the 20<sup>th</sup> February 1958.

woman as a weak human being who is socially dangerous. For instance, the crime of exploitation is punished even if it is exercised on an adult fully conscious person; evidently in that case, being the woman willing, there is no exploitation but a voluntary exchange. Well, the law does not take into consideration this possibility. As we will see, the Austrian legislator, even though it does not fully liberalize prostitution like the Dutch counterpart, nevertheless it considers the possibility of “choosing” sex work, and thereby it proposes a “positive” regulation.

However, without anticipating the matters we will touch in the next paragraphs, let us consider the Italian law scheme, where the prostitute does not exist, her will does not exist, she is made invisible under the stereotype of victim. Prostitution has a unique interpretative key: exploitation. Moreover, whether the law does not provide for any form of zoning, the crime of “favoreggiamento” prevents two or three sex workers to organize altogether their work at home.

The parliamentary debate, as already mentioned, was prolonged due to dilatory devices used by the main parties which were divided inside on this theme. One thorny issue was the abolition of mandatory sanitary checks. The Vatican State, which strongly opposed any form of sex trade, did not intervene so much in the debate. The fascist and monarchic groups were totally against the bill. The most vocal extra-parliamentary opposition was organized by brothel-keepers who gathered in a trade union, the “Associazione Nazionale Esercenti Case Autorizzate” (ANECA, from now on); their main argument against the closure of the “case di tolleranza” was the health issue. Their parliamentary representative of the Democratic Socialist Party in the Senate, Gustavo Ghidini, went so far as to say that the bill was incompatible with art. 32 of the Constitution (“The Republic defends health as fundamental right of the individual and interest for the community...”). The ANECA had its headquarters in Milan in a big building in corso Vittorio Veneto. It organized two conferences in 1949-1950, in Geneva and in Milan. Its struggle to maintain the *status quo* relied upon the “social function” of brothels, reported the voice of prostitutes willing to work under the existing regime, convinced journalists and scientists to support the

social utility of a state-controlled system. The ANECA gathered 1,300 entrepreneurs and a business worth around 14 billion liras each year. One of ANECA leaders who was unwilling to reveal his identity, “Remo B.” from Rome, suggested to accept the abolition with the exception of brothels for the military. Another leader proposed to invest the 30 percent of revenues into an unemployment fund, provided that the law was discarded<sup>5</sup>.

Lina Merlin was made the target of newspapers and satirical cartoons against her initiative. She reacted to these vehement attacks by openly denouncing what sort of abuses and vexations women were forced to undergo in those places. The invention of penicillin had defeated syphilis, but in those brothels prostitutes continued getting ill due to unpleasant working conditions. Mrs. Merlin and her friend Carla Barberis Voltolina (who later got married with Sandro Pertini) gathered a number of prostitutes’ letters in a volume named “Lettere dalle case chiuse” (Ed. Del Gallo, 1951); in those letters prostitutes claimed for the liberation from the “shameful slavery”.

“Il Tempo”, the Italian newspaper which sided with Mrs. Merlin, received a number of menaces and anonymous letters written by self-styled prostitutes (or written by ANECA members)<sup>6</sup>.

The first consequence of the Merlin law was the increase in street prostitution. This consequence was unintended because, as we have already made clear, Mrs. Merlin believed that, after the elimination of exploitation, no woman would have continued prostituting. She completely misled the reality.

On closer inspection, during the debate the risk of increase in outdoor prostitution had been underlined, not only in the Parliament, but also in the public opinion. A reader had written to “Il Tempo” to stress the risk of a rush in “wandering prostitutes” due to a law dictated by “the moral *sensiblerie* of some feminists”<sup>7</sup>. On the 9<sup>th</sup> July 1958 a former seminarian starts fasting and gathering signatures for a

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<sup>5</sup> Vergani, G., *La Repubblica*, 24 July 1985.

<sup>6</sup> Bellassai, S., *La legge del desiderio. Il progetto Merlin e l’Italia degli anni Cinquanta*, Carocci, Rome, 2006.

<sup>7</sup> Ivi, p. 74

referendum against the law “for sanitary, historical and costume reasons. Women working in closed houses will move on the street where it will be even more difficult to protect them and to safeguard at the same time the public morality” (La Stampa, 10th July 1958). To better understand the moralistic culture of the time, we have to consider that after the approval of the law on the 20<sup>th</sup> February 1958 (with 385 yes and 115 no) the news anchorman on the state-owned channel – his name was Ugo Zatterin - announced the event without pronouncing, not even once, the word “prostitution”. On the midnight of the 19<sup>th</sup> September 560 brothels were closed down. The manager of a romen hotel remembers what happened the night of the 20<sup>th</sup> September, when many clients arrived in the zone of brothels with bottles of champagne to say hello to their prostitutes, but they remained disappointed when they realized that there had been a terrible misunderstanding: all the houses had been closed the night before.

A portrait of the problems following the approval of the Merlin law is provided by Pier Paolo Pasolini in his documentary, “Comizi d’amore”, in 1965, when all the people interviewed, including women, claim the risk of a rise in street prostitution with bad effects for the health of persons involved, in addition to fiscal and criminal troubles. Some people interviewed stress the role of sex working as a form of sexual initiation : “Why ugly men like me must be forbidden to know a woman?”, asks a boy interviewed.

#### **1.4 Prohibitionist revival**

The main consequence of the Merlin law was the shift of prostitutes from the “case di tolleranza” to the street. It is sufficient to walk around in some Italian neighborhoods to have an idea of the conditions in which prostitutes have to work: on the street they are daily exposed to violence and health risks, in addition to the uncomfortable situation in which they have to perform their activity.

According to the data provided by the Ministry for Equal Opportunity there are around seventy thousand prostitutes (migrant and not) with nine million clients, while



the profits are about ninety million euro each month, more than one billion euro yearly. Indoor prostitution is more rampant in the North (75-80%) than in the South (40-50%). Some of these data are controversial due to the “invisible” nature of the phenomenon. For instance, the nine million clients arguably are to be intended as nine million sex meetings. However almost all sources agree on the fact that about 80% of prostitutes are foreign, 40% of them are non-EU citizens. In spite of the Italian irrational situation where prostitution income is considered as “taxable” (Court of Cassation, 2011) but prostitutes are not allowed to pay taxes, some political groups have provided some estimates of the potential income from sex working taxation. According to the Radicals (a small libertarian party), the state could gain around 80 million euro yearly. The Northern League (a federalist movement) takes into consideration a tax rate of 30% and tax revenues for the state near to 900 million euro yearly.

Although some figures may appear exaggerated, what is evident is that the Merlin law failed in both combating exploitation and reducing the phenomenon of prostitution as such. In 2008 the Minister of Equal Opportunity Mara Carfagna proposed a bill to combat prostitution targeting both the prostitute and the client on grounds of public order and security reasons. After all the sanitary issue, which had been so important until the half of the Nineteenth century, lost its relevance in consequence of the improved health conditions.

In 2008 Berlusconi government declares war to prostitution in open places, obviously on the street (defined as source of “major social alarm”) as well as in places open to the public. The bill introduces the crime of prostitution in open places and in places open to the public. The penalty consists in arrests (from 5 to 15 days) and fines (from 200 to three thousand euro). The same treatment is reserved to sex workers and their clients.

After the approval in the Council of Ministers, the bill (S. 1079) was presented in the Senate but it did not advance. Some measures were introduced by

administrative ordinances at local level by criminalizing both prostitutes and clients, always on grounds of public order and security.

As some commentators pointed out, the rigid scheme laid down by Minister for Equal Opportunity Carfagna would bring about a shift of prostitutes from the street to clandestine indoor work, without any kind of regulation or control, and thereby exposing women to trafficking and abuses.

As we have previously seen, Italian legislation seems to be based on the equation between exploitation and prostitution itself. In this cultural and theoretical horizon, as it emerges from the parliamentary debate accompanying the Merlin Law enactment, there is no room for the recognition of a “right” to prostitute. The dominant idea is that prostitution consists in a clear-cut violation of human dignity and that prostitutes are always – and *a priori* – victims of a crime labeled as “exploitation”. It is worth noting that public order and health issues are mentioned as a way to justify the legislative initiative: theoretically the closure of “case di tolleranza” is needed to preserve women, in fact the law is rooted in what we might call a “moral bias”, namely the negative value judgment considering prostitutes as victims of vice (rather than exploitation), as people leading a sinful life. Finally there is the idea that prostitution is immoral and that prostitutes are “deviated” women.

## **Austria**

### **1.5 Historical path**

In order to better understand the philosophical background, it is useful to compare it firstly with the Austrian case and, secondly, with the Dutch one. What makes these two countries interesting is that both of them, even opting for two diverse receipts with diverse outcomes, share the same basic idea: prostitution and exploitation are separate matters; combating exploitation does not lead to the elimination of prostitution because – and this is the paramount point for our analysis – voluntary prostitution does or can exist, and the legislator has to deal with it. It is in this theoretical framework that the Austrian and the Dutch legislator set up two

diverse regulatory models, where the latter appears more “liberal” than the former, but nevertheless in both cases there is no repressive intent and no moral bias against prostitutes.

In Austria prostitution has been forbidden for a long while. In the Ancient time and in the Middle Ages there was a clear-cut prohibition to sell sexual services in return for money, although the activity thrived on and was tolerated. Undoubtedly the influence of the religious morality played a crucial role in this attitude.

The king Rudolph of Hapsburg (1273-1291) made it an offence to insult these *gelüstigen Frauen* (“libertine women”) in 1276. After all they paid their taxes (two pfennigs a week), and on Sundays and special festivities they were obliged to stay away from the town. In spite of the formal prohibition there was a tacit agreement to tolerate sex working by virtue of reciprocal advantages. In other words, although there was nothing like the open regulation existing in the Ancient Greece or in the Roman Empire where prostitutes could appeal to a specific magistrate in case of controversy, in the Hapsburg Empire there was already the awareness that prostitution could not be eradicated and, thereby, a *modus vivendi* with it was to be found. In this regard we can detect a major difference with the Italian legislative attitude toward sex working. The mirage to eliminate prostitution as such does not pervade the Austrian decision-maker.

It is no surprise that the first recorded mention of the existence of brothels in Vienna concerns the initiative of some councilors who wanted to set up a charitable foundation assisting prostitutes willing to renounce their sinful life. The word *Freudenhäusern* (“brothels” in German) first appears in a charter of Duke Albrecht III (1365-1379). However very soon councilors were actually establishing brothels, they even funded a nunnery using the taxes collected.

The last attempt to prohibit prostitution was made by Maria Theresa of Austria (1740-1780) who shipped prostitutes along with other “antisocial” people down from the Danube to Timisoara in the Banat region of Romania.

The current regulation of prostitution in Austria – where the activity is legal – goes back to 1850, when Dr. Nusser of the Vienna police suggested that prostitutes be required to register with the police, receive medical examinations twice a week and obtain special health certificates. Overall the regulation was not different from the Napoleonic model which was later exported in Italy. A further change was introduced in 1873 when Anton Ritter von Le Monnier, head of the Vienna police, reformed Vienna's prostitution law setting the obligation of health certificates. According to news reports, in 1874 about 6,424 prostitutes had received health certificates and were under observation by police and health authorities. According to police estimates, at least 12 thousand women prostituted out the regular registration procedure. Most of these were factory workers who needed an additional income. With regard to registered prostitutes the youngest was 15 and the oldest 47 years old<sup>8</sup>.

### **1.6 “Positive” regulation**

In Austria the regulation system, which was repealed in Italy by the Merlin law, has been maintained and amended throughout the ages by several laws. As we have already said, prostitution is regulated under the penal code which allows for the prosecution of clients of workers younger than 18.

The Acts on AIDS and STDs include provisions on examinations by a public health officer (*Amtsarzt*) that are required for prostitutes: they have to undergo a weekly health check and an AIDS test at least every three months. Although at the time homosexual prostitution is far from being contemplated (even nowadays it is a thorny issue yet), the AIDS epidemic starts getting an increasing importance as a major concern for the public health.

The laws of the federal states of Austria place further restrictions on the times and places where prostitution may be practiced. The most restrictive law is that of Vorarlberg, where prostitution is legal only in licensed brothels, and so far no such

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<sup>8</sup> Ehrlich, A., *Auf den Spuren der Josefine Mutzenbacher*, Amalthea Signum Verlag, Vienna, 2005, p. 205.

licenses have been issued. Vorarlberg is also the only province in which prostitution is still referred to as “acts of indecency”.

Prostitution out of brothels is also prohibited in Carinthia, Tirol, Salzburg and Upper Austria. In Vienna, Lower Austria and Burgenland prostitution or “soliciting” is also permitted in certain public places at specified times, and under certain conditions in apartments as well (home visits). In Styria prostitution outside of brothels is subject to a town’s explicit permission in certain places outdoors.

Provincial and local laws can enact a number of further restrictions. In Vienna, Lower Austria, Styria and Burgenland prostitution is generally forbidden in railway stations, station buildings and at the stops of public transport, in buildings and parts of buildings that serve religious purposes, in child day care institutions, schools and boarding schools, youth centers, playgrounds for children and young people, hospitals and nursing homes. Vienna also includes cemeteries, and Burgenland, Lower Austria and Styria mention barracks, public office buildings and sport centers. Prostitution is prohibited in the neighborhood (150 up to 200 meters) of these places as well, and the individual towns (or districts in the case of Vienna) may define additional prohibition areas. Another restriction is that sex work in the street is permitted only at certain times. For instance, in Vienna it is allowed between 9 p.m. and 4 a.m. during the summer time and between 8 p.m. and 4 a.m. in the winter time, in the first district of Vienna only between 11 p.m. and 4 a.m. throughout the year. All these restrictions fall into public order issues without a merely punitive/repressive intent.

The majority of provincial laws refer to prostitution as the tolerance of sexual acts on one’s own body for commercial purposes or the performance of sexual acts for commercial purposes. “For commercial purposes” means that the person involved intends to earn a regular income in this way. The provincial law of Tirol specifies that prostitution involves male-female combination (again, homosexual prostitution is excluded).

In 1989, due to the spread of HIV, homosexual male prostitution was legalized under the penal code. In the same year the Supreme Court of Austria ruled that prostitution was an “unconscionable contract” (*Sittenwidriger Vertrag*); therefore a prostitute had no legal recourse against a customer who refused to pay<sup>9</sup>. In that sentence the Court went so far as to state that the contract between a prostitute and her client is an “agreement against morality”, which takes advantage of “the carelessness, inexperience, impulses and drunkenness of people”. This sentence was revised in 2012 explaining that prostitution can no longer be considered as unconscionable because moral attitudes have changed and prostitution is regulated by local laws. In particular, nowadays prostitutes are entitled to sue their clients for payment<sup>10</sup>.

What is forbidden in the Austrian regulatory regime is to be employed as a prostitute. Since 1998 prostitutes have been regarded as self-employed, and since 1987 they have been required to pay taxes. After the start of the activity sex workers have to register within four weeks to the Business Social Insurance Fund.

From the above considerations it emerges why the Austrian legislation which maintains a regulatory regime, with some changes throughout the years, can be defined as a “positive” regulation. There is no punitive intent, but what is more relevant for the legislator is to guarantee a legal framework within which sex workers are allowed to exert their profession in the respect of the surrounding environment. In the Austrian model prostitutes are seen as active contributors to the welfare system, not as “social deviants” to be emarginated.

## **Netherlands**

### **1.7 A story of tolerance**

While Austria has witnessed in its history a period of prohibition against prostitution, in the Netherlands sex working has always been tolerated. As we have already said, the Austrian and the Dutch cases are interesting examples of two

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<sup>9</sup> OGH June 28, 1989, 3 Ob 516/89.

<sup>10</sup> OGH April 18, 2012, 3 Ob 45/12.

countries which have decided to regulate prostitution by differentiating between the activity itself and the crime of exploitation. In absence of moralistic or repressive intent, both countries have framed a more or less “liberal” model. Netherlands is particularly important as it represents the Weberian ideal-type of a fully “liberalized” model placing itself at one of the extremes in an imaginative scale going from full liberalization to the clear-cut prohibition (represented by the Arab model we will examine hereinafter).

In the country of tulips prostitution liberalization has been restricted in some periods under the influence of the prevailing morals, but prostitution itself has never been a criminal offence. In 1911 living on the avails of prostitution and owning brothels were prohibited by law, but in 2000 sex working has been fully legalized and all the existing bans on pimping have been removed from the penal code.

During the Middle Ages both worldly and religious institutions had a pragmatic approach toward prostitution seen as a “dishonorable” profession, which however could be useful to protect chaste female citizens from rape and defilement. At the time prostitution was not conceived as a job like any other. There were many constraints on it. For instance, prostitutes were not allowed to get married. Besides honor had social significance in the early modern Dutch society, “honorable” people had more rights and an upper position in the social scale.

Since sex working was viewed as a “dishonorable” activity, it was confined on the margins of society. Until the fifteenth century Dutch cities tried to keep prostitution outside of the city walls. Later city governments tried to reserve certain areas of the city for prostitution. Prostitution businesses were driven to the streets and alleys near the city walls.

The following decree from the city of Amsterdam in 1413 gives an idea of the typical mindset:

“Because whores are necessary in big cities and especially in cities of commerce such as ours – indeed it is far better to have these women than not to have them – and also because the holy church tolerates whores on good grounds, for these reasons the

court and the sheriff of Amsterdam shall not entirely forbid the keeping of brothels”<sup>11</sup>.

During the Sixteenth century attitudes about sexuality changed under the influence of the Spanish occupation and rising Protestantism. Sexual activities were conceived only within marriage. Church and state were not separated, and what was defined by the church as a sin was defined as a crime by the government. Prostitution was viewed as a sin and therefore prohibited. However, during this century the city of Amsterdam started to regulate prostitution. Only the police, the bailiff and his servants could keep a brothel in the Pijl and Halsteeg (currently the Damstraat). Prostitutes who practiced their trade in other parts of the city were arrested and their clients were fined. Prostitution was a lucrative trade for the bailiff’s servants as well as for the city treasury. In 1578 the city of Amsterdam left the Spanish side during the Netherlands uprising and converted from Catholicism to Calvinism. The city then stopped regulating prostitution.

This fluctuating attitude shows that, in spite of “tolerating” practice, the legal framework underwent some changes under the influence of the prevailing public morals and religious teachings. Under the Calvinist morals titillating activities such as dancing, fairs and prostitution were sometimes outlawed. The authorities couldn’t uphold the laws against prostitution and tended to leave brothels alone if they didn’t cause trouble.

During the Eighteenth century there was a growing middle class which tried to distinguish itself by strong work ethic and self-control. Showing restrained sexual behavior the middle class could separate itself from the “loose” lower class as well as the indecent nobility. Rich and poor also began to separate geographically. Prior to this period different social classes lived side by side, but they now lived in separate neighborhoods. Prostitutes were relegated to the suburbs, condemned to extreme working and living conditions. There was no proper birth control, condoms were hardly available and there were no effective cures against venereal diseases.

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<sup>11</sup> Brants, C., “The Fine Art of Regulated Tolerance: Prostitution in Amsterdam”, *Journal of Law and Society*, Cardiff, 4, 1998, pp. 621–635.



Prostitutes often got pregnant and because of venereal diseases they eventually became infertile. This situation did not improve until the Twentieth century.

### **1.8 From Napoleonic regulation to abolitionism**

At the beginning of the Nineteenth century the armies of Napoleon started to regulate prostitution in the Netherlands (in 1810) to protect soldiers against venereal diseases. As we have already seen, prostitutes were forced to register and were subject to mandatory medical examinations. Registered prostitutes were endowed with a red card which was a sort of work permit. If they were found to be infected, their red card was withdrawn and they were given a white card while they were prohibited from working and were only allowed to work when declared fit. After the French occupation the Dutch government stopped regulating prostitution, but during several decades slowly began to regulate prostitutes again in the same style as under the French occupation. Many scientists during the nineteenth century believed that sexual abstinence for men was unhealthy. In their eyes it was unavoidable that a number of women had to sacrifice themselves to protect other women. Women bound to sacrifice belonged to the lower class. Prostitutes themselves, however, were still despised and portrayed as disgusting creatures. Lower-class people themselves detested prostitutes. Prostitutes stood outside of society.

During the nineteenth century sexual morals became stricter and a counter movement arose against regulated prostitution. In the beginning this movement consisted of wealthy orthodox-Protestant Christians, but it later got support from other movements like Catholics, socialists, feminists and progressive liberals. They attacked the idea that men could not abstain from sex. Clients were viewed as low, dirty lechers, they were not the young unmarried men prostitution was meant for, but they were often well-off middle-aged married men. This movement also attacked mandatory medical examinations, which were deemed degrading and ineffective to stop the spread of venereal diseases. Many prostitutes lived in the brothels and were bound to the madams by debts to pay off expensive working clothes. Prostitutes were

often sold among madams, were subjected to fines, and could only leave the brothel under supervision. Medical expenses were added to their debt. Brothel keepers throughout Europe sold women among each other. The abolitionist movement (as the opponents of prostitution were called) in the Netherlands was largely connected to the international abolitionist movement. The movement slowly gained more influence, and during the last decades of the nineteenth century city governments slowly started to abolish regulated prostitution. At first, the abolitionist movement mainly targeted mandatory health checks for prostitutes, but when the movement became more successful the focus shifted towards the people who profited from prostitution. In 1911 living on the avails of prostitution and owning a brothel were prohibited by law. However prostitution itself was never turned into criminal offence.

### **1.9 De Wallen and the Project 1012**

Prostitution was defined as a legal profession in January 1988. Brothel prohibition (enacted in 1911) made it difficult to set rules for the sex industry. During the eighties many municipalities urged the national government to lift the ban on brothels. In 1983 Minister Korthals Altes presented an amendment to the law on prostitution. On the 1<sup>st</sup> October 2000 brothels lost the half-legal status of being tolerated and became fully legal and licensed businesses. Currently, prostitutes may work as regular employees, though the vast majority works as independent contractors. Since then the Dutch union FNV (the acronym stands in English for Federation Dutch Labor Movement)<sup>12</sup> accepted prostitutes' membership.

The full legalization in 2000 was aimed at preventing abuses and protecting women. It enabled the government to exercise more control over the sex industry. The underlying idea, as in Austria, is that making the invisible visible helps counter exploitation and criminality. However evidence proves that regulation did not eradicate organized crime and human trafficking, which have turned into a major concern even more after the fall of the Berlin Wall. Therefore in 2006 the former

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<sup>12</sup> The *Federatie Nederlandse Vakbeweging*, founded in 1976, is a federation of trade unions of the Netherlands.

mayor of Amsterdam Job Cohen denied the license renewals for about thirty brothels in the red light district De Wallen; the brothel owners appealed. To counter negative news reports, the district organized an open house day in 2007 and a statue to an unknown sex worker was unveiled, “intended to honor those employed in the industry world-wide”. In September 2007 it was announced that the city of Amsterdam was buying several buildings in the red light district from Charles Geerts, one of the largest brothel owners, also known as the “Amsterdam’s Emperor of Sex”, in order to close about a third of the windows. Permits for a large numbers of rooms in the Red Light District, where prostitutes stand behind windows, are being rescinded. Rooms are being turned into fashion shops and women are replaced by mannequins in designer clothes. Recently the town council ordered the closure of the famous sex club Yab Yum as well as the live-sex theatre Casa Rosso. All these measures come under the name of “Project 1012” from the postal code of the red light district to be “cleaned up”. A Dutch newspaper says the centre of Amsterdam is moving another step towards becoming a prudish backwater, that is a “Staphorst on the Amstel”. Staphorst is considered the most strict and devout Calvinist town in the Netherlands.

According to the former mayor “cleaning up” the Red Light District is needed to combat organized crime. In 2009 a law proposal was introduced in the House of Representatives which would ban prostitution for people younger than 21. The proposal would introduce, aside the licensing requirement, a registration system which would make the task of supervision and enforcement less complex. It is worth underlining that, unlike the Austrian case, in this proposal prostitutes receive a registration pass with a photograph and a registration number, but no name or other personal data are requested. However the bill has not been approved yet.

## **The Arab model**

### **1.10 Overview**

An Arab model does not exist as such because Arab countries are featured by different legislations, even though it is possible to detect some common elements. It is worth focusing the attention on some cases of anti-prostitution legislation, which characterize the overall Arab society with the only exception of Tunisia, in order to stress the real effects of the clear-cut prohibition. On the imaginative scale we have already mentioned it is necessary to consider both the extremes and the intermediate solutions; in this sense, Italy, as we have already pointed out, deserves special attention just due to its schizophrenic legislation, the Arab world represents the prohibition extreme that forbids prostitution itself regardless of the presumed consent of the woman involved. In other words, Italian legislation punishes prostitution on behalf of the crusade against exploitation, the Arab legislation punishes – and very severely – sex working itself on moral grounds. Besides, if we consider that both the Arab and the Italian legislation prohibit prostitution *de facto* (and also formally in the first case), we could say that, to a certain degree, the Arab model seems less hypocritical than the latter because it does not resort to the expedient of “exploitation” in order to appear as an anti criminal tool. The Arab model punishes prostitution turning it into a crime with the explicit end to pursue an *immoral* behavior. As we have already seen, the Italian legislation can be hardly defined as exempted from this moral bias. Besides in the Arab world the clear-cut prohibition on prostitution is strictly tied to the conception of woman and her place in the social scale. Are we sure that in the Italian case the same considerations on female dignity and image do not play a crucial role in some anti-prostitution initiatives? Apart from this, it is obvious that no assimilation can be made between a system, the Italian one, that, in the worst case, imposes fines and prison, with a system, the Arab one, which is able to decree the death penalty for “immoral” women. A hypocritical legislation is preferable to a vindictive one.

In conservative societies tradition plays a crucial role in defining social status and power relationship between man and woman. It is quite impressive that from this point of view Italian society has some in common with the Arab one, where women are discriminated in a number of way.

Throughout history Arab women have experienced discriminations and restraints of their freedoms rooted in the tradition rather than in religion. There is no doubt however that religious beliefs have exacerbated and legitimated many abuses against women. The obligation to wear burqas covering the entire face or female genital mutilations – a practice which has been banned by a unanimous vote of the UN General Assembly on the 20<sup>th</sup> December 2012 - are only the most vocal signs of male despotism or, more outspokenly, of gender apartheid.

### **1.11 The main tenets around “Beghaa”**

First of all, it is useful to underline that in spite of the severe punishment set for the crime in most cases, Arab legislation lacks an accurate definition of prostitution. The Arab word referred to prostitution is “Beghaa” deriving from the verb “Bagha” which means committing injustice. “Baghi” means injustice. If a person is “Bagha” then it means he or she committed adultery. Idiomatically it is every sexual relationship condemned by legislation or by the Sharia (the moral and religious code of Islam). In this respect it is quite telling the Moroccan case, where article 490 of the penal code only mentions illicit sexual relationships, thus deeming any relationship between an unmarried couple to be a crime of depravity. Thus the absence of a marital linkage in a sexual relationship becomes an element of crime, without providing a clear definition of sex or depravity.

Other Arab countries like the United Arab Emirates, Lebanon, Jordan, Kuwait lack legal texts that define prostitution in plain language, leaving definitions to be given by courts, where the judgement depends on findings, testimonies and reports to legally characterize the crime.

The practice of prostitution, that is a woman trading sexual services, is prohibited in the legislations of all Arab states (save for Tunisia, which only incriminates prostitution if in private) and it is a stigmatized behavior. From a general point of view the main elements characterizing the crime are: the intent to have sex for money, the presence of sexual relationship, the presence of a place for prostitution. The sexual intercourse must be illicit, that is outside of lawful marriage. The financial or material gain in return can consist in money or other facilities.

### **1.12 Tunisian exception**

Tunisia is an exception in the Arab landscape as it is the only country which has maintained the regulation of prostitution dating back to the colonial period. The majority of French and British colonies in the Arab region had the same regulation on public prostitution, but they abandoned it following independence, such as Egypt, which abolished laws regulating prostitution in 1949.

In Tunisia public prostitution is regulated by an old legal text issued on the 30<sup>th</sup> April 1942 on behalf of the Governor, the general secretary of the Tunisian government and the governor responsible for managing public security for the Tunisian government.

The legal text remained in effect until 1977 when a publication issued by the Tunisian Ministry of the Interior reorganized public prostitution and revised the 1942 law to be in line with the social and legislative developments that Tunisia had witnessed. “Public” prostitution refers to legal prostitution, that is based on legal licenses. In order to prevent misinterpretation of the word “public”, the administration asserted that prostitution in public was a punishable crime. Article 231 of the Tunisian Penal Code stipulates that “women who, by gestures or words, solicit themselves to passersby or engage in prostitution, even on an occasional basis, are punishable by six months to two years’ imprisonment and a fine of TND20 – 200” (USD14,4 - 144). Any person who has sexual relations with one of these women is considered an accomplice and is subject to the same punishment.

The Tunisian legislation distinguishes between prostitution in brothels, where women place themselves within their supervisor's responsibility (without any possibility of visiting the outside world except once a week or when having a disease that requires hospitalization), and prostitution at home, in private residences on their own responsibility. Prostitutes are required to submit a request at the security center and to be heard by the chief of police in order to make sure that they act at their own free will without any type of constraint. Moreover women have to prove their civil status and to be free of infectious or septic diseases.

Lawmakers decided that maintaining public prostitution was a social necessity, or a lesser evil, because sexual repression in society creates many other crimes like kidnapping, murder, rape, and sexual assault, which could target children. The existence of public brothels and prostitutes registered in governmental and medical circuits was considered a means for reducing the risk of underground prostitution and outbreaks of STDs. Criminalizing prostitution proved to be ineffective in limiting prostitution. On the contrary, criminalization and stigma result in more underground prostitution, which in turn increases the risk of disease transmission.

### **1.13 Saudi Arabia**

To understand the harshness of anti-prostitution regulation in Saudi Arabia it is useful to consider that the Arabian peninsula is the ancestral home of patriarchal, nomadic tribes, in which "purdah" (separation of women and men) and "namus" (honor) are paramount. In this sense the Arab prohibition of prostitution is openly based on moral grounds, that are evident and expressed, even vindicated as a "righteous" moral precept.

The most vocal claim against female segregation in Arabic society was expressed on occasion of the 2012 Olympics, when the participation of Saudi female athletes was allowed only after a strong resistance of the Saudi Olympic Committee. After all, the only way Saudi women can gain access to sports facilities is through expensive private institutes and health clubs, and even these élite organizations get

their share of criticism as sport is seen as bringer of moral corruption, promiscuity and a danger for female health and psyche.

Women are forbidden from driving, and this prohibition sparked some demonstrative actions led by the “Women2Drive” movement throughout the country (the images of women driving were uploaded on Facebook and Youtube and were disseminated worldwide). In September 2011 the King Abdullah announced a “cautious reform” to give women the right to vote and run for the 2015 municipal elections, the only public polls in the ultra-conservative Gulf Kingdom. In January 2013 the King named thirty women, including two princesses, to the 150-member Shura Council after changing the council’s law to stipulate that at least 20 percent of its members should be female. Even though the Shura Council has a purely consultative function, the decision was considered as a breakthrough for the female empowerment.

All females must have a guardian, typically a father or husband. Women may need their guardian’s permission for marriage and divorce, travel, if under 45, education, employment, opening a bank account, elective surgery, particularly when sexual in nature.

Male guardianship is closely related to “namus” (or “sharaf” in a Bedouin context), roughly translated as honor. It also carries connotations of modesty and respectability. The “namus” of a male includes the protection of the females in his family. If their honor is lost, before the community he has lost control of them. Threats to chastity, in particular, are threats to the “namus” of the male guardian.

“Namus” is associated with honor killing. If a man loses his honor because of a woman in his family, he may attempt to cleanse it by punishing her. In extreme cases, the punishment can be death. The suspicion alone of a woman’s wrongdoing can be enough for her to be subject to violence on behalf of honor.



### **1.15 Punishment**

In Saudi Arabia a person found guilty of Zina (unlawful sexual intercourse) is punished by flogging. In this regard, the story of the “Al-Qatif girl” is worth mentioning. The case was massively reported in the media in March 2006. A Saudi teenage girl in the company of a man (not one of her relatives) was gang raped by seven young men. The rapists also kidnapped the man who was with her, assaulted and battered him. In November 2006 the woman and her companion were sentenced to ninety lashes each for the offence of “being alone with a man who is not a relative in a private place”. Four of the rapists were sentenced to 80 to 1000 lashes and one to four years in jail.

The young woman appealed the ruling which was referred to the Supreme Judicial Council. This institution granted a retrial at the Al-Qatif Court, with a recommendation to double the discretionary punishment for the defendants in a way commensurate with the crime of each, including the crime of the woman and her companion. In Saudi media, a judicial source justified that recommendation on the basis that the woman and her companion were the primary cause of the incident, since they had an unlawful extra-marital affair lasting several months. Much of the blame fell on the woman as being the main reason for the rape, particularly because she was married.

The Saudi legal system grants a judge the right to set discretionary punishment, amid the absence of any penalty that is stipulated in any written legal code. This legislative loophole brought about rulings that do not take into consideration mitigating circumstances or the motives of a crime. It is to be noted that the rulings pertaining to discretionary punishments dispute the principle of legality; the Saudi Constitution stipulates (in article 38) that “there shall be no crime or penalty except in accordance with Sharia or organizational law”. Legal rulings such as this are intended to guarantee the administration of justice, since knowing in advance the punishment may dissuade the would-be perpetrator from committing his crime.

The main effect of harsh prohibition in the Arab world can be summed up into two words: underground prostitution. The spread of illegal sex workers rings, with inevitable harmful effects in terms of health and personal safety, is a main feature of countries such as Saudi Arabia and the United Arab Emirates, which have become sex tourism destinations. Reports on human trafficking that the US State Department released in June 2012 sharply criticizes the UAE government for failing to tackle the links between prostitution and illegal trafficking. The report says: “The United Arab Emirates is a destination country for men, women and children trafficked primarily from South and East Asia and the former Soviet Union for the purposes of sexual and labor exploitation”. This picture is confirmed by reports and interviews realized by no profit organizations and charities engaged in defending women from abuses. Undoubtedly there is a portion (according to some commentators, the overwhelming majority) of voluntary prostitution, that is women declaring to have chosen this profession of their own free will as it was more profitable than others. To have an idea of this aspect we can consider, for instance, the story of “Marina”, a young Romanian prostitute working in Dubai<sup>13</sup>:

“Marina” is a 28-year-old Romanian economist who says she is married to a police officer back home. She said she worked at various Romanian and international companies in her country and made an average of \$200 a month. “I have a husband in Romania. He knows. When I want to do something, I will do it. I make good money here. I send to Romania \$2,000 every month. I also have a boyfriend [here] to help me [with expenses]. This is the life I must live now. I think every girl has this kind of boyfriend to pay rent, to pay for food, to pay for clothes”.

In Dubai there are more than two thousand prostitutes. Dubai’s Cyclone night club is a major example of UAE’ flourishing sex trade. The massive club, owned by an Indian based in London, is known by visitors as the “United Nations of prostitution”. On an average night there are possibly as many as 500 prostitutes from

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<sup>13</sup> Peyman Pejman, “UAE: Muslim Federation of States’s Hub of International Prostitution”, Radio Free Europe, 23<sup>rd</sup> January 2013.

as many as two dozen countries, including Azerbaijan, Bulgaria, China, Russia, Taiwan, Tajikistan, and Uzbekistan.

There are plenty of stories of abuses, of women who are lured in the UAE or in another country under false pretenses and subsequently forced into sexual servitude. In the current context characterized by the harsh prohibition (which can lead even to death penalty) state authorities have no instrument to identify crimes and trafficking of persons. Smugglers benefit from such a legislative framework as it allows them to operate in the darkness, out of any control.

It is worth noting that in spite of the legal prohibition against sex working the Saudi/Salafi tradition foresees some forms of legalization of a phenomenon, which is not called “prostitution” even though in fact it consists in the exchange of sex for money. Saudi scholars have issued many *fatwa* to allow some forms of deceptive marriages, which consist in temporary sexual relationships with women receiving money for their consent. For instance, in the *Mesyaf* (summer holiday marriage), Saudis go on summer vacation to countries like India, Pakistan, Bangladesh, and they marry very young girls, between 9 and 16 years, dealing an agreement with their families. In some cases the woman is made aware of the fake marriage, which lasts a short time, and she gets paid an agreed amount in advance. In other cases, instead, the female is deceived and she is induced to believe that it is a regular marriage and that she will follow her husband to Saudi Arabia. What happens instead is that after a few weeks the man comes back to his country, and the girl, who has publicly exposed herself to a similar promiscuous relationship, definitely loses her honor and often she is bound to get involved in prostitution.

From the overall picture that we have traced out, the anti-prostitution regime existing in Arab countries can be considered as the prohibitionist extreme in the scale we have initially imagined (from the full prohibition until the complete legalization). If we want to resort to another classification, we might say that the Arab model represents the prototype of the “criminalization” approach, which makes all laws and activities related to prostitution a crime, thereby producing a clear-cut prohibition.

The opposite of this is the so-called “decriminalization”, which eliminates laws and regulations associated with prostitution, thereby aligning its status with any other legal occupation or activity. A median approach is labeled “legalisation” (or regulation), which enacts laws and regulations dealing specifically with sex working<sup>14</sup>.

As widely pointed out so far, the Arab model fails to eliminate or even reduce the size of the phenomenon, by contrast it extends the perimeter of a grey area, where abuses and dangers for women’s life are endemic.

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<sup>14</sup> Thompson, S., “Prostitution – A Choice Ignored”, *Women’s Rights Law Reporter*, Newark, 21, 2000, p. 46.

# Chapter Two

## Theoretical perspectives

### 2.1 Premise

After the descriptive discourse in the first chapter, the time has come to analyse the issue from an epistemological point of view. In the second chapter we intend to put forward the main arguments pro and against prostitution regulation casting light, in the meantime, on the rifts existing within the feminist movement. The objective is not only a theoretical one, even though in a dissertation in matters of political theory it would suffice as such. Intercepting the main arguments pro and against prostitution regulation allows us to understand the philosophical driver which has been prevailing until our days.

Indeed, as emerges from the Italian legislative scenario, much part of anti-prostitution legislation relies on the equalisation between prostitution and exploitation. In other words, the decision-maker's attitude relies on the idea that combating prostitution would lead to the eradication of exploitation. This happens because there is a wide consensus on the fact that no woman would choose prostitution as an act of will. Voluntary sex working falls completely outside of the dominant cultural and ideological landscape. This reasoning is common to feminist thinkers as well as to "prohibitionist" politicians. Yet the two words, prostitution and exploitation, refer to two different phenomena, which not always go hand in hand.

The goal of my dissertation, as initially laid down, is to demonstrate that prostitution as an act of freedom does exist. Though admitting certain premises of the radical feminist thought, we cannot exclude *a priori* the individual faculty to choose sex working as the most suitable or convenient job. In this regard it does not matter whether the actor involved is man or woman. What matters is that, even admitting that all people currently exerting prostitution are victims of exploitation, we cannot exclude in principle that one day somebody would decide to prostitute himself (or herself) as outcome of a free and conscious choice. If we exclude this possibility, we

have to produce convincing arguments to avert the allegation of an *a priori* reasoning. Confusing prostitution with exploitation is a misleading activity.

As we will see in the next paragraphs, some feminists have proposed a number of arguments to maintain that no woman would choose prostitution and that, if someone does it, she is alternatively oppressed by a male-dominant society or deprived of an outright consciousness of the self.

To provide a consistent framework of our in-depth analysis, we will start from the exposure of the main arguments put forward by the so-called “radical feminists”, to whom we will contrast the so-called “liberal feminists”. As we will see, there are diverse nuances that deserve equal attention in order to better understand the arguments that support prostitution as a “matter of freedom”. The theoretical review is not only a philosophical exercise, but it is devoted to the full explanation of my driving thesis.

## **2.2 Black swan**

First of all, it is worth dwelling upon the so-called “principle of falsification” issued by Karl Popper, who is generally regarded as one of the greatest philosophers of science of the Twentieth century. It is not paramount to the ends of our dissertation, but starting from this principle can add something valuable to our epistemological framework.

To put it in simple terms, we can say that the main slogan of the staunch defender of the “open society” works as follows: “No number of sightings of white swans can prove the theory that all swans are white. The sighting of just one black swan disproves it once and for all”. This principle marks a major change in scientific method on behalf of “falsification”<sup>15</sup>. What does it mean?

According to Karl Popper’s theory, scientists do not have to comfortably look for white swans, but they have to pursue another end, that is falsifying their

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<sup>15</sup> Popper, K., *Conjectures and Refutations*, Routledge and Keagan Paul, London, 1963, p. 147.

theories<sup>16</sup>. This should be a driving teaching for people approaching scientific research. Scientists are required to look for black swans, that is for potential contradictions or falsifications to their theories; they must conduct their research keeping borne in mind that thousands confirmations do not “prove” their theory once and for all, while a single falsification – just one black swan – disproves it without appeal. Only insofar as they do not discover any black swan, they can feel confident that their theory is the best existing approximation to the truth.

The principle of falsification introduced by Karl Popper, who is also known as a dedicated opponent of all forms of holism and conventionalism, marks a turning point in the history of scientific knowledge. His thought represents, to a certain extent, a good metaphor for something that manifests itself in the recent debate about sex working. Let us explain. What can be rebutted to Popper’s theory is that the presumed “black swan” is not, in fact, a swan. Although it looks like a swan, it belongs to a different animal category. This test – whether it is about a swan or not – is the real challenge the two opposite fronts have to cope with.

In the public debate about prostitution the same scheme is, in a way and to a certain extent, replicated. Anti-prostitution advocates are used to completely ignoring black swans. They tend to resort to generalizations such as: “all women prostituted are exploited”. Yet this argument appears weak and fallacious from an epistemological viewpoint: the existence of *some* women sexually exploited does not allow us to consider *all* women as sexually exploited. From the existence of exploitation as such, we cannot infer the denial of voluntary prostitution. If we do it, if we universalize a piece of experience (which is inevitably partial and segmented), we commit a logical leap engendering a gap in our argument.

Prostitution does not mean, by itself, coercion. Prostitution and exploitation can go hand in hand, but they are not synonymous. The fact that *some* women are actually exploited does not imply that *all* women are exploited. More importantly, even though *all* people currently exerting the oldest job in the world were victims of

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<sup>16</sup> Popper, K., *The logic of scientific discovery*, Routledge, London, 1934, p. 96.

exploitation, we cannot exclude that one day someone will opt for prostitution as a free choice. We cannot exclude that one day a sex worker will say: “I chose it”. Perhaps the insistence on this aspect can appear redundant, but it is of paramount importance to understand the cornerstone of my main argument: prostitution as a matter of freedom.

The weakness of the above mentioned arguments is crystallized in the Italian legislation, where, as we have already outlined in the first chapter, there is a substantial equation between prostitution and exploitation on the grounds that voluntary prostitution cannot exist. A similar *a priori* reasoning appears fallacious because, as Popper explains, it is sufficient to observe even one woman, who has freely chosen sex working, to falsify once and for all the idea that all prostitutes are inevitably victims of exploitation or, in a broader sense, of social and economic constraints (leaving them no alternative except sex working). Even Karl Marx, who is a prominent advocate of the ineluctable course in human history, would never assert such a “law”. Set aside a pinch of irony, what I maintain is that each of us lives in society and can be considered, in a way, a “social animal”. Each of us is overwhelmed by external factors influencing our choices and the path of our lives. Nevertheless, considering our actions as the exclusive outcome of social constraints would entail the elimination of our individuality, of our subjectivity. José Ortega y Gasset resorted to an effective periphrasis to explain the fact that nobody is a mere product of society: “I am I plus my circumstances”<sup>17</sup>. In the same social and economic conditions people make different choices, people respond in different ways to identical exogenous spurs. In poverty, even in extreme poverty, neither everybody turns into a thief nor every woman into a prostitute.

What happens in the current debate about sex working is that that prostitute, the one who claims to have freely chosen sex working as a more convenient or suitable job, is systematically compared to Popper’s “black swan”, and thereby she is *de facto* deprived of self-agency. Anti-prostitution advocates are used to neutralizing this

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<sup>17</sup> Ortega y Gasset, J., *Obras Completas*, Ed. Taurus/Fundación José Ortega y Gasset, Madrid, 2004, p. 757.



“proof” (contrasting their universal theory) by asserting that in fact that woman deludes herself. She presumes to have freely chosen sex working, she presumes to have exerted her self-determination. Instead she inevitably acts within a male-dominant scheme, which makes her neither free nor conscious.

### 2.3 False consciousness

To better understand this point, we have to resort to the masterpiece of Catharine MacKinnon, an American radical feminist who is well-known for her anti-pornography campaign. In “Toward a Feminist Theory of the State”<sup>18</sup> the author explains why, using our metaphor, the “black swan” is not really a swan. The starting point is that “sexuality is gendered as gender is sexualized”<sup>19</sup>: the sexual intercourse is crucial to define gender roles. One becomes a woman – acquires and identifies with the status of a female – not so much through physical maturation as through the experience of sexuality. “It is sexuality that determines gender, not the other way around”<sup>20</sup>. If one wonders what the sexual encounter implies, the answer is simple: women’s objectification. Sex codifies the male pursuit of control over women. It is clear that, in MacKinnon’s words, men and women are deemed not as individuals or biological beings, but as gender groups characterized by maleness as socially constructed, and femaleness as socially constructed. The problem, from the radical feminist viewpoint, is that sex entangles women in a position of submission, and this is perpetuated through the act of penetration. Other feminists quite close to MacKinnon go so far as to compare the sexual intercourse to the military invasion of female body, through terms such as “conquest” and “occupation”. For instance, Andrea Dworkin, another American vocal advocate of radical feminism, states that “male pleasure is inextricably tied to victimizing, hurting, exploiting”<sup>21</sup> and that “dominance in the male system is pleasure”<sup>22</sup>. At that moment women are “victims”,

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<sup>18</sup> MacKinnon, C., *Toward a Feminist Theory of the State*, Harvard University Press, Cambridge, 1990.

<sup>19</sup> Ivi, p. 113.

<sup>20</sup> Ivi, p. 111.

<sup>21</sup> Dworkin, A., *Pornography: Men possessing women*, Putnam’s Sons, New York, 1981, p. 69.

<sup>22</sup> Ivi, p. 136.

but they lack awareness. They do not know to be the object of an occupation, they do not know to perpetuate a social construct that penalizes them granting men a dominance position. “The object is allowed to desire, if she desires to be an object”<sup>23</sup>. In Dworkin’s view, the dynamic in the sexual intercourse reduces woman to “a few of sexual orifices”<sup>24</sup>, and prostitution is labeled, in a vehement discourse, as a “human right crime”<sup>25</sup>. We live, she argues, in a male-dominant society, where every woman is treated like an object, but prostitutes are treated like a certain kind of object, i.e. a target. When men use women in prostitution, they are expressing a “pure hatred”<sup>26</sup> for the female body. Dworkin goes so far as to say that prostitutes are women “available for the genocidal kill”<sup>27</sup>: if a man murders a prostitute, people accept it as part of the job. It is easily remarkable the expiration in such statements, where the analogy with the Nazi genocide of the Jews seems completely misplaced. The author considers prostitution as an irremediably degrading work, which excludes any possibility of a consent-based exchange. In comparison with gang rape, the only difference is money exchange. The condition of the prostitute is the dramatization of women’s condition itself. Women are, in general, considered to be dirty, but a prostitute lives the literal reality of being the dirty woman. The prostitute has a purely sexual function. More importantly, she is contagious as she represents the “generative source of everything which is bad”. Furthermore the prostitute is “the ultimate anonymous woman”<sup>28</sup>, deprived of her identity she is reduced to a “generic embodiment of woman”<sup>29</sup>. Male power determines a sex hierarchy, where prostitutes stand at the bottom beneath which there is no bottom. Instead men, who are prostituted, are above that bottom.

Turning the attention again to MacKinnon’s analysis, that moves from the same premises of Dworkin’s theory, the way women look at themselves and at the external

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<sup>23</sup> Ivi, p. 109.

<sup>24</sup> Dworkin, A., “Prostitution and Male Supremacy”, *Michigan Journal of Gender and Law*, Ann Arbor, 1, 1993, p. 75.

<sup>25</sup> *Ibid.*

<sup>26</sup> Ivi, p. 92.

<sup>27</sup> Ivi, p. 98

<sup>28</sup> Ivi, p. 23

<sup>29</sup> Ivi, p. 46.

reality is shaped by male sexual desire. Even when they presume to exert their autonomy, for instance by giving consent to a sexual encounter, actually they are victims of rape: “The major distinction between intercourse (normal) and rape (abnormal) is that the normal happens so often that one cannot get anyone to see anything wrong with it. Which also means that anything sexual that happens often and one cannot get anyone to consider wrong is intercourse not rape, no matter what was done”<sup>30</sup>.

In this regard, it is worth considering these few lines by Richard Miller: “the overall objective of female conditioning is to make women perceive themselves and their lives through male eyes and so to secure their unquestioning acceptance of a male-defined and male-derived existence. The overall objective of male conditioning is to make men perceive themselves and their lives through their own eyes and so to prepare them for and existence in and on their own terms”<sup>31</sup>.

The focal point is that women are induced to perceive themselves - their social role and self-identity – through men’s eyes. Women apprehend the world from the male standpoint. “The perspective from the male standpoint enforces woman’s definition, encircles her body, circumlocutes her speech, and describes her life. The male perspective is systemic and hegemonic”<sup>32</sup>. Sex institutionalizes gender inequality, thus MacKinnon goes so far as to say that sex is violence, it is rape, even when there is an illusionary consent. The author recalls the Bible metaphor, according to which to know a woman is to have sex with her. Carnal knowledge is paramount in our male-dominated society. “Interpreting female sexuality as an expression of women’s agency and autonomy is always denigrating and bizarre and reductive, as if sexism does not exist, just as it would be to interpret black culture as if racism did not exist”<sup>33</sup>.

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<sup>30</sup> MacKinnon, C., “Sexuality, Pornography and Method”, *Feminist and Political Theory*, Cass R. Sunstein, University Chicago Press, Chicago, 1990, p. 230.

<sup>31</sup> Miller, R., “Ways of moral learning”, *The Philosophical Review*, Duke University Press, Durham, 4, 1985, pp. 507-56.

<sup>32</sup> MacKinnon, *Toward a Feminist Theory of the State*, cit., p. 114.

<sup>33</sup> MacKinnon, C., “Sexuality, Pornography and Method”, cit., p. 236.

According to MacKinnon, sexual objectification, the central process in this dynamic, is in the meantime epistemological and political. The “feminist method” is needed to get out of two different approaches which have prevailed up to date and which, in the author’s opinion, are unfit to overcome the dominance-submission paradigm. The former is the subjectivist approach, which proceeds as if women were free, “or at least had considerable latitude to make or choose the meanings of their situation”<sup>34</sup>. The latter is the objectivist approach, of Marxian origin, claiming that there is no universal and non-situated standpoint, but women’s views are unconscious conditioned reflections of oppression and thus complicit in it. In this case the main idea is that the “false consciousness” cannot explain experience as it is experienced by those who experience it. To get out of this trouble MacKinnon proposes a “feminist method”, which is devoted to a fascinating task: the “consciousness raising”. Women are in a situation where “the struggle for consciousness is a struggle for world”<sup>35</sup>, and the world is featured by male dominance, that is “perhaps the most pervasive and tenacious system of power in history”<sup>36</sup>. The final goal is to restore the authentic representation of the self and the world through females’ eyes. The “devalidation of women’s experience” serves to reach the “standard for point-of-viewlessness”, the “desexualization” of women. Only in this way, at the end of this complex process, women will start looking at the world through their own eyes, not as men want them to look at it. Only at the end of this process – the consciousness raising - women will liberate themselves from the image of the world men have shaped in their own image and in their own desires.

Therefore, where Simone de Beauvoir states that men describe the world “from their own point of view which they confuse with absolute truth”<sup>37</sup>, MacKinnon proposes the consciousness raising by which “women can grasp the collective reality of women’s condition from within the perspective of that experience, not from

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<sup>34</sup> MacKinnon, *Toward a Feminist Theory of the State*, cit., p. 116.

<sup>35</sup> Ivi, p. 115.

<sup>36</sup> Ivi, p. 116.

<sup>37</sup> De Beauvoir, S., *The second sex*, Vintage, London, 2011, p. 352.

outside it”<sup>38</sup>. By comparing women’s situation to blacks’ (even though for the author gender difference is paramount), MacKinnon explains that, to a certain extent, blacks have been advantaged by segregation: “due to segregation black culture developed under more autonomous conditions than women, intimately integrated with men by force, have had”<sup>39</sup>.

Both Dworkin and MacKinnon address the same arguments against pornography, which is considered as another instrument degrading women with the unique aim to satisfy male sexual desire. We will dwell upon their crusade against prostitution hereinafter, it is quite relevant to stress that their campaign against prostitution and that one against pornography overlap each other. In MacKinnon’s 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”<sup>40</sup>). In other words, pornography constructs women’s status as unequal and their reputation as inferior. It acts as a mass instrument, its influence on popular culture is paramount. This is why the philosopher contests the male myth of compartmentalization, according to which pornography would inhabit its own spatial and cognitive world without invading other spheres of social life<sup>41</sup>. Nowadays pornography, MacKinnon maintains, is ubiquitous. The female portrayal in pornographic materials becomes widespread in the collective imagination: an “objectified” woman, who is irremediably subordinated to male desires. Woman becomes a kind of living sex toy. As a consequence, men are willing to find in the real life that kind of “imbalanced” relationship based on the inequality between sexes. They induce women to conform to that degrading stereotype.

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<sup>38</sup> MacKinnon, C., *Toward a Feminist Theory of the State*, cit., p. 121.

<sup>39</sup> MacKinnon, C., *Sexuality, pornography and method*, cit., p. 236.

<sup>40</sup> MacKinnon, C., *Pornography and Civil Rights: A New Day for Women's Equality*, Organizing against pornography, New York, 1988, p. 207.

<sup>41</sup> MacKinnon, C., “X Underrated”, *Times Education Supplement*, London, 20, 2005, p. 83.

Another consequence of pornography's ubiquity is that it is increasingly used to excuse any sort of sexual violence and human rights violation. For instance, the photos of naked Arab men being abused by American soldiers in Abu Ghraib were termed pictures of torture in the press. Well, according to MacKinnon, those images were similar to much pornography, which is socially accepted (and excused) as pornography indeed.

In order to have a complete array of radical feminists' arguments, it is worth dwelling upon Melissa Farley's theory as well. She is an American psychologist, anti-pornography and anti-prostitution activist. Providing some evidence based on surveys and interviews, Farley maintains that legalizing prostitution is a way to ensure impunity to sexual exploitation and violence, and to normalize predatory behaviors of men. The similarities with MacKinnon are patent. Prostitution, Farley maintains, 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"<sup>42</sup>. Even if prostitutes do not report violence, their silence must not be interpreted as consent because it is only the product of intimidation and terror. The claim that legalization would reduce the risks for women in prostitution is an illusion. Prostitution is destructive to women in a number of ways. First of all, it produces serious health risks. The inefficacy of condom distribution/harm reduction programs is underlined: they would not reduce HIV incidence while turning over time into a means to obtain public funds and to promote prostitution as sex work (in many cases legalization has been the final outcome of an HIV outreach). Secondly, there are strong psychological effects ranging from post traumatic stress disorders to personality dissociations. As a consequence of verbal abuse, moreover, prostituted women suffer serious loss of self-esteem. Thirdly, prostitution is inevitably associated with social stigma. Regulating it by zoning is a physical manifestation of social contempt. Therefore, Farley maintains, decriminalization does not help overcome the social bias towards women.

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<sup>42</sup> Farley, M., "Prostitution harms women even if indoors", *Violence against women*, Sage Publications, 10, 2004, p. 25.

To support her arguments Farley lists a number of interviews and surveys. More interestingly, the author dwells upon the distinction between street and indoor prostitution. In her view, moving prostitution from streets to brothels, strip clubs and massage parlors does not make the job safer. By contrast, for street prostitutes it would be easier to identify customers and report a violent john. Indoor prostitutes instead cannot refuse customers, the identity of whom can be easily kept under secrecy. The risk for street johns to be prosecuted in case of violent behaviors works as a deterrent, which is sterilized in case of indoor prostitution. Moreover, Farley argues, no research has demonstrated that legal prostitution decreases the illegal one. A legal job requires recording one's identity, and many women are reluctant to do it because they prefer to maintain anonymity and often to confine this experience to a limited period of their life. There are quite objectionable opinions, while it is more interesting a particular phenomenon Farley stresses, that is the existence of some legal regimes, such as Venezuela and Paraguay, where the penalty for rape is reduced by one fifth if the victim is a prostitute. In other words, being in prostitution works as an extenuating circumstance. Undoubtedly a similar legislative orientation represents a worrisome drift.

In conclusion, to the ends of our analysis, it is useful to stress three points, which intertwine the radical feminists' discourse about female identity and the delicate balance between self-determination and social acceptance:

- The (male) ideology of compartmentalization: the advocates of prostitution legalization say that sex work inhabits its own world without affecting external people or culture;
- The objectification of woman, who is seen as an object producing pleasure (which is the logic inherent in the exchange of money for sexual services);
- The distinction between "consensual" and "forced" behaviors, which is usually denied by those who stand for banning pornography and criminalizing prostitution.

## 2.4 Fatal conceit

At this stage, after a far-reaching analysis of the radical feminist thought, some considerations can be laid down. The “black swan” deludes itself to be a swan, radical feminists maintain, actually it is the victim of a false consciousness. In the same way women, who state to have chosen sex working, are the victims of sex objectification imposed by men. Men’s power is paramount, “an unreal thing with very real consequences”. First of all, someone may wonder how “real” is something like “collective consciousness”, if male power is unreal. The premise of MacKinnon’s theory relies on the collective research for a “feminine essence”, that permeates a collective consciousness unduly corrupted by male power. MacKinnon believes that a dialog between feminism and Marxism is needed, and that the “consciousness raising method” will allow women to construct their own “essence”. Such a discourse inevitably touches on metaphysics, one wonders what the feminine essence would consist in. Can the human identity, the “self”, be reduced to the male-female dichotomy?

Each of us has multiple properties going from physical aspect to the wealth and religious beliefs. I am woman, but I am not only that. Establishing that gender identity is the prominent property in shaping the self, that the gender identity is the essential property setting the main difference with the others, appears to be an *a priori* reasoning. The identity of each of us is far more complex and it is not a case that the belonging to most human associations abstracts from the male-female difference.

Secondly, according to radical feminism, the prostitute who asserts to have freely chosen prostitution deludes herself because she lacks an outright consciousness of the self. This seems a slippery slope. To what extent can we establish that a person is making a conscious choice? What are the parameters measuring the degree of consciousness in each of us? It sounds, to say the least, conceited to pretend to decree whether and when others act in a conscious manner. Someone could rebut, with some



reason, that this is an arbitrary tool to delegitimize, for instance, ways of life or decisions we simply do not share.

There is also another question. Are we sure that prostitutes are given no choice? The number of jobs are un-limited. Moreover, if a person is given no choice it means that that person is “forced” and his/her will is coerced. But, in that case, we witness an act of exploitation which corresponds to a particular criminal offence.

Further aspects remains unfilled. Why should some women trust the ability of other women to decode and “devalidate” their experience? If the reality is male-centered and our knowledge of the world is filtered through male eyes, it is not clear why and to what extent some women should be wiser than others. Moreover, the narrow circle of enlightened women, of which Dworkin and MacKinnon are vocal members, would pretend to teach others the “right” way to construct their perception of the world and the self. Frankly speaking, this theory looks fragile. Or, better, it perfectly works only at one condition: that we accept that some women – the large majority – are minor beings, deprived of self agency. Doing this from a “feminist” viewpoint seems paradoxical.

To put it another way, the radical feminist approach stands only if we deem women as *minus habens*. Only if we accept that women’s free will does not exist. It is, undoubtedly, a huge responsibility. What is at stake is, first and foremost, the recognition of female capability to exert individual will.

There are also some obscure points in the consciousness raising theory. It is not clear how – in which manner – some women should “devalidate” female experience and raise the outright consciousness. It is not clear how the male-female relationship will work out after the completion of such process. It is important to underline, once again, that in MacKinnon’s view the institutionalization of women’s submission happens through and because of the sexual intercourse, which, in her opinion, crystallizes the male dominance by relegating woman into a submissive, degrading and objectified role. Everything turns around penetration (in an heterosexual encounter), which is an act of totality and invasion. The vaginal orgasm, according to

some radical feminists, is itself a male invention exclusively aimed at satisfying male pleasure. However, let us suppose that the process of consciousness raising reaches its final goal, a question arises: what would change in women's sexuality? If the black swan becomes convinced that it is not a swan; if the woman who thought to have freely chosen sex working becomes convinced that she was wrong and that the "conventional" sexual dynamic is rape, even when there is a fallacious consent; what will change afterward? According to Camille Paglia, sex is a natural urge, like breathing or eating, and its forms – also its mechanical dynamic – are dictated by nature. Or does someone pretend to invent a new "sex spelling-book"?<sup>43</sup>

The slippery slope we mentioned above touches on metaphysics and social engineering. The radical feminist approach totally excludes the possibility that prostitutes choosing sex working are able to make a free choice, even if they consider it as immoral or reproachable. They exclude the possibility that, insofar as male consent is deemed worthy of legitimacy, the female one is not lesser. They exclude that people – including females – can choose to have an aggressive, even "degrading" sexual intercourse as product of an act of will. Rather radical feminists seem willing to propend for a materialist approach that reduces economic and social inequalities – nowadays far less marked than in the past – to the sexual male-female relationship. As if the role played during the sexual intercourse could shape our identity in all the domains of our life. It seems also a simplification to reduce the self to a biological contingency, as it is coming into the world male or female. A deterministic approach, to say the least.

## **2.5 A pinch of paternalism**

Before moving to the in-depth description of the libertarian feminism, which contains the most severe criticism against the radical feminist arguments mentioned in the previous paragraphs, it is worth dwelling upon what could be considered as a "third way" or, in political terms, as a "liberal socialist" approach. From a

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<sup>43</sup> Paglia, C., *Sexual Personae. Art and Decadence from Nefertiti to Emily Dickinson*, Vintage, New York, 1991, p. 14.

philosophical point of view this stream stems from the thought of John Stuart Mill, who is sometimes assimilated to radical feminism, even though, as we will see, differences prevail on similarities. A recent reference instead can be found in Peter de Marneffe's oeuvre<sup>44</sup>. We will start from the latest work and, at a subsequent stage, we will review Mill's theory which, by means of comparison, will allow us to better understand the libertarian position.

If we should explain de Marneffe's theory in a few and simple words, we could say, without fear to be contradicted, that his main idea is to regulate prostitution accepting a pinch of paternalism. To put it another way, also in a liberal framework we can admit a moderate dose of "nanny State". It must be said that Peter de Marneffe should be lauded for leaving the ivory towers so dear to philosophers and entering the quicksand of the prostitution debate. It is quite unusual. His main work, "Liberalism and prostitution", is primarily a study in political philosophy, not sociology, criminology or feminist theory. Fundamentally, this book is about whether paternalistic policies can be justified within a liberal framework that takes seriously the idea that individuals have rights to liberty. The final answer is affirmative. The author examines this philosophical question by focusing on prostitution laws. In doing so he proposes a controversial application of liberalism to a pressing problem of criminal law. The theoretical ambition is challenging and the thought undoubtedly brilliant.

In his attempt to strike a balance between individual liberty and protection from harm (the reference to John Stuart Mill is explicit) in a liberal perspective, he states that some prostitution laws, albeit paternalistic, are morally permissible. This can sound strange to libertarian readers as paternalism is inevitably intrusive into the field of personal freedom. However, de Marneffe makes the strong claim that from a liberal point of view a certain dose of paternalism is fully compatible with the respect for individual liberty. Which is the *trait d'union* in his view? The author dwells upon the so-called harm principle. Whereas policies categorically prohibiting the exchange

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<sup>44</sup> De Marneffe, P., *Liberalism and Prostitution*, Oxford University Press, Oxford, 2010.

of sexual services for money are to be considered an unjustifiable restriction of adult sexual freedom, those setting only certain limits on prostitution can in fact be justified compatible with the fundamental principles of liberalism. From this subtle difference, emerges the distance of de Marneffe's perspective from radical feminists advocating the end of prostitution as inevitably detrimental to women's dignity. De Marneffe thinks neither that prostitution is *per se* disruptive to women, nor that voluntary prostitution cannot exist. Rather he supports some regulations which are compatible with prostitution intended as a free choice (an act of will); in the meantime, he opposes decriminalization, that is the rejection of any law specifically targeting prostitution.

The father of the so-called "harm principle" is John Stuart Mill, who also sought to resolve the eternal conflict between individual liberty and state intervention. As we will see hereinafter, he lived in the Victorian England and his analysis stressed the imbalance between sexes in family. In his view, human well-being and development will be best promoted over time if society adopts the principle that government is justified in restricting individual liberty only insofar as this is strictly needed to protect others from being harmed. The attention is to be focused on the term "others" as everyone, Mill maintains, is endowed with the inalienable faculty to harm oneself, even through suicide<sup>45</sup>.

This principle was later revised by Ronald Dworkin (not to be confused with Andrea, the radical feminist we have previously mentioned). Ronald Dworkin proposes to abandon the "extremist" view on both sides, respectively the moralistic excess as well as the strong protection of freedom of contract and property rights (deemed as characteristic of an earlier laissez-faire ideology). In this way, Dworkin maintains, we can concentrate our efforts on the protection of greater equality, particularly equality of opportunity. De Marneffe is strongly influenced by this interpretation, and arguably, in doing so, he renounces a rigorously liberal approach for a more paternalistic one. In other words, by setting an egalitarian goal de

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<sup>45</sup> Mill, J. S., *Three Essays*, Oxford University Press, Oxford, 1859, p. 69.

Marneffe makes a clear choice, whose inevitable consequence is a restriction of the perimeter of individual freedom in favor of a bigger government. Besides people in nature are not equal, they differ for a number of reasons; to make them equal an exogenous intervention is required.

The premise of de Marneffe's theory is that immorality is not the unique reason for prostitution laws. There are some empirical assumptions, that have nothing to do with morality and that nevertheless justify some prostitution laws. It is worth underlining that radical feminists' approach is not morally neutral at all, as well as Mill's attitude toward prostitution in the Victorian society is not morally neutral. Mill looks at prostitution with contempt, but he considers it "a necessary evil".

Evidence, according to de Marneffe, shows that prostitution has a number of negative consequences, even when it is voluntary and consensual. According to de Marneffe, prostitution has harmful consequences on sex workers' health, similar to the effects of other forms of sexual abuse, such as rape and adult-child incest. He does not go so far as to say, like radical feminists do say, that prostitution is rape, but the philosopher deems the activity detrimental to psychophysical health. In his words, prostitution brings about a sense of loss of control, feelings of worthlessness, shame and self-hatred, post-traumatic stress disorder, difficulty with intimate relationships and so on. More importantly to the ends of our dissertation, the author openly recognizes that available evidence shows the existence of voluntary prostitution, although radical feminists continue to deny it. Furthermore, providing detailed data, de Marneffe stresses the fact that *most* prostitutes admit to have freely chosen prostitution. MacKinnon or Andrea Dworkin would rebut that those women delude themselves because they lack an outright consciousness of the self. De Marneffe does not say anything similar.

Paternalism deemed as "morally permissible" leads the author to admit some prostitution laws on the grounds that legalization as such would increase the number of people harmed by the work that they choose to do. This point is particularly important as it marks a further distinction with those advocating a ban on prostitution

on the basis of non-paternalistic arguments, such as reducing crime, protecting women as a group from gender discrimination, fostering an environment conducive to respectful intimate relationships.

De Marneffe favors either a permissive form of abolition – which criminalizes not the sale of sex as such but related practices such as kerb-crawling and the operation of brothels – or severe regulation – which imposes higher age restrictions on the adoption of prostitution as a job. For de Marneffe, a final decision about which of these policy alternatives is preferable must await a cost-benefit analysis in each context. The author proposes a kind of post-neutrality principle, which works as follows. A government is justified in adopting a policy that limits individual liberty in order to prevent or reduce a kind of harm, provided that this policy violates no one's rights and its benefits outweigh its costs. This means that what counts is not the kind of harm at issue, but the weight of individuals' reasons not to want their liberty to be restricted by policies that would reduce it. Thus a post-neutrality principle permitting some paternalistic laws, including those restricting prostitution, while preventing the invasion of important liberties, best captures the moral intuition behind the principle of neutrality.

At this point some questions arise. In a liberal vision is it possible to establish a sort of hierarchy of individual freedoms? If so, why should prostitutes' right to self-determination and sexual freedom be ranked at the bottom of such alleged hierarchy? De Marneffe does not provide an explanation, but he seems to take it for granted.

In de Marneffe's theory ethics applied on a particular subject of criminal law intertwines the discourse on democracy because, in the author's words, "the fundamental principles of democracy are the fundamental principles of liberalism". What is at stake indeed is the veritable essence of liberalism. The author distinguishes between civil libertarianism and progressivism. For the former, the government should not prohibit an activity unless it violates someone's rights; as a consequence, voluntary prostitution intended as a free exchange between competent adults should not be banned. For the latter, on the contrary, the central function of government is

the promotion of human well-being and development, even when doing it means limiting individual liberty without protecting anyone's rights from being violated.

It is evident that de Marneffe favors the progressive front, and it is not a case that he mentions Jane Addams as an ardent feminist, who in the early Nineteenth century actively advocated female suffrage, racial equality and worker health, but opposed prostitution legalization. Arguably the author's terminology is partially misleading insofar as he describes as "progressivism" a clear-cut form of conservatism, whereas civil libertarianism can be considered as an equivalent of liberal orthodoxy laying stress on individual freedom of choice. By admitting a certain dose of paternalism in order to restrict voluntary prostitution, de Marneffe sides with the progressive front, although he continues to present his theory as a kind of "third way".

We have reviewed de Marneffe's theory quite in detail because it is important to stress, as we have stressed, the differences with radical feminism. There is no doubt that there are some points in common, but differences have the upper hand. De Marneffe, who advocates more restrictive prostitution laws, recognizes the distinction between prostitution and exploitation. He recognizes that voluntary prostitution does exist. Even from a moralistic and anti-prostitution perspective, he never goes so far as to deny women's capability to decide for their own, to choose prostitution and to exert their will.

If, on the one hand, de Marneffe does not appear perhaps as liberal as he would like to, on the other hand the distinction between a paternalistic justification and a moralistic judgment on prostitution is quite subtle, even inscrutable. It seems hard, indeed, to maintain a sharp distinction between the contentions that paternalistic motivations are based on prostitution being bad for prostitutes rather than a moral notion that prostitution is wrong. De Marneffe, who focuses his attention on American and, in general, on Western societies, seems more intent on convincing liberals to accept some forms of legal restrictions rather than converting non-liberals ("progressives", in the author's language) to move away from absolute prohibition.

However, what is relevant is that de Marneffe proposes an innovative perspective on a delicate issue, the application of liberalism on prostitution. The author has the merit to make in a conventional debate an unprecedented attempt, that is offering a paternalistic defense of some forms of prostitution laws, showing a modesty and thoughtfulness too often missing on this emotional subject. In his view restrictions on prostitution are consistent with liberal principles, and undoubtedly his reasoning gives rise to a vivid debate. Finally, it is the case to underline the empiric content of de Marneffe's work: the philosopher displays a sophisticated understating of regulatory and legal options, as we have tried to replicate in the first chapter of this dissertation. The wide array of data, statistics and polls makes the whole work interesting from an empirical point of view as well. It is hard to accuse de Marneffe of avoiding the heart of the question, he tackles it and, more deservingly, in an intuitive manner bound to keep the debate alive.

## **2.6 Mill and the “third way”**

De Marneffe's application of liberalism to prostitution is deeply rooted in John Stuart Mill's thought. Indeed in the vast corpus of Mill scholarship it is possible to find the embryonic core of a liberal approach to prostitution and its social backlashes. Mill is the author of “The subjection of women” and his masterpiece “On liberty” dwells upon prostitution and female condition. To him the discourse about sex working is strictly linked to women's status in social hierarchy and marriage relationship. In the Nineteenth century Mill is “feminist” in his own way, and undoubtedly his insightful analysis influences the emergence of feminist activism and ideas. It is worth remembering that in 1851 he gets married with Harriet Taylor, philosopher and women's rights advocate.

Mill's reflections in “On liberty” are drawn from his hearing before a Royal Commission at Westminster, when the British Parliament was called to regulate prostitution through the Contagious Diseases Acts, which were firstly passed in 1864 (then in 1866 and 1869, finally repealed in 1886). It is important to understand the



cultural and social context. Prostitution was a major concern for people in Victorian England. Sex working was a booming phenomenon, which brought about a real problem, that is the spread of sexually transmitted diseases, including syphilis. The British government was keen to address the issue in order to protect the Empire's military. It feared that the declining health and effectiveness of soldiers was a direct result of diseased prostitutes servicing armed forces. The Acts, whose application concerned garrison towns and naval ports frequented by prostitutes, provided for compulsory medical visits for women suspected of being "common prostitutes"; they were forced to undergo an internal genital examination (quite invasive and painful, according to the reports of the time) by a male doctor. If a woman was found infected, she was consigned to a lock hospital until she was cured<sup>46</sup>. Therefore, while the British government could not forbid its sailors and soldiers from employing prostitutes, these women became the target of a special police regime, which was firstly implemented in the British colonies of India, Hong Kong and Malta. The application of the Acts was entrusted to a group of plain clothed policemen, who became known as the "spy policy". As it was easily foreseeable, such an inspective power turned into a weapon of blackmail and vengeance. Some women were subject to a deep surveillance without any warrant or cause; often they were "ruined" on the basis of false accusations, only as consequence of retaliation on the part of a jealous sailor or because their clothing was too colorful. After medical examinations (which not rarely led to worse health harms and miscarriages), women infected were to be detained for up to nine months.

In this historical setting John Stuart Mill was heard before a Royal commission to expound his own view on such a delicate subject, which after the first act in 1864 led to robust feminist protests against the coercive legislation. Josephine Butler founded the Ladies' National Association for the Repeal of the Contagious Diseases Acts. By the late 1860s agitation grew up to such an extent that government decided to establish the Royal commission to investigate the operation of the acts. Mill had

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<sup>46</sup> Wojtczak, H., *Women of Victorian Sussex*, Hastings press, Hastings, 2003, pp. 74-96.

already expressed his views on the subject in this paean to personal freedom, “On Liberty”, where the philosopher justified legal sanctions against pimps. However the evidence provided by the hearing before the Royal commission is quite relevant to better understand his approach. He defines prostitution as one of the “great social evils” of his time.

In the Victorian age male sexual license was seen as something innate and immutable, that was simply to be acknowledged and managed. As a result, prostitute was seen as a “safety valve”, a necessary expedient to satisfy male innate urges. Mill strongly opposed this conception, “the true conservative standpoint”. He claimed that there was no inevitability in male sexuality, rather this false conception was usually a device used by men to forge norms according to their urges. In Mill’s view, sexuality is socially constructed and, as society progresses, sexual “passion” would come “completely under the control of the reason”. This is why Mill highlights the male-female unbalance in marriages: he rejects the doctrine of separate spheres as well as all arguments drawn from biology or nature. Women are not condemned by nature to social submission. Female condition is generated and perpetuated by men’s dominance in politics, culture and their “almost despotic power” as husbands. Mill advocates fundamental reform of the institution in marriage, not just in terms of the public nature of the contract, but most significantly in relation to the private relations between husband and wife. He openly condemns the prevalence of rape and domestic violence within marriage in a period where such behaviors are socially tolerated.

Mill challenges the indulgent attitude permeating the discourse about prostitution in Victorian England. While women are socially stigmatized and legally sanctioned, men are just regarded as victims of natural impulses. Before the Royal Commission, Mill stresses male responsibility for the risks wives and children are unconsciously exposed to. In the “sin of fornication”, as the Royal commission defines it, men and women participate in the same way and they are to be treated equally. Therefore clients, Mill maintains, ought to be subject to the “same degree of

espionage” reserved to women. Similar statements can appear banal to our sensitivity, but they are incendiary for that time.

In fact Mill does not support the “espionage” method, but he wants to stress the fact that no discrimination must be allowed between prostitutes and their customers. Moreover, before the (all male) Royal commission, he proposes to introduce a right to reparation for damages in case a man is proved to have transmitted venereal diseases to a prostitute or to his wife (in this case, according to Mill, divorce is a matter of right).

Mill challenges the common beliefs of the time. He opposes the Acts which violate, in his words, “one of the greatest principles of legislation, the security of personal liberty”. Excessive is the discretion of police to label any woman as a prostitute, as well excessively invasive are medical inspections referred to as a “tyrannical operation by force of law”. The Acts institutionalize “gross inequality between men and women”.

Mill demands prostitutes’ (and women’s) equality as well as male accountability for sexual behaviours. Mill lays stress on male guilty because it is male dominance in society that perpetuates prostitution. However Mill distances himself from radical feminism because neither he advocates the abolition of prostitution nor he supports the “unconsciousness” of sex workers. He never puts in question their capability to rationally choose sex working. Surely, he would like to live in a world without prostitution, but he departs from the proposal of criminalising the purchase of sexual services. In his view, prostitution could be eradicated one day not as a consequence of law, but as the product of social and cultural progress. It is not the trade exchange that troubles Mill, but rather the exploitative and disruptive aspects related to prostitution. This is why he lays stress on the reform of marriage in order to establish male-female relationship based on “perfect equality”, an ideal condition where men and women have risen above the animal instincts of sex. But this evokes an ideal-type or, more simply, a wishful thinking.

Even though Mill's approach cannot be assimilated to a sheer libertarian one, he is far from radical feminist theories. He supports greater state intervention to help prostitutes, who often choose this activity as a result of economic conditions, but he does not go so far as to state that no one would ever choose prostitution. With regard to this question he takes a more liberal stand by abstaining from giving a definite answer. Besides the philosophical study about female subjectivity falls outside Mill's interest, more focused on the socio-economic aspect of the issue.

Before the Royal commission Mill says: "I would not be beyond the proper function of the State to take means of making these persons understand that they are not considered as totally unworthy of any kind of regard or consideration by the rest of their fellow-creatures, but that is it the object to reclaim them, and do them as much good as their condition makes them susceptible of. Such measures, at all events, might be applied to the dangerous classes more generally, much more than ever has been done yet". Miller opposes legalization: "I do not think that prostitution should be classed and recognized as such by the State". He hopes in a reduction of prostitution demand (for which the responsibility is men's) and in an intervention to fix the most harmful consequences for women. Licensing systems, which are common in the continent at the time, are negative because they tend to encourage a profession which is to be discouraged. In this sense Mill's approach is driven by a clear moralistic attitude. There is no ethical neutrality in his stance, as for de Marneffe who highlights this aspect as a major difference from a purely libertarian position. Prostitution is evil, but it is a "necessary evil". It cannot be eradicated as such, but it can be discouraged, always with the goal to protect women from abuses. Anti-prostitution laws must not turn into a weapon of oppression. Mill's approach is primarily pragmatic, there is no room for theoretical inquiries, so dear to radical feminists, about the self and the "false consciousness" inside each woman.

Mill is not neutral, as we have said. His stance is a moral one at root. This emerges even more clearly with regard to pimps and brothel-keepers, who are not seen as private activities to be shielded from public regulation. They are the target of

criticism because they gain from an activity, which often contemplates vulnerable people and should be discouraged.

Granted that “fornication, for example, must be tolerated”, “should a person be free to be a pimp?”<sup>47</sup>. The author asks this question without finding a definite answer. It is quite hard to criminalize those who promote an activity which is lawful. However, he abstains from providing a clear-cut answer. Also before the Royal commission, regarding brothel-keeping he speaks of an “extremely difficult question”, adding that “so many pros and cons have occurred to me when I have thought about it that I have found it very difficult to make up my mind”. He is in favour of stronger measures to prevent young women from prostituting: “I perhaps would go further for the protection of the extremely young than most people would”. It is important to underline the distinction Mill traces down between those women who have capacity, and therefore they are free to make their own, even wrong, decisions, and those who lack capacity and need preventative, and potentially coercive, measures for their own good.

To conclude, we can say that in what can be deemed as a liberal socialist view, Mill sides with prostitutes, while his condemnation is mostly devoted to men culpable of exploiting women in many ways in Victorian society. But where there was no coercion, liberty should prevail. The exchange of sexual services for money does not trouble Mill. His worries concern state intervention to protect the “vulnerable persons” among whom he lists prostitutes. At this point it is evident that Mill, and more recently de Marneffe, proposes a “third way”, a compromise between the radical and the libertarian (or sheer liberal) position. Maybe his thought about this delicate issue is more nuanced and complex than it is often assumed. He opposes legalisation, that in his opinion would increase prostitution, and he condemns the practise itself. Nevertheless he recognizes the need for some regulations with specific, and morally justified, aims. In a way, we could say that Mill is radical in his sentiments, though remaining liberal in his proscriptions. Nobody can envisage what

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<sup>47</sup> Mill, J. S., *Saggio sulla libertà*, Il Saggiatore, Milan, 2009, pp. 83-119.

he would have thought in our days when, also in presence of more balanced and equal male-female relationships, prostitution is far from disappearing.

## 2.7 Libertarian view

The libertarian approach rejects any stereotype applied to women. In fact the first work relevant at this regard is the essay entitled “The feminine mystique”<sup>48</sup> signed by Betty Friedan. According to many scholars, this 1963 book marks the beginning of second-wave feminism in the United States. Indeed, on the basis of a detailed survey, the author demolishes the stereotype of the happy mother and wife. American women are unhappy with their lives as housewives. In most cases women try to conform to social expectations by stopping their careers and devoting their entire life to children and husbands. The outcome is that, as the time goes by, they do not find total fulfilment through marriage and motherhood alone. The feminine mystique, sparked by mass media and political rulings, does not correspond to women’s real needs and desires; as a consequence, many of them turn to alcohol, depression and extra-marriage affairs.

The libertarian approach on prostitution stems from the sheer refusal of stereotypes and from the tenet of self-ownership. Each person is the absolute owner of his or her own body. In his “Two treatises on government” John Locke writes that “every man has a property in his own person”, and that the individual “has a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did”. The concept is also investigated by Gerald Cohen, and his are the following words: “Each person enjoys, over himself and his powers, full and exclusive rights of control and use, and therefore owes no service or product to anyone else that he has not contracted to supply”<sup>49</sup>. The idea is that human body is under the exclusive sovereignty of the individual/owner who is able to self-determine his own acts and decisions. This may seem a secondary point but, as we will see later, it is crucial to the ends of our analysis.

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<sup>48</sup> Friedan, B., *Feminine mystique*, Norton and Company, New York, 1963, pp. 25-40.

<sup>49</sup> Cohen, G., *Self-ownership, freedom and equality*, Cambridge University Press, Cambridge, 1995, pp. 35.

Prostitution does not consist in slavery insofar as it is about the exchange of sexual services in return for money. In other words, there is no sale of “body” or of other physical components. The American philosopher Camille Paglia, a self-described dissident feminist, is a convinced advocate of sexual freedom and self-determination. She contests the demonization of sex. In her view, the “MacKinnon-Dworkin brigade” is responsible for propounding a distorted vision of the sexual intercourse. It is not about assault and violence, as radical feminists maintain. On the contrary, the prostitute is the absolute dominatrix of sexual desire. The prostitute exerts his or her power on the customer.

In her masterpiece “Sexual Personae” Paglia argues that human nature has an inherently dangerous Dionysian or chthonic aspect, combined with an Apollonian aspect. Apollo is “the One, denying the Many and abjuring multiplicity”. The Apollonian is aristocratic, monarchist and reactionary. Volatile, mobile Dionysus is “hoi polloi”, the Many. “He is rabble and rubble, both democratic mob-rule and the slurry of uncountable objects rumbling through nature”<sup>50</sup>.

Paglia criticizes the mainstream feminism which oversimplifies the problem of sex reducing it to a matter of social convention: readjust society, eliminate sexual inequality, purify sex roles, and happiness and harmony will reign. This concept is heir to Rousseau: nature is good while society is bad. Paglia overturns the perspective: nature is not good at all. Aggression comes from nature, while social controls weaken man’s innate cruelty. The rapist is created not by bad social influences but by a failure of social conditioning. Unlike what radical feminists maintain, sex is inherently violent and its way of fulfilment is not a social construct, but it reflects natural desires and tensions. “Sex is animality and artifice, a dynamic interplay of nature and culture”<sup>51</sup>, Paglia says. Therefore repressing sex and sexual differences between men and women is a mistake. Feminist ideology began by claiming to give women freedom, enlightenment and self-determination, but it has ended by alienating professional women from their bodies. Every signal from the

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<sup>50</sup> Paglia, C., *Sexual Personae*, cit., p. 97.

<sup>51</sup> Paglia, C., *Vamps & Tramps: New Essays*, Vintage, New York, 1994, p. 19.

body is automatically interpreted in terms of social oppression. The will to be sexually attractive is considered as a distorted reaction to social conditioning in a male-dominant society. Paglia opposes this scheme. She defines herself as a representative of “drag queen feminism”. In her view the drag queen is the perfect model of disguise, of harmonious and daily coexistence between the Dionysian and the Apollonian principle, where the former is synonymous with instinct, unconsciousness, passion and nature, the latter means self-control, order, resolved consciousness and civilization. Queens are “fierce” in every sense, “masters of aggressive speech, they know the street and its dangers and fight it out without running to authority figures, who would hardly be sympathetic”<sup>52</sup>. Unlike feminists, queens know that woman is dominatrix of the universe, that the prostitute is the ruler of the sexual empire, which men have to pay to accede. Prostitute and drag queen are sexual warriors representing a pagan dare to bourgeois sophisticated elite. “In reducing prostitutes to pitiable charity cases in need of their help, middle-class feminists are guilty of arrogance, conceit and prudery”<sup>53</sup>. Obviously Paglia refers to voluntary prostitution by distinguishing it from coerced prostitution. Whereas radical feminists tend to exclude *a priori* the possibility of voluntary prostitution, Paglia states that prostitution can be chosen as a desirable activity. Undoubtedly every profession has its bums and cheats, and this happens also for prostitutes, but the common denominator of all sex workers is invisibility. “That invisibility was produced by their high intelligence, which gives them the power to perceive and move freely but undetected within the social frame”<sup>54</sup>. The prostitute is a super analyst, not only in infringing the law but in understanding the unique combination of convention and fantasy, order and disorder, that generates a stranger’s orgasm. “She lives by her wits as much as her body”. She is psychologist, actor and performance artist as well as a shrewd entrepreneur and businesswoman.

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<sup>52</sup> *Ivi*, p. 42.

<sup>53</sup> *Ivi*, p. 57.

<sup>54</sup> *Ibid.*



According to Paglia, government may not under any circumstances intervene in consensual private behaviour. Not surprisingly the philosopher is in favour of drugs legalization as well as of the “absolute right to homosexual sodomy”. This does not mean that sex acts should visibly occur in shared public spaces like streets and parks. Solicitation should be tolerated and treated exactly like the vending of any commercial product. Police may keep building entrances unobstructed, guarantee a clear zone around schools and churches, and control noisy late-night auto traffic cruising in residential neighbourhoods. But harassment of sex workers and their clients must cease. Government should concern itself with public health matters: free testing and treatment of venereal disease should be required to prostitutes working in licensed brothels. With regard to the risks connected to prostitution, it is important to consider that it is not the only dangerous job. Stranger sex will never be risk-free. It is just as challenging an exploration of hazardous nature as cliff-climbing, sailing, car racing, big-game hunting, bungee-jumping, hang-gliding or parachuting. The thrill is partly due to the nearness of disaster or death.

Paglia expresses a double criticism against radical feminists. On the one hand, they do not recognise women’s capacity of self-determination (or self-agency). They are so obsessed by male power that they reduce women to a product of social constructs. On the other hand, radical feminists are blamed of supporting an anti-scientific idea, i.e. the absence of differences between men and women. In their rhetoric radical feminists go so far as to state that women should get free of men and live altogether in a kind of one-gender Republic; in this way, radical feminists maintain, women would be able to rediscover their authentic gender consciousness. Paglia considers it foolish to deny differences between sexes. Men and women are different for biological, social and cultural reasons. At the same time Paglia rejects the alleged dichotomy between sexes as she affirms that women do need men exactly as men do need women. Therefore she sees a source of cooperation and reciprocal advantages in the relationship between sexes. “If men are obsolete, then women will

soon be extinct”, she says in an interview released in 2013<sup>55</sup>. “A peevish, grudging rancour against men has been one of the most unpalatable and unjust features of second and third wave feminism. Men’s faults, failings and foibles have been seized on and magnified into gruesome bills of indictment. Ideologue professors at our leading universities indoctrinate impressionable undergraduates with carelessly fact-free theories alleging that gender is an arbitrary, oppressive fiction with no basis in biology”. In the course of history obstructive traditions arose not from men’s hatred of women, but from the spontaneous division of labour that in agrarian societies immensely benefited women endowing them with tasks concerning the care for infants and children. “Over the past century, it was labour-saving appliances, invented by men and spread by capitalism, that liberated women from daily drudgery”.

Radical feminists deny the existence of differences between sexes in order to affirm the project of a kind of society, someone says “dictatorship”, based on “sexual non-differentiation” or, in other words, on an “asexual revolution”, where all individuals should be gender neutralized and “equal”. Paglia opposes such a social engineering plan, in her view sexual differences are prescribed by biology and by the Dionysian aspect of our nature. Moreover, she reckons that nowadays multitasking and alpha-females women may be joining men in running the world, but they are hardly replacing them. “Men are absolutely indispensable right now, invisible as it is to most feminists, who seem blind to the infrastructure that makes their own work lives possible. It is overwhelmingly men who do the dirty, dangerous work of building roads, pouring concrete, laying bricks, tarring roofs, hanging electric wires, excavating natural gas and sewage lines, cutting and clearing trees, and bulldozing the landscape for housing developments. It is men who heft and weld the giant steel beams that frame our office buildings, and it is men who do the hair-raising work of inseting and sealing the finely tempered plate-glass windows of skyscrapers fifty stories tall. Every day along the Delaware River in Philadelphia, one can watch the

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<sup>55</sup> Sommers, C., “Camille Paglia defends men”, AEIdeas, 11<sup>th</sup> December 2013.

passage of vast oil tankers and towering cargo ships arriving from all over the world. These stately colossi are loaded, steered, and off-loaded by men. The modern economy, with its vast production and distribution network, is a male epic, in which women have found a productive role - but women were not its author. Surely, modern women are strong enough now to give credit where credit is due! ”<sup>56</sup>.

Paglia rejects the idea of an “eternal feminine” characterizing all women as a unique collective body. Such entity does not exist since being born male or female is a contingent element, a property featuring each individual like many others (religious beliefs, physical aspect, political ideas...). How to establish a hierarchy among this multitude of features? Radical feminists establish that sexual property is the paramount element conditioning all other features. According to Paglia it is an arbitrary choice with no theoretical basis. In the same way Paglia’s libertarian approach leaves no room for the “compartmentalization theory”, that is the idea that our sexual behaviors, as performed in reality or in fiction (through audio-video materials), are not confined within a sphere of our life, but they reverberate in all areas of our existence by affecting our way to conceive women, sexuality and the entire constellation of social relations. It is worth noting that this kind of criticism overwhelmingly concerns the debate over pornography. Anti porno advocates, such as Catharine MacKinnon and Andrea Dworkin, form a single front along with far-right and religious fundamentalist groups. The main objection is that the use of porno materials institutionalizes the inequality of sexes. “Pornography is coerced sex”, MacKinnon maintains. Moreover pornography would favor “emulative behaviors” and the repetition of such acts would spur the idea that the performance, as violent and degrading as it is, represents the normal way to interact with the other sex. Women are treated as “objects”, nothing more than “a few of sexual orifices” (Dworkin’s copyright), but their false consciousness, framed by the male standpoint, prevents them to really acknowledge what kind of treatment they undergo. This is why women should get rid of this false idea of themselves and of external reality, and

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<sup>56</sup> *Ibid.*

they should discover their real nature through the “consciousness raising” method. It is worth noting that legal actions against porno have found an obstacle in the US Supreme Court stating the constitutional value of freedom of speech, including all forms of arts. The pro-porno front relies on the idea of woman as subject, making free and autonomous choices which can also contemplate the use of body for commercial and artistic purposes. As someone points out, those against porno are eager to impose an obsolete stereotype of woman as “angel of the hearth”. But, as Paglia points out, women, like men, are a mix of Dionysian and Apollonian aspects, and “most shows women in as many dominant as subordinate postures, with the latter usually steamily consensual”<sup>57</sup>.

Turning the attention to the libertarian approach to prostitution, it is useful to dwell upon the thought of Wendy McElroy, a Canadian individualist anarchist who stands in favor of prostitution decriminalization. McElroy founded the so-called i-feminism which stems from the idea of self-ownership. The main concept of i-feminism is that women and men are, first of all, single individuals deserving equal treatment under fair law. McElroy opposes the so-called “gender feminism” as a collectivist degeneration whose unique worry is to demand social and economic egalitarianism, inevitably damaging individual property rights (for instance, through affirmative action and non-discrimination policies). According to McElroy and i-feminists, “a just legal system is one that seeks to protect the person and property of individuals equally, and it is applied to all individual”<sup>58</sup>. The underlying idea is that free market delivers emancipation better than any other competing system, such as state interference. McElroy is situated in a cultural stream that is quite close to classical liberalism of Mary Wollstonecraft, the pioneering 18<sup>th</sup> century British feminist, who compared street prostitution to marriage, labeled as “legal prostitution”, and considered the former a more honest activity. Other intellectual references of the Canadian thinker are Ralph Waldo Emerson and David Thoreau.

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<sup>57</sup> Paglia, C., *Vamps & Tramps*, cit., p. 65.

<sup>58</sup> McElroy, W., “An overview to ‘solutions’ to prostitution”, available at [www.wendymcelroy.com](http://www.wendymcelroy.com).

McElroy's ideas are quite similar to Paglia's, but she proposes a more vehemently market-based approach and, in terms of policymaking, she favors "tolerance", that is the removal of all laws concerning prostitution. Almost all committees for prostitutes' civil rights in North America demand the "decriminalization" of consent-based sex working among adult individuals on the grounds that laws against such activity violate civil liberties. With regard to policymaking, decriminalization represents a different option than regulation, insofar as the former calls for repealing all laws and regulations specifically concerning prostitution. McElroy lists a number of reasons in favor of decriminalization. First of all, anti-prostitution legislation has historically been used to limit women's freedom in the sex industry without touching male customers. Laws against prostitution turn into laws against women. Even laws against pimps (assumed to be men) increase the persecution of prostitutes. "This is because pimping is defined in economic terms; a pimp is merely an associate of a prostitute who receives any of her earnings. It has nothing to do with whether or not the woman is forced to perform sex"<sup>59</sup>. This is a practical problem denounced by a multitude of prostitutes, and sex workers' organizations, because such a broad definition includes partners, roommates, male adult children and friends. This constitutes an illegitimate intrusion in prostitutes' private life, necessarily infringing their right of free association. The prostitute's right to marry is enormously compromised since a husband would automatically expose himself to charges of pimping. Secondly, legislation against sex working turns into legislation against women working altogether. In 1949 the General Assembly of the United Nations adopted the "Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others". Theoretically, the aim was to protect women from exploitation. In fact the Convention turned into an anti-prostitution piece of international law aimed at suppressing prostitution as such, including the voluntary one. It read, in part:

"The parties to the present convention further agree to punish any person who:

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<sup>59</sup> *Ibid.*

Keeps or manages, or knowingly finances or takes part in the financing of a brothel;

Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others”.

The unintentional effect of these laws is to literally obstruct prostitutes’ lives. Indeed prostitutes are denied the possibility to work indoor, to exert their profession in a warm, safe and clean environment instead of streets where they are exposed to abusive acts on the part of clients and police, as well as to weather conditions. Working in tandem could be charged with running a brothel. Instead of protecting prostitutes, anti-brothel laws condemn them to isolation.

Thirdly, anti-prostitution laws turn prostitutes into criminals, and in doing so they discourage them from having a cooperative attitude toward police and government. Since they are considered as outlaws, their voice is never taken into consideration. Rarely sex workers decide to report violent to public authorities because they know that they would risk to be pursued or even to be totally ignored. This is even a more serious concern in countries where sex workers contribute to welfare state by paying taxes and fines.

The prohibitionist option has created an underground market, the illegal activity is exerted in the darkness and in most cases it attracts other illegal activities in a vicious cycle. For instance, the awful working conditions of prostitution drive women toward drugs, which are then used as an argument in favor of more severe anti-prostitution laws. Yet drug addiction is a problem that can be linked to many professions.

Moreover, in some countries prostitution becomes a stigma for the entire life, even though the sex worker may exert the profession only for a limited period. In Europe many countries stamp the passports of prostitutes to identify them as such. Other countries may refuse to admit them, and this inevitably restricts their mobility. There is a way to avoid being branded, that is to lie about their profession. Outing can lead to the loss of custody of their children or to the legal prosecution against their

partners and friends charged with pimping. In other words, there are more incentives to exert the profession in the darkness than in a legal and open way. An argument which is often used against prostitutes concerns public nuisance. In this regard McElroy supports that laws dealing with these aspects already do exist, while anti-prostitution laws on the grounds of public order and safety “are not aimed at removing a nuisance - namely, what prostitutes *do*, i.e. cause noise or disturbances. They are aimed at removing what prostitutes *are* - women who sell sex”<sup>60</sup>. The proof is given by many anti-prostitute ordinances that require no evidence of bad behavior for a charge to be brought. Any nuisance that a prostitute creates can be coped with under existing public order laws that make it illegal to publicly hurl threats, abuse or obscenity.

McElroy is also an opponent of affirmative action and gender quotas, which she considers “gender privileges”. “Those policies have had a devastating effect in North America. Or, rather, there are several devastating effects. Whenever you mandate the advancement of a class of people because of a characteristic like gender or race, you are saying the merit of individuals is secondary; it is not the best or most deserving person who gets a promotion but a woman. It is difficult to measure the impact of systematically devaluing merit within society but I have seen what it does on an individual level. A male friend was passed over for a well deserved promotion at a university because they needed to have a woman on staff. He now tells his son that merit does not matter, striving for excellence is a fool’s game. Multiple my friend by hundreds and hundreds of thousands (perhaps millions) of people. The refusal to acknowledge merit is not merely unjust, it lowers the entire quality of a society. By how much? Again, it is difficult to impossible to measure”<sup>61</sup>. According to the Canadian philosopher, quotas and affirmative action decrease the productivity and profitability of a society. Gender quotas grant a privilege to women as such, and consequently they may reward the less innovative people, who happen to belong to

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<sup>60</sup> Ibid.

<sup>61</sup> McElroy, W., Interview on feminism in America, Laissez Faire website ([www.lfb.org](http://www.lfb.org)), 21<sup>st</sup> February 2012.

the politically correct gender, while penalizing the most innovative and skilled people.

Turning back to prostitution, Wendy McElroy supports that “if society respects women’s right to refuse a sexual intercourse, it should respect also women’s right to say *yes*”. The main problem comes from the non-recognition of women’s will. If a person gives his or her consent to a sexual exchange, no third person should interfere in that transaction. In this sense prostitution is a victimless crime. Nevertheless it is treated as a crime because it offends the moral sensibilities of uninvolved and uninjured third parties. But radical feminists say that the formation of individual will is not free at all, because it is framed and influenced by male-dominant society. McElroy rebuts that this idea is an example of female victimization. On the one hand, women are becoming increasingly influential in society, they cover important political and economic roles and the gender gap index measures this steady trend. On the other hand, the idea that women’s identity is framed by men does not consider the fact that each person is “I plus my circumstances”, borrowing a famous expression of Ortega y Gasset. What does it mean? Society influences each of us, this is a matter of fact, but this does not mean that we are the mere product of society. Unless we admit a kind of social mechanics, we have to acknowledge that people in the same circumstances react in different ways. Not all poor people turn into thieves. Not all money-chasing girls turn into prostitutes. Therefore there is a subjective component which cannot be neglected or ignored. Besides it is crucial to consider it in order to grant women with the same self-agency power that the common sense usually attributes to men.

McElroy thinks that the vast opposition to prostitution comes from social hypocrisy. Society applies double standard. “The current second-class citizen status of prostitutes is a reflection of American Puritanism more than anything inherent in the profession. Our society tells women to marry well, to get things from men and to use flirtation to gain favors. Advertising presents sex as a commodity, as part of the medium of exchange. Prostitution is just the logical extension of this societal attitude.



But, because prostitutes flagrantly reveal attitudes that are usually left unstated, they are reviled”<sup>62</sup>. Furthermore McElroy tries to defeat another typical radical feminists’ argument, that is the identification of voluntary prostitution with exploitation. She makes clear that by prostitution she intends “the exchange of sex for money between consenting adults”. Therefore there is no room for coercion. Moreover, if policymakers are keen to make sex working less attractive, they ought to eliminate minimum wage laws that make women uncompetitive in the labor market. “Get rid of laws that keep them (i.e. women) from opening businesses in their homes. Educate and allow choices...don’t legislate. Poor morals are, as often as not, a response to poor choices. Let better choices to exist”<sup>63</sup>. It is not surprising that McElroy is also a supporter of pornography that, in her view, is nothing more than “freedom of speech applied to the sexual realm”. Why shouldn’t ideas flow freely?

If women’s self-agency is as worthy as men’s, and if there is no (gender-based) difference in the capacity to determine individual choices and behaviors, there is no room for gender-based arguments against prostitution. In other words, anti-prostitution advocates might resort to sanitary or public order arguments, as some of them actually do. But they cannot fight against prostitution as a detrimental activity carried out by “unconscious women”. Women are conscious and they freely choose the activity; that said, sex working is a dangerous activity. Peter de Marneffe, who can be described as a liberal socialist thinker mentioning among his teachers John Stuart Mill, wonders whether paternalistic policies can be justified within a liberal framework that takes seriously the idea that individuals have rights to liberty. As we have seen, in his work “Prostitution and liberalism”<sup>64</sup> he examines this philosophical question by focusing on prostitution laws. In doing so he proposes a controversial application of liberalism to a pressing problem of criminal law. The author dwells upon a number of negative consequences, even when sex working is voluntary and consensual. According to de Marneffe, prostitution has harmful psychological

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<sup>62</sup> McElroy, “An overview of ‘solutions’ to prostitution”, cit.

<sup>63</sup> McElroy, W., Interview on Rightwing news ([www.rightwingnews.com](http://www.rightwingnews.com)), 17<sup>th</sup> February 2012.

<sup>64</sup> De Marneffe, P., *Prostitution and liberalism*, Oxford University Press, Oxford, 2010, p. 124.

consequences close to those related to other forms of sexual abuse, such as rape and adult-child incest; prostitution brings about “a sense of loss of control, feelings of worthlessness, shame and self-hatred, post-traumatic stress disorder, difficulty with intimate relationships and so on”<sup>65</sup>. Yet the author recognizes that on the basis of available evidence most prostitution is voluntary, although anti-prostitution feminists continue to deny it.

## **2.8 Defending prostitution**

A libertarian defense of prostitution is proposed by Walter Block in “Defending the undefendable”<sup>66</sup>. The author, who mentions among his teachers Murray Rothbard and Friedrich von Hayek, presents people who are generally considered villainous by highlighting the positive functions they perform. In particular, he underlines that those people are guilty of no violent behavior or misact; that in virtually every case they are actually beneficial to society and that, if their activities are forbidden, we risk to be the final loser. “The impetus for this book is Libertarianism. The basic premise of this philosophy is that it is illegitimate to engage in aggression against non-aggressors. What is meant by aggression is not assertiveness, argumentativeness, competitiveness, adventurousness, quarrelsomeness, or antagonism. What is meant by aggression is the use of violence, such as that which takes place in murder, rape, robbery, or kidnapping. Libertarianism does not imply pacifism; it does not forbid the use of violence in defense or even in retaliation against violence. Libertarian philosophy condemns only the initiation of violence – the use of violence against a nonviolent person or his property”<sup>67</sup>. Block dwells upon the figure of the prostitute, “the value of their service is proven by the fact that people continue to seek them out, despite legal and civic opposition”. Is the prostitute harmful to society? According to Block, her or his activity is beneficial to the rest of society. Obviously he speaks of voluntary prostitution, where two people have agreed a specific exchange on a

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<sup>65</sup> Ivi, p. 62.

<sup>66</sup> Block, W., *Defending the Undefendable*, Ludwig von Mises Institute, Auburn, 2008

<sup>67</sup> Ivi, p. 13.

voluntary basis, with the aim to obtain mutual satisfaction. Undoubtedly there are some drawbacks, such as abuses by police, enforced commissions to pimps, harmful working conditions. But, after all, comparing the good features (short hours, high remuneration) and the negative aspects, the prostitute prefers sexual work, otherwise he or she would not go on.

Exploitative prostitution exists, Block maintains, but it has nothing to do with the intrinsic career of prostitution. “There are prostitutes who are drug addicts, prostitutes who are beaten by pimps and prostitutes who are held in brothels against their will. But these are sordid aspects which can concern any other profession”<sup>68</sup>. There are nurses and doctors who are kidnapped and obliged to perform for fugitives from justice; there are miners who suffer drug addiction. “We would hardly conclude that any of these professions or vocations are suspect, demeaning or exploitative. The life of the prostitute is as good or as bad as she wishes it to be. She enters it voluntarily, *qua* prostitute, and is free to leave at any time”. But where do prohibitions against prostitution arise from? They do not originate either from prostitutes who have volunteered for their tasks or from customers who are a willing participant. The impetus for prohibition comes from third parties who do not participate in the transaction. They are outside parties. “To allow them to decide this matter is as absurd as allowing an outsider to decide about the trade between the milkman and the pie man”. Block proposes the example of a league devoted to the “decent eaters” with the objective to espouse the doctrine that eating pie together with milk is evil. “Even if it could be demonstrated that the league against pie-and-milk and the league against prostitution had identical intellectual merit, the reaction to the two would still be different. The attempt to prohibit pie and milk would evoke only laughter but there would be a more tolerant attitude toward the attempt to prohibit prostitution. So sexual trades receive a special treatment because they seem to be based on, or at least connected to, the shame we feel, or are made to feel, at the prospect of having to *buy*

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<sup>68</sup> Ivi, p. 32.

*sex*. One is hardly *really a man*, nor in any way to be confused with an attractive woman, if one pays for sex”<sup>69</sup>.

Block singles out two different arguments which might overcome the idea that paying for sex is humiliating. On the one hand, there are those who simply reject the idea that it is bad to pay for sexual intercourses. This harsh criticism hardly convinces those who consider prostitution as a disgrace. On the other hand, the real challenge is to show that no sexual relationship is for free. In other words, all of us pay for sex, and therefore we should not criticize the deals between a professional sex worker and a client. “Many dating patterns clearly conform to the prostitutional model. The male is expected to pay for the movies, dinners, flowers, etc., and the female is expected to reciprocate with sexual services. The marriages in which the husband provides the financial elements, and the wife the sexual and housekeeping functions, also conforms clearly enough to the model”<sup>70</sup>. In other words, in any relationship we must offer something to our future lovers before they will agree to have sex with us. At a closer insight we understand that “all voluntary human relationships, from love relationships to intellectual relationships, are trades. In the case of romantic love and marriage, the trade is in terms of affection, consideration, kindness, etc. It is clear that unless affection, kindness or something is given, it will not be reciprocated”<sup>71</sup>. In the same way if two “non-mercenary” poets did not “get anything” from each other, their liaison will go to an end. Block goes so far as to say that, if there are trades, there are payments and consequently there is prostitution, intended in the meaning he gives to that word. “All relationships where trade takes place, those which include sex as well as those which do not, are a form of prostitution. Instead of condemning all such relationships because of their similarity to prostitution, prostitution should be viewed as just one kind of interaction in which all human beings participate”.

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<sup>69</sup> Ivi, p. 7.

<sup>70</sup> Ivi, p. 6.

<sup>71</sup> *Ibid.*

In a 1980 essay entitled “Charges against prostitution: an attempt at a philosophical assessment”,<sup>72</sup> Lars Ericsson investigates a number of charges against prostitution, in his view prostitution deserves to be defended. Among these criticisms there is the so-called “charge from conventional morality”. It states that prostitution is undesirable because it represents a fact of sexual immorality. The author’s idea instead is that, “even though prostitution is not in any way ultimately desirable, it is still conditionally desirable because of certain ubiquitous and permanent imperfections of actual human societies”<sup>73</sup>. According to Ericsson, sexual institutions and relationships are estimated and ranked on an imaginative layer according to their connection to reproduction. The more they are reproduction-devoted, the more virtuous they are considered. In this perspective the traditional monogamous marriage is the sexual institution which is ranked at the top, it is strongly supported and encouraged by government through laws and welfare state. Instead, “when coitus is practiced for pecuniary reasons, with pleasure and not procreation in mind, we have a sexual practice that, far from being sanctioned, finds itself at the opposite extreme on the scale of social approval”<sup>74</sup>. Moreover, another factor should be mentioned. Promiscuity in the female is hardly approved by society, which instead is quite benevolent toward male sexual desires and sins. Undoubtedly our Christian roots has an influence in this anti-hedonistic aspects. “To indulge in sexual activities is bad enough, but to indulge in them for the sheer fun and pleasure of them is a major feat in the art of sin”<sup>75</sup>. Moreover, sexual activities are also time-spending and this is sanctioned by Protestant morals as an anti-work behavior. The problem with the moralist charge is that it provides no explanation. Saying that having sex for money is intrinsically immoral does not give any argument. The moralist simply “sees” or “senses” its immorality, and in doing so he stops rational discussion in the beginning. Besides it is quite difficult to see that coition for a pay is intrinsically bad than

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<sup>72</sup> Ericsson, L., “Charges against prostitution: an attempt at a philosophical assessment”, *Ethics*, The University of Chicago press, Chicago, 3, 1980.

<sup>73</sup> *Ivi.* p 3.

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ivi.*, p. 338.

drunkenness is. “There is something fanatic – Ericsson says – about both of these views which I find utterly repelling. If two adults voluntarily consent to an economic arrangement concerning sexual activity and this activity takes place in private, it seems plainly absurd to maintain that there is something intrinsically wrong with it. In fact, I very much doubt that it is wrong at all”<sup>76</sup>.

On moral grounds there is also another charge, the “sentimentalist” one. The idea is that a coitus between a prostitute and a client is cold, impersonal and degrading. This is why mercenary sex should be discouraged or even banned, while romantic love should be promoted as a relationship of better quality. This charge is denied by its premise insofar as in this perspective sex in ordinary love stories is probably idealized while prostitutional sex is underestimated. On the one hand, most couples are not pure lovers. A multitude of people stay together for reasons which have little to do with authentic love. Often love keeps people altogether in a first stage, but after a while there are other elements that keep relationships alive, for instance affection, familiar and economic interests, the incapacity to stay alone, the will to raise children without familiar traumas. On the other hand, sexual performances for fees are not of such low quality as the collective imaginary is brought to think. By contrast sex with a stranger has incommensurable advantages and, according to Ericsson, “the best prostitutional sex available is probably much better from the customer’s point of view than average marital sex”. The distinction between marital and prostitutional sex is not quality but the contrasting type of legal arrangements. Sex with a stranger allows for diverse psychological dynamics which tend to loosen restraint making clients more available to demand what they really want in terms of performances and sexual fantasies. The fact that the prostitute is a person you may meet just once in a life brings about some undeniable positive effects. There is no reason to affirm that sex without affection must be worthless. On the contrary, satisfaction of sexual desires is intrinsically welcomed, love or no love, because this means satisfying a basic need (such as food or shelter). The author dwells on this point: the fact that we must pay to

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<sup>76</sup> *Ibid.*

satisfy our basic needs is no reason for socially penalizing those persons whose job is to give vent to those human appetites. Besides who looks at food vendors with contempt? The same scheme applies to prostitutes. Someone would rebut that in case of prostitution the exchange does not contemplate food but her body. Actually this statement is false: the prostitute does not sell herself (or himself), otherwise she would no longer be a prostitute but a sexual slave. Undoubtedly the popular misunderstanding contributes to our distorted views about sex working. That said it is not clear at all why selling food should be a fully normal and acceptable activity while offering sexual services should deserve a completely diverse treatment. Undoubtedly the butcher differs in many ways from the prostitute, but the conventional labeling of the former as “respectable” and the latter as “indecent” is not due to these contrasts but rather to social influence and bias. This has much to do with religious and sexual taboos. “That the naked human body is obscene, that genitalia are offending, that menstrual blood is unclean, etc., are expressions of taboos which strongly contribute to the often neurotic way in which sex is surrounded with mysteriousness and secrecy”<sup>77</sup>. It is worth mentioning also the “paternalist charge” as it is very common to hear that prostitutes ought to be forbidden from exercising the profession they have chosen because this would be detrimental to their psychological and physical health.

Putting aside the question whether government is entitled to interfere with individual liberty, Ericsson dwells upon another point by asking whether the existence of certain risks can justify the prohibition of a profession as a whole. By comparing sex working with other fields it is easy to find that the hazards connected to a job are never considered *per se* a good point for the view that the type of profession in question is undesirable. Consider, for instance, the miner who is exposed to undeniable dangers in his job, but someone hardly concludes that mining should be forbidden. Rather the awareness of such risks leads the worry about how to minimize possible harmful effects, for instance by ameliorating working conditions

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<sup>77</sup> Ivi, p. 342.

or installing safety devices. “The individual is not to be protected from himself, but from certain environmental risky effects. It is not the individual who should be changed but the milieu in which he has to place himself in order to be able to follow his occupational inclinations. [...] The individual whose does not need to be protected from herself if her hustling is voluntary in the same sense of voluntary as someone’s choice of profession may be voluntary. What she does need protection from are detrimental factors in the social environment, especially the hostile, punitive, or condescending attitudes of so-called respectable citizens. It is not the hooker who should be changed, reformed, or rehabilitated, but the social milieu in which she works”<sup>78</sup>. To contrast prostitution by referring to prostitutes’ health and happiness may seem a humanitarian and worthy choice, but in fact it has the unique effect to maintain the regulatory framework and social attitudes as they are. What is worst, Ericsson maintains, is that the paternalist does not worry about the diffusion of depressions and neuroses among sex workers, the paternalist does not try to formulate answers about how these psychological dysfunctions could be fixed.

Ericsson deals also with the “feminist charge” which advocates the abolition of prostitution on the grounds that it institutionalizes women’s social inequality in a male-dominant society. As I have already pointed out, the first weakness of this criticism lies in the incomplete picture of the phenomenon, which nowadays concerns an increasing portion of male homosexual prostitutes and a not negligible portion of women customers. With regard to the alleged “reification” of women, that is the radical feminist idea that women’s body is reduced to an object aimed at satisfying male sexual desires, it is important to make some reflections. First of all, considering women as “object” deprives them of their sheer self-determination capacity, i.e. the capacity to freely take decisions concerning their body and sexual behaviors. Frankly speaking, this perspective seems weakly “feminist”. Rather the idea that women would never choose to offer sexual services in return for money appears to have its roots in a precise stereotype which is bound to be fallacious as any other model. As

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<sup>78</sup> Ivi, p. 343.



Paglia says, women are a mix of Apollonian and Dionysian aspects. Unlike what our prejudices prescribe, women can freely choose sex working for all their life or for a short period of their existence, just as the outcome of a cost-benefit analysis. The individual hooker is neither for sale nor he (or she) is reduced to a piece of merchandise. In fact the accuse of “reification” betrays a good portion of contempt for prostitutes as such, for the kind of profession they exert. The “reification” charge has another limit. The customer is accused of looking at the prostitute not as a person but as “a piece of ass”. He is not interested in her as a human being, but exclusively in her sexual performances. This charge, which seems a sentimentalist critique, is quite weak. First of all, “the complete truth is that prostitute and customer treat one another as means rather than as ends”<sup>79</sup>. This happens for all professional performances. When you go to a lawyer or to a butcher, you are not interested in him or her as a person but in his or her professional performances. In other words, the kind of relationship that exists between prostitute and customer is one that we find in most service professions. “I suspect – Ericsson maintains – that those who talk about the badness of it in the case of prostitute-customer relationship have in fact long before decided that the relationship is bad on some other – not declared – ground”. With regard to alleged oppression against women, Ericsson underlines that, if A oppresses B, we take it that B’s freedom of choice and action is severely reduced, against his will, as a result of actions undertaken by A against B. Well, in the case of voluntary prostitution, it can hardly be disputed that prostitutes are oppressed in that sense, it can hardly be affirmed that the person volunteering prostitution is the object of some kind of oppression limiting his (or her) self-agency.

The problem is society’s hypocritical attitude toward harlotry. “It is this hypocrisy which creates the prerequisites for the sex-capitalist exploitation of the prostitutes”<sup>80</sup>, Ericsson says. Most states have adopted the UN declaration<sup>81</sup> which recommends that prostitution in itself should not be made illegal. The penal code persecutes those who

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<sup>79</sup> Ivi, p. 353.

<sup>80</sup> Ivi, p. 352.

<sup>81</sup> United Nations, “Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others”, 1949.

provide for renting, apartments and other premises to sex workers. Consequently sex workers are literally forbidden from renting the necessary instruments to advertise their services, and so on. They are prevented from exercising their profession in practice. What is more interesting is that the feminist charge particularly targets customers. The underlying idea is that men forge women's identity, their way to conceive themselves and the external reality.

In France, for instance, there is a huge debate about the current legislative reform of the anti-prostitution law. French feminists and leftwing parties advocate for the introduction of severe fines against clients (up to three thousand euro in case of recidivism and "reeducation courses"). The underlying idea is that men should become less masculine, whereas women should become less feminine. The final goal would be the establishment of a "dictatorship of sexual faint", that is a kind of asexual revolution where, in order to eliminate any gender discrimination and difference, all individuals would be sexually neutral and indistinct.

At the end of this review of libertarian standpoints about prostitution, one may wonder in a comparison between a typical middle-class housewife in suburbia and her prostitute counterpart which of them needs to be "liberated" the most. Both have a comfortable life, but while the housewife necessarily depends on her husband, at least on the economic plan, the prostitute is fully self-sufficient. Although radical feminists consider her a traitor to her own sex, from a libertarian point of view she looks like a winner, the absolute dominatrix of the sexual realm, the human being able to govern male sexual desire as a means to achieve her own aims. The libertarian view on prostitution overturns the mainstream perspective of woman as a victim or, alternatively, an object. As Paglia, McElroy, Block, Ericsson maintain, each of them with different nuances, the prostitute deserves full recognition of his or her self-agency, as a person consciously choosing a profession like any other. Woman is a subject, not less than man, and denying this basic truth seems to have a purely anti-feminist tone.

## **2.9 Porno dilemma**

Pornography is one of the most divisive issues in feminism. Strictly linked to the ideas of body, sex and power, pornography has been at the center of a heated debate between anti-porno feminists and sex-positive ones, giving rise to the famous “Feminist sex wars” in the Eighties. The main question, which is still alive today, is whether pornography should be considered as an artistic performance, nothing more, or, rather, as a destructive activity against women’s wellbeing (both individually and as a gender group).

The anti-porno crusade broke out in the Anglo-Saxon world in the Seventies. The American Andrea Dworkin was the main theorist and, not less importantly, the main activist. For instance, in 1976 she organized a night vigils against the movie “Snuff” accused of being an attack against women due to the images of mutilations on a female body. The protest was repeated in other US towns and for the first time gave rise to an anti porno movement. Dworkin was joined by other feminists such as Catharine MacKinnon, Susan Brownmiller, Gloria Steinem, and they established the group “Women against pornography”. The mobilization included tour conferences, lectures and walk-around aimed at banning pornography. Neighbors such as Times Squares, which hosted massage parlors, night clubs and “adult” book stores, were targeted by feminists with the “Take back night” marches. In spite of its modest size, the movement gained a political stance, as showed by the Meese commission work. The final report of the commission led by US Attorney General Edwin Meese, under Ronald Reagan presidency, was published in July 1986. Dworkin was heard by the commission, and she said that two thirds of women involved in the sex industry had been victims of incest or child abuse. Her statements, which influenced the final report, were criticized by the anti-ban advocates who stressed the lack of evidence at the basis of Dworkin’s assertion. It is worth noting that in that period there is an unusual alliance between anti-porno feminists and fundamentalist religious groups demanding a stricter policy against porno performances and books.

Martha Nussbaum dwells upon the concept of “objectification”, that is women’s reduction to object in pornographic performance<sup>82</sup>. Her analysis is much softer than Andrea Dworkin’s, with the latter going so far as to speak of “cultural genocide of women”<sup>83</sup>, an attempt to eliminate female personality in a male-driven sexual scheme. According to Dworkin and MacKinnon, the word “pornography” refers to “the graphic sexually explicit subordination of women through pictures and words that also includes: women are presented dehumanized as sexual objects, things, or commodities; or women are presented as sexual objects who enjoy humiliation and pain; or women are presented as sexual objects experiencing sexual pleasure in rape, incest or other sexual assault; or women are presented as sexual objects tied up, cut up or mutilated or bruised or physically hurt; or women are presented in postures or positions of sexual submission, servility or display; or women’s body parts – including but not limited to vaginas, breasts, or buttocks – are exhibited such that women are reduced to those parts; or women are presented being penetrated by objects or animals; or women are presented in scenarios of degradation, humiliation, injury, torture, shown as filthy or inferior, bleeding, bruised or hurt in a context that makes these conditions sexual”. In “Toward a Feminist Theory of the State” MacKinnon states that porno is “a form of forced sex, a practice of sexual politics, and institution of gender inequality”<sup>84</sup>.

MacKinnon dwells upon the “dehumanization” argument, i.e. the idea that pornography reduces women to some parts of their own body (“vaginas, breasts, buttocks”...) by depriving them of their dignity as human beings. In this sense she radically rejects the idea that pornography, like any other job, concerns only a sphere of human life, and as such it cannot be attributed a totalizing effect on human personality. This happens for any job, and someone would wonder why pornography, as a freely chosen profession, should have an alleged “dehumanizing effect”. Moreover MacKinnon warns against the risk of “emulative behaviors”, that is men’s

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<sup>82</sup> Nussbaum, M., *Sex and social justice*, Oxford University Press, Oxford, 2000, pp. 52-84.

<sup>83</sup> Dworkin, A., *Pornography Men possessing women*, cit., p. 71.

<sup>84</sup> MacKinnon, C., *Only words*, Harvard University Press, Cambridge, 1996, pp. 23-24.

will to replicate the same porno performances in their real life with partners and wives. “Consumers become increasingly unable to distinguish between rape and sex”, she maintains<sup>85</sup>. In other words, pornography constructs women’s status as unequal and their reputation as inferior. It acts as a mass instrument, its influence on popular culture is paramount. This is why the philosopher contests the male myth of compartmentalization, according to which pornography would inhabit its own spatial and cognitive world without invading other spheres of social life. Nowadays pornography, MacKinnon maintains, is ubiquitous. A consequence of pornography’s ubiquity is that it is increasingly used to excuse any sort of sexual violence and human rights violation. For instance, Mackinnon maintains, the photos of naked Arab men being abused by American soldiers in Abu Ghraib were termed pictures of torture in the press. Well, according to MacKinnon, those images were similar to much pornography, which is socially accepted (and excused) as pornography indeed.

Not surprisingly, the “solution” prospected by MacKinnon and anti-porno feminists consists in criminalizing pornography and all the related activities. Porno actresses and consumers should be allowed to report to the public authority the “illegal” production or display of videos, magazines and so on. MacKinnon and Dworkin advocated laws which defined pornography as a civil right arm. They drafted an “anti-pornography civil rights ordinance” which was passed in 1984 by the Indianapolis council and signed by the mayor of the town, but finally the Supreme Court, two years later, declared it unconstitutional due to its incompatibility with the freedom of expression.

As initially said, the feminist front is deeply divided with regard to pornography. Sex-positive feminists stand in favor of prostitution as well as of pornography provided that this is a freely chosen activity. In their view sexual liberation and sexual freedom are key components of women’s liberation, and banning pornography means depriving women of their capacity of self-determination. Camille Paglia is “totally pro pornography”, she accused the anti-porno feminism to have “betrayed

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<sup>85</sup> MacKinnon, C., “X Underrated”, cit., p. 62.

women, alienated men and women, replaced dialogue with political correctness”. In her view even Michelangelo’s *Pieta*, the supreme artifact of the Saint Peter Basilica, is a work of pornography. Unlike feminists who think human nature as pure and society as source of corruption (in the wake of Jean Jacques Rousseau), Paglia states that human nature is not pure at all, and sex is the realm of nature. “Sex is animality and artifice, a dynamic interplay of nature and culture”<sup>86</sup>. In this sense pornography does not invent anything innovative, but rather it displays the real essence of sexual intercourse, without disclosing anything. Sex is neither clean nor tender, it is the realm of the “dionysian” element (as opposed to the “apollonian” one) where instincts and passions take over. According to Paglia, also known as the “academic Rottweiler”, pornography means the absolute freedom of imagination, the obscure truth about nature, that is hidden by the artifices of civilization. Porno allows for a temporary escape in our primordial nature, in our animal reality, in “lust which is always elementary, aggressive, asocial”<sup>87</sup>. Paglia accuses anti-porno feminists, such as the “MacKinnon-Dworkin brigade”, to found their theories on an apollonian vision of human nature which does not correspond to reality. Violence and rapes do exist since the dawning of human history. She accuses them of turning feminism in a fundamentalist religion, MacKinnon is labeled as “stalinist” who thinks that artistic products should be sacrificed to a political agenda, and that dissonant voices should be silenced as “humanity’s enemies”.

In the previous paragraph I have described in detail the liberal feminists’ thought about pornography. It is worth adding the opinion of the American writer Sallie Tisdale, author of a book “Talk dirty to me”<sup>88</sup>, which underlines pornography’s educational role: “In most families children are provided with no model of sexual expression”, she states. Sex is banned from family context, even sexual relationships or simple gestures between mother and father are usually source of embarrass and thereby self-censored. But a family education in which sex and sexuality have no

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<sup>86</sup> Paglia, *Vamps and tramps*, cit., p. 19.

<sup>87</sup> Ivi, p. 110.

<sup>88</sup> Tisdale, S., *Talk dirty to me. An intimate philosophy of sex*, Random House, New York, 1995, pp. 70-112.

meaning make teenagers more dependent on other instruments, including pornography, in search for information, images and self-training.

From a sociological point of view the development of information technology brought about a phenomenon known as “sexting”, that is the act of sending sexually explicit messages between mobile phones. To understand the size of the phenomenon among 21<sup>st</sup> century teenagers, the so-called “Millennial” generation, imagine that in August 2012 the word, produced by the fusion of “sex” and “texting”, was listed for the first time in Merriam Webster’s Collegiate Dictionary. Sexting deserves great attention also because the material over which the originator has no control often contains “sexual selfies”, that is self-made images in sexually allusive postures. This can give rise to serious privacy violations.

Finally it is worth recalling the theory of the anthropologist Carole Vance. According to her anti-porno feminists are, simply, anti-sexual. Moreover the demand for banning is always detrimental insofar as it ignores the plurality of women’s tastes and preferences: “Show any personally favored erotic image to a group of women, and one-third will find it disgusting, one-third will find it ridiculous, and one-third will find it hot”. In “Against love: a polemic”<sup>89</sup> Laura Kipnis, media expert and writer, says that porno represents the continuation of the Seventies’ sexual revolution. In her view, porno gives vent to a “vital explosion”, a radical rebellion against the dominant values of western society. In the Italian arena recently an interesting viewpoint was expressed by the philosopher Simone Regazzoni, author of a book entitled “Pornosofia”<sup>90</sup>. Regazzoni casts light on a contradiction in the feminist anti-porno front: those, who oppose pornography as a degrading form of female representation, at the same time propose a traditional model of women as a normalizing and reassuring social character. Undoubtedly the feminist criticism against pornography (and, in a wider sense, against prostitution) coexists with this inner contradiction. And this, finally, constitutes a step back for the female gender as a whole.

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<sup>89</sup> Kipnis, L., *Against love: a polemic*, Pantheon, New York, 2003, pp. 30-53.

<sup>90</sup> Regazzoni, S., *Pornosofia*, Ponte alle grazie, Milan, 2010, pp.11-22.

# Chapter Three

## Exploitation

### 3.1 Premise

As we have seen in the first chapter, for a long while prostitution has been dealt with on the basis of a false equation, in the sense that the decision-maker was mostly driven by the idea that the struggle against the oldest profession in human history would liberate the world from exploitation. Excluding the possibility of voluntary prostitution, there was a wide consensus – involving the ruling class as well as the cultural and feminist world – that the most effective way to combat exploitation was to prohibit sex working as such. In the first chapter we reviewed some examples of this attitude in diverse cultural and geographical settings, while in the second chapter we dwelled upon the philosophical branch of the issue by highlighting the rifts within the feminist movement as well.

Exploitation is arguably the most effective argument against prostitution regulation. In the Italian scenario, for instance, anti-prostitution initiatives are usually based on the fallacious premise that combating exploitation would lead to the eradication of sex working itself. Such a deduction derives from the idea that voluntary prostitution cannot exist because no woman would choose to prostitute herself. Therefore in most cases anti-prostitution advocates use the totally sharable argument against exploitation in order to lead their own crusade against prostitution itself. As we have already pointed out, their vehement opposition to sex working is rooted on moral grounds, not so diversely from what happens, more openly, in the Arab society.

My main argument about “prostitution as a matter of freedom” relies on the theory that, even admitting the idea that all prostitutes are victims of exploitation, we cannot exclude the possibility that a woman (or man) would choose sex working as a free act of will. Evidently it is about a theoretical reasoning, which is fully compatible, in the same time, with an irrevocable condemnation of what exploitation



actually is. And, precisely because there is a sheer awareness of this deplorable reality, the author does not propose prostitution legalization as a sort of panacea, in which any evil finds solution. Besides, the “positive” regulation adopted by some countries such as Austria or Netherlands (both have been deeply examined in the first chapter) shows that reality is always more complicated than philosophical theories. Regulating prostitution does not allow as such to combat degenerative phenomena and outright crimes. Rather it allows to have a better knowledge of the activity by spurring victims to report their abusers. It works as a “carrot”, an incentive for a marginal improvement of the situation without any “totalizing” receipt. It does not work - it is worth underlining it again - as a “magic stick” able to eradicate crime from the world.

That being said, in the next paragraphs we will review the main features of the most worrisome illegal activity, that is currently connected to sex working and which, in many cases, is used to justify prohibitionist measures against prostitution. I refer to trafficking in human beings. Indeed, in the last decades, exploitation has coincided in most cases with it, also as a consequence of greater mobility and the elimination of geographical barriers. Trafficking is a legal crime in all legislations. Even if it was not punished by the criminal code, trafficking would be, first and foremost, an inconceivable moral crime. Whereas voluntary prostitution does exist insofar as the free consent of the person involved – man or woman – is granted, trafficking in human beings implies coercion and thereby a violation of will.

### **3.2 Picture of a crime**

Nowadays there is great concern worldwide about the huge size of this criminal phenomenon. Recent estimates from the International Labour Organisation put the number of victims of forced labour, including forced sexual exploitation, at 20.9 million people worldwide, 79 percent of these are women. According to Europol, children forced into criminal activities such as organized begging and shoplifting are being traded as commodities with 20 thousand euro price tags.

The estimated number of victims in the developed economies (US, Canada, Australia, Norway and EU countries) amounts to around 1.5 million forced labourers, 7 percent of the total worldwide. Trafficking in human beings generates more than 25 billion euro a year for international criminal organisations worldwide, and it represents the second source of money after the illegal drug trade. According to the United Nations Office on Drugs and Crime (UNODC), at EU level 76 percent of victims trafficked – in other words, three quarters of the total in EU member States - are employed in sex industry, with Bulgaria and Romania being the main countries of origin. These data appear consistent with those provided by single member States.

From a gender-specific point of view preliminary data available show that women and girls are the main victims of trafficking in human beings; as we have already pointed out, between 2008 and 2010 female victims accounted for 79 percent (of whom 12 percent were girls) and men for 211 percent (of whom 3 percent were boys) of victims.

Trafficked women are reduced to a form of slavery from which it is impossible to escape: on their arrival in western Europe these women are forced to work in the sex industry, and their recruiters take away their documents and deduct the cost of transport and other “fees” from their earnings. Women are mostly recruited through informal channels. Organized criminal gangs often use persons of the same nationality, especially young males, to pose as sympathetic business people offering marriage or employment opportunities in the EU countries. This means that greater regulation of advertisements for jobs in sex industry may not have much effect on combating trafficking. Other methods of recruitment include marriage agencies and, more and more massively, Internet. Catalogues of “mail-order brides”, including girls aged as young as thirteen, commercial sex tours and specific websites, where men exchange information on where to find prostitutes, give a wide array of sex opportunities which can hardly be caught.

Potential victims from central and eastern Europe are very young women living in poverty who want to help their families by moving to western countries or who

want to earn money for their subsistence. In many cases women do not know that they are going to work as prostitutes, but they are recruited for jobs such as domestic workers or waitresses. Then, once they have arrived in the destination country, they are sold into such areas as prostitution, pornography, forced marriages and slavery. Normally women are paid for each client but their debts increase the longer they work, they are charged weekly rent and billed for everything, from drinking water to electricity. It is worth considering that sometimes women voluntarily enter the trafficking chain, they know that they will work as prostitutes but later they are deprived of their basic human rights in conditions which are akin to slavery.

Before 1989 most of foreign prostitutes working in western Europe were recruited from Asia, Africa and South America. Since 1990 central and eastern European countries have become the major economic suppliers of prostitutes. The reasons of these migratory movements are rooted also in the “feminisation” of poverty as a consequence of the transition to a market economy following the fall of the Berlin wall; the enormous profits generated by the business of trafficking in women (according to Interpol, a pimp in Europe can earn approximately 110 thousand euro per year); the proximity of the countries concerned to EU member States and, in general, the relaxation of visa requirements, which makes it easier to transport women from Poland, the Czech Republic and Hungary, countries for whose national visas are not required. Women from these countries arrive with temporary work permits and, when their visas or permits expire, they are often moved to a different western European country. It is worth recalling that 80 percent of prostitutes in Europe are immigrants and that around 500 thousand victims of trafficking enter western Europe annually<sup>91</sup>.

Moreover women are reduced to a situation of extreme dependency. They are told that if they manage to escape, the police will not understand their story in their language, or the police will prosecute them for being prostitute or for the lack of regular documents, so they will face deportation or prison. Sometimes the police

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<sup>91</sup> Dallas Morning News, “People in motion”, 8<sup>th</sup> November 1997.

officials are clients and accomplices of the agents, some others they fear to be prosecuted due to the prohibitionist laws in force. There are also various methods to gain control over rebellious women: they are drugged, beaten, isolated from other women, physically tortured – cigarette burns, knives or electric shocks – or sold to other pimps, or have their personal belongings confiscated. This is why they often have no belongings or personal documents. They are authentic prisoners.

The number of convictions in trafficking cases decreased from around 1500 in 2008 to around 1250 in 2010. Too few perpetrators end up behind bar while victims meet increasing difficulties to recover and reintegrate themselves into society. Being victim of trafficking and sex trade is a social stigma it is quite hard to live with. Victims tend to conceal this experience, to remove it as a psychological response to the abuses suffered and, sometimes, as a way to avert social discrimination.

A main obstacle to an effective prosecution of perpetrators is related to the cross-border nature of the crime. Trafficking in women takes on international dimensions thanks to the *modus operandi* of the networks involved and the ease with which victims can be moved. Therefore there is a wide consensus that effective action against what is called the “white slavery” needs a coordinated multidisciplinary approach involving all the actors concerned – legal authorities, police forces, NGOs, social and immigration services. It is important to underline that if a single country adopts a repressive legislation, this will produce the so-called “displacement effect”: criminal networks will move to another country, where they have a greater margin of manoeuvre for their illicit activities, with no effect on the eradication of the crime. Undoubtedly a successful strategy needs appropriate legislation as well as suitable policies of prevention and protection of victims. In this regard it is important to stress the fact that severe anti-prostitution policies, which are often inspired by the illusionary need to combat exploitation (through a false equation we have already underlined), are scarcely effective in targeting this particular cross-border crime. Instead strict regulations, on the one hand, tend to dissuade women from reporting abuses to the public authorities for the fear to be prosecuted; on the

other hand, the “criminalizing” attitude toward their activity contributes to the perpetuation of a curtain of opacity which covers criminals and related crimes (such as smuggling and drug trafficking).

In the countries of origin the legislation often does not contemplate a specific offence of trafficking in women, but the concept is subsumed under other concepts such as illegal immigration or prostitution. In most countries of destination instead legislation often treats victims as offenders, for instance for prostitution-related crimes (e.g. soliciting), by discouraging women to report their exploiters to the public authorities, which are perceived in the same manner as *de facto* enemies. It is important to dwell on this point as it is strictly tied to the legislation in matter of prostitution. In this perspective it is evident that a merely repressive regulation, contemplating a clear-cut criminalisation of sex working, has a detrimental effect in the crusade against trafficking: it turns police forces into *de facto* accomplices of traffickers against their will by reducing women’s propensity to cooperate with public authorities.

There is no doubt that nowadays trafficking in human beings can be effectively dealt with only in presence of a well-defined European strategy to prosecute cross-border activities. As we will see hereinafter, in June 2012 the EU Commission adopted a specific Strategy towards the Eradication of Trafficking in Human Beings.

### **3.3 Immigration and black market in Austria**

In the previous paragraphs we have underlined the crucial distinction between exploitation and prostitution, also resorting to the metaphor of the “black swan”. It is worth stressing again that admitting a “right” to prostitution is not equivalent to supporting criminal networks. Moreover, the clear-cut prohibition of prostitution as such has no effect in combating exploitation. There is instead some evidence that regulating legal prostitution, far from being a panacea or a “magic stick”, allows for a greater control of sexual trade, including its “exploitative” and illegal forms.

We have seen that the misleading equation between prostitution and coercion comes also from history, as during the greater part of the Twentieth century prostitution was deemed to involve exploitation. It is no surprise that the 1949 United Nations Convention called on all states to suppress trafficking as well as prostitution without any distinction between voluntary and compulsory activity, without any regard for the consent of the woman involved. Only in the late Seventies 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 like 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 prostitutes' movements in many countries, a profound division emerged between those advocating the abolition of prostitution as a way to protect women who, in their view, are inevitably victims of exploitation; and those supporting various forms of legalisation and regulation on the grounds that voluntary prostitution does exist and deserves recognition from the state.

Focussing our attention on exploitation, it is useful to provide some empirical data on the phenomenon in some countries such as Austria and Netherlands, which cannot be blamed of having anti-prostitution legislations and, at the meantime, they have to deal with criminal networks engaged in trafficking in human beings.

Although prostitution is legal and regulated in Austria, underground activity goes on, and after the fall of the Iron Curtain the situation worsened due to the immigration of many women from the former Eastern bloc. They were willing to work for less money than the Austrian counterparts, and their activity was mostly controlled by organized crime groups. It is worth dwelling on this point because it denies the argument that regulating prostitution would eliminate underground activity. As in any other market segment, also in the sex industry the regulation does

not exclude the existence of a corresponding “black market” as a loophole to fix lower prices and escape legal controls.

In 2012 2,758 female prostitutes were officially registered in Vienna. The number of women working legally or illegally at least from time to time as prostitutes is estimated between 3,500 and 6,000; it is estimated that they totally serve 15 thousand clients per day. A similar relation of prostitutes to population number can also be found in other Austrian cities. For instance, in 2008 there were 120 registered prostitutes in Linz, which has approximately 10 percent of the size of Vienna.

Regulation was initially conceived also as a way to induce pimps to a good cooperation with police; on the one hand, they were allowed to regulate their turf wars themselves, on the other hand they served as informants for the police. The situation changed after the unification of Germany and the end of the bipolar division of Europe (and the world). The arrival of organized crime and Eastern sex workers changed the geography of Austrian prostitution. In the Nineties the number of registered prostitutes decreased while the number of the unregistered ones increased.

Nowadays sixty to ninety percent of prostitutes are migrants, mainly from the former eastern bloc. Among them there are many commuters from the former Slovakia. In a single night on the streets of Vienna women can gain more than in a whole month working as nurse in a hospital in Bratislava. In this way they escape controls and fiscal obligations. In the meantime underground prostitution is an uncontrollable phenomenon, and often it comes along with crimes like human trafficking, pimping and rape. There are, in addition, health problems as unregistered prostitutes are more exposed to infections and sexually transmitted diseases.

### **3.4 The betrayal of regulation**

Is regulation an effective tool to eradicate exploitation? Looking at the Austrian case, the right answer would be negative, and this can be easily explained since they are two separate phenomena. Austria denies the argument that regulating prostitution would be useful to combat the shameful phenomenon of human trafficking.

Regulation is not a panacea, it neither excludes the existence of a “black market” nor it ensures the victory in the struggle against criminal activity. Yet some forms of non-punitive regulation may help identify and punish smugglers of human beings. From a policymaking perspective, regulation, far from being a magic stick, is better than prohibition: advantages outweigh disadvantages. That being said, since we cannot exclude that a woman (or a man) would choose prostitution of her (his) own, we reckon that such a choice deserves legal recognition as any other professional activity.

In Austria the well-framed regulation system has been able to provide women with concrete instruments for social insurance, health protection and personal safety. Not less importantly, regulating sex working provides with a patent of legitimacy a job which does not differ, in substance, from others (it is always about an exchange of activity in return for money). What regulation failed is the struggle against human trafficking.

Austria is both a transit and a destination country for women and children trafficked from Romania, Bulgaria, Hungary, Moldova, Belarus, Ukraine, Slovakia, Nigeria, and sub-Saharan Africa for the purposes of commercial sexual exploitation. Most trafficked women are brought to Austria with promises of unskilled jobs, such as nannies or waitresses. Upon arrival they are often coerced into prostitution. According to police, there are also some women who knowingly enter the country to work as prostitutes but then they are forced into dependency akin to slavery. Most victims are in the country illegally and fear being turned over to authorities and deported. Traffickers usually retain victims’ personal documents, including passports, to maintain control over them.

What deserves great attention is that a major deterrent to victim cooperation with authorities is fear of retribution, both in Austria and in the victims’ countries of origin. This is a crucial point as nowadays the authorities have to cope with an important challenge, that is to provide legal inducements to cooperation. Until victims are not sure that reporting will not negatively reverberate on their status, they



will not cooperate and, in a way, they will be forced to cover criminals. Currently in Austria, unless affected persons are recognized as victims of human trafficking, when apprehended they must also expect to be deported to their country of origin, which also prevents them from trusting the authorities.

However victims of human trafficking are eligible for a “special protection” residence permit that must be granted *ex officio* or upon request provided that this is necessary for prosecuting the culprits or for asserting the victim’s civil law claims. Such residence permits may also be granted on the grounds of individual circumstances that necessitate special protection for the woman concerned<sup>92</sup>.

The Intervention Centre for Women Affected by Trafficking provides comprehensive advice and support for women who are forced to prostitution or were lured to Austria through marriage trade or trade in domestic servants, and are now forced to live in conditions of blatant exploitation.

Traffickers include citizens, who are generally connected with licensed brothels, and foreign nationals, who are involved primarily with unlicensed brothels. Authorities estimated that organized crime groups from Eastern Europe, including Russia, controlled much of the trafficking. Police were also aware of cooperation between domestic and foreign citizens to traffic foreign prostitutes through the country. Some victims are trafficked through Austria to Italy, France and Spain. Women from Africa are trafficked through Spain and Italy to Austria for the purpose of sexual exploitation.

Police and NGOs identified a combined total of 203 trafficking victims in 2008, up from 170 in 2007. In 2007 thirty trafficking offenders for whom trafficking was the leading charge were convicted, an increase from eighteen such convictions in 2006. The government improved its funding for victim protection and continued to undertake proactive prevention campaigns.

Numerous bilateral agreements on police cooperation also include the combating of human trafficking. Such interdepartmental or even intergovernmental

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<sup>92</sup> The statutory basis is laid down in section 69a of the Establishment and Residence Act.

agreements have been concluded in particular with Austria's neighboring states, the successor states of former Yugoslavia and a number of other East European states, as well as several African, Asian and American states.

On the EU and international level, important legal regulations have been worked out (recommendations, framework resolutions, conventions etc.), among others the Council of Europe Convention on Action against Trafficking in Human Beings that was ratified by Austria in 2006 and the EU-Directive on preventing and combating trafficking in human beings and protecting its victims of 5 April 2011.

The "Human Trafficking Task Force" - an interministerial working group under the chairmanship of the Foreign Ministry that was appointed by resolution of the Ministerial Council on 9 November 2004 - discusses the topic from various viewpoints of the responsible ministries and jointly with independent experts. Besides the Task Force strives towards constant development and improvement of the policies against human trafficking.

Another interdisciplinary group of experts - again chaired by the Women's Division in the Federal Chancellery - was set up in March 2009 to develop also comprehensive policies on the federal state level. A first report covering a description of and recommendations on the most urgent issues was published in May 2012<sup>93</sup>.

Before moving to the Dutch case, it is worth briefly dwelling upon the German scenario which shares some features with the Austrian one. In Germany prostitution is legal since the unification of the country, but it is regulated since the 1<sup>st</sup> January 2002. It is about a "positive" regulation, not diverse from the Austrian model: sex workers pay taxes and enjoy social as well as health insurance. They have comparable rights to other self-employed workers. The activity is exerted in brothels and night clubs, where clients are offered dances, entertainment and sexual encounters. There are 3,500 brothels nationwide: five hundred are concentrated in Berlin, about 270 in the Saarland (near to the French border). "Artemis" is arguably

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<sup>93</sup> "Regelung der Prostitution in Österreich". Legal situation, its implications and recommendations with special focus on the federal state level issued by the "Arbeitsgruppe Länderkompetenzen Prostitution", Vienna, May 2012. Available at <http://www.bka.gv.at/DocView.axd?CobId=48235>.

the most well-known, as well as the “Fkk club” in Berlin (Freikörperkultur, that is “culture of free body”). The entry costs eighty euro and allows for a visit, wearing rigorously a bathrobe, among sauna, swimming pool, cinema, food and drinks. Sexual performances must be paid apart.

According to the German trade union Ver.di<sup>94</sup>, there are one million clients per day and the yearly business is around 14,5 billion euro. Registered sex workers are about 400 thousand, the half are women and nearly 70 percent of them come from Romania and Bulgaria. The size of the phenomenon is impressive, if we consider that in the Netherlands registered prostitutes amount to eight thousand and the total revenues are estimated around 625 million euro. Clients are attracted by German lower prices: they come from the rest of Europe, even from the United States.

In some clubs, like the Caligula in the neighborhood of Charlottenburg, there is a special “flat rate” regime, where the client, once paid a quite costly entry ticket, is allowed to obtain all sexual performances he wishes without limits of time or quantity. Joanna Lesniak, who works as social assistant at Hydra (an association founded in 1980 to provide prostitutes with medical and legal consultancy) explains that most sex workers rent a room in a brothel (the expense is between six and ten euro); alternatively, they turn a percentage of the performance cost to the club owner (usually forty percent of the income goes to the club owner, the rest to the sex worker who must pay taxes as well). In case of flat-rate regime, instead, the club is obliged to employ the sex worker with a formal contract, then the payment of taxes and social insurance is up to the employer. Moreover, Lesniak explains that most prostitutes are German, who exert the profession with the aim to gather money only for a few years. There are also successful tourism agencies which are skilled in the provision of comprehensive packages including flight, visit in the town and night sex offers (there is a huge demand on the occasion of stag parties, mostly from the United Kingdom).

Since the enactment of the regulation law in Germany, which was supported by the Greens and the Social-democrats, ten years have gone by. Nowadays there is wide

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<sup>94</sup> Ver.di stands for Vereinte Dienstleistungsgewerkschaft, which means “United Services Union”. The headquarters of this large trade union, which counts 2.2 million members, are located in Berlin.

consensus about the fact that legalization improved sex workers' living conditions by reducing the risks connected to a clandestine life. With regard to exploitation, the convictions have decreased (from 151 in 2000 to 32 in 2011). A possible explanation lies in the current legislation, which considers "exploitation" only the case where the brothel-keeper (or the pimp) pretends to retain more than fifty percent of total revenues.

However, as we have already underlined in the Austrian case, regulation targets prostitution as such, by alleviating certain disruptive aspects of the activity. Exploitation, which is a separate phenomenon, needs specific criminal policies which cannot be exhausted in anti-prostitution laws. Indeed, whether it is true that regulating prostitution does not eradicate exploitation, it is also true that the clear-cut prohibition, like in what we have termed the "Arab model", did not prove so far to have any "magic" effect against criminal activities. It is worth saying that Thailand, where prostitution is forbidden, is ranked as the first sex tourism destination worldwide. In 2003 the University of Chulalongkorn made a study about this national plague, which involves thousands of children: 2,8 million sex workers and a total yearly revenue amounting to 3,3 billion euro. The situation is not more encouraging in Cambodia, which promulgated a law against exploitation in 2008, but still nowadays the country holds a deplorable primacy in minor prostitution. Recently the state of Ghana, where the legal prohibition coexists with a rising black market, has been granted a new label: "Thailand of Africa". In Kenya the police tolerates what the law prohibits in order not to discourage sex tourism, which is an "asset" for the national economy. According to UNICEF, in 2006 about thirty percent of Kenyan children aged between 12 and 18 were involved in sexual activities.

### **3.5 The Dutch case**

The Netherlands, which has a more "liberal" regulatory regime than Austria or Germany, confirms once again that a positive regulation – even a fully liberalized regime – does not guarantee either the elimination of black market or the eradication

of exploitation. Therefore, considering some Dutch figures, we can conclude that exploitation remains a separate phenomenon, against which public authorities are called to use specific anti criminal tools; but it has nothing to do with prostitution itself. Besides, with a pinch of irony we could say that, when Karl Marx proposed to eliminate the exploitation of labor through the ineluctable proletarian revolution, he never advanced the bizarre idea to eliminate labor itself.

Prostitution exists in almost a third of Dutch municipalities. It is concentrated in and around big cities and in border towns in the regions of Limburg, Groningen, Twente, West Brabant and Zeeland. Sex working occurs in various forms: “window” and street prostitution, clubs, escort agencies and home-based prostitution. “Window” prostitution occurs in twelve cities in the Netherlands. It is estimated that on average around 2,000 prostitutes are engaged each day in this form of prostitution.

Until the 1970s prostitutes in the Netherlands were predominantly white lower-class women from the Netherlands, Belgium, France and Northern Germany. During the Seventies, in the wake of the sex trips made by Dutch men in South-East Asia, sex operators introduced women from Thailand and the Philippines. In the 1980s there was a second wave from Latin America and Africa. In the 1990s, after the fall of the Soviet Union, women came from Eastern Europe. Foreign prostitutes are economically motivated to come to the Netherlands and they tend to travel to engage in sex work between the Netherlands, Germany, Belgium and other European societies.

Street prostitution exists in ten Dutch cities and involves on average some 320 prostitutes daily. Between 3,500 and 4,000 prostitutes are employed daily in 600-700 clubs and private brothels. The extent of other forms of prostitution such as escort agencies and home-based prostitution is less clear. The police, municipalities and municipal medical and health services do not have sufficient data on this. The only certainty is that home-based prostitution occurs in at least seventeen municipalities and that escort agencies exist in at least twenty-eight municipalities. The police

estimates that over half of the total number of male and female prostitutes in the Netherlands are foreigners.

The Netherlands is listed by the United Nations Office on Drugs and Crime as a top destination for victims of human trafficking<sup>95</sup>. Countries that are major sources of trafficked persons include Thailand, China, Nigeria, Albania, Bulgaria, Belarus, Moldova, Ukraine, Sierra Leone and Romania.

Currently human trafficking in the Netherlands is on the rise according to figures obtained from the National Centre against Human Trafficking. The report shows a substantial increase in the number of victims from Hungary and China. There were 809 registered victims of human trafficking in 2008, 763 were women and at least 60 percent of them were forced to work in the sex industry<sup>96</sup>.

Within the Netherlands, victims are often recruited by so-called “loverboys”, men who seduce young Dutch women and girls and later coerce them into prostitution. Many victims of human trafficking are led to believe by organized criminals that they are being offered work in hotels or restaurants or in child care and are forced into prostitution with the threat or actual use of violence. Estimates of the number of victims vary from 1,000 to 7,000 on a yearly basis. Most police investigations on human trafficking concern legal sex businesses. All sectors of prostitution are well represented in these investigations, but particularly the window brothels are overrepresented.

In the end of 2008 a gang of six people were sentenced to prison terms of eight months up to 7½ years in what prosecutors said was the worst case of human trafficking ever brought to trial in the Netherlands. The case involved more than one hundred female victims, violently forced to work in prostitution.

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<sup>95</sup> BBC News, "UN highlights human trafficking", 26 March 2007. Retrieved 27<sup>th</sup> March 2010.

<sup>96</sup> Crossroadsmag.eu, "Dutch authorities register 809 human trafficking victims : Crossroads", 9<sup>th</sup> February 2009.

### **3.6 Harm reduction principle**

As it emerges from the overall portrait, legalization helps improve working conditions and health protection, but it does not succeed in eradicating exploitation where it exists. The rights of prostitutes are more explicit, as the industry now has to comply with labor laws. It has the same obligations as any other sector, relating to tax and social insurance contributions. The government publishes booklets for prostitutes and their employers, containing information on social insurance and related matters. They examine the comparative advantages of employment and self-employment, and their respective rights and obligations.

The reasoning behind the policy of tolerance, the same applied for soft drugs, is harm reduction, namely the belief that the enforcement of anti-prostitution laws would be counterproductive and that tolerating such activities allows for their control with the aim of reducing as much as possible potential damages and bad effects. Through regular inspections to ensure that brothels conform to the licensing conditions, the police is in a position to pick up signs of human trafficking. They obtain precious information that can be immediately used to trace and prosecute offenders in both the regulated and unregulated sectors. In the Netherlands a special phone line was opened so that members of the public can anonymously report suspicious activities. Article 250a of the Dutch Criminal Code, which prohibits traffic in persons and exploitation of prostitutes, is strictly enforced. The law enforcement authorities in the Netherlands give priority to combating traffic in persons, exploitation of prostitutes and employment of minors in prostitution.

There is also another positive effect of legalization: the end of social stigmatization. This is a major problem for many women, especially if we consider that sometimes sex working is the occupation of a single life period. Combating the social bias against sex workers also contributes to create a feeling of tolerance and cooperation with the rest of the community, including the authorities engaged in the struggle against organized crime.

In the Netherlands the “Red Thread” (*De Rode Draad*) has played a role in this respect: this advocacy organization was founded in 1985 with the aim of bringing legitimacy to the prostitution industry by seeking regulation via labor, employment and health laws. Moreover the Red Thread has worked against the stigmatization of prostitutes, considering prostitution a valid choice. They have never self-identified as a feminist group. Their activity was interrupted in September 2012: the group went bankrupt due to the lack of grants and donations it was dependent on.



# Chapter Four

## The floor to sex workers

### 4.1 Sex workers as an interest group

The separation between exploitation and prostitution, which has been the definite premise of our argument about sex working as a “matter of freedom”, also emerges when we consider as an interest group any prostitutes’ movement which compiles manifestos and solemn declarations of rights to acquaint the decision-maker with its own legitimate claims and priorities – we could say “category interests”.

What is more striking in the debate about sex working is the substantial absence of the directly interested people from the “bargaining table”. The persons who are usually consulted in public conferences or in parliamentary hearings include a wide range of experts, going from scholars to robust feminists and politicians. But nobody asks sex workers to express their own views.

The outcome is that we are quite used to hearing philosophers and commentators speculating about prostitution, but sex workers are rarely listened to. There is a sort of compulsory intermediation as if letting the floor to sex workers was something unusual and definitely improper. Yet the reality is quite different. There are some movements, which are well organized and have clear ideas about what policymakers ought to carry out for the sake of sex industry. Let us review some of them. As we will see, they formulate claims and requests on behalf of voluntary prostitution. In general there is condemnation toward exploitation, but in some cases the issue is completely ignored because it is not considered as a matter of their concern. And this demonstrates, once again, that a “right” to prostitution exists as something separate and autonomous from the crime of exploitation.

### 4.2 The Global Network of Sex Work Projects

The Global Network of Sex Work Projects (NSWP is the acronym) is an interesting experience combining two elements: the transnational nature of a

worldwide organization along with a special membership regime. The global dimension of the NSWP has entailed the creation of a multi lingual website with a special attention to dialogue and culture diversity. NSWP members are regional sex work networks and organizations from all global regions. To become a member an organization agrees to:

- Recognize sex work as work;
- Oppose all forms of criminalization and legal oppression of sex work (including sex workers, clients, management and others related to prostitution);
- Support for self-organization and self-determination of sex workers.

From the above mentioned requirements we can already notice that there is no explicit reference to exploitation or coercion, but the NSWP mission is conceived as a struggle for sex workers' emancipation in terms of civil and social rights, namely health and social services, freedom from discrimination, equal opportunities in employment.

It is no surprise that the network was initially established as an informal alliance in 1992 by a group of sex workers, who had no concern with smugglers or violence, but they wanted to improve their condition as workers. These activists first met at the 2<sup>nd</sup> International Conference for NGOs working on AIDS in Paris in November 1990. In 2002 NSWP was registered and a secretariat was established in South Africa. After the collapse of the secretariat in 2004 NSWP again became an informal alliance relying primarily on individual members volunteering to continue its work.

The NSWP was registered in 2008, following an organization review in 2006 that created a permanent secretariat with a staff and an accountable management structure to carry out a strategic plan of communications, capacity building and advocacy. Moreover the review recommended the NSWP to become a network of organizations rather than individuals. Nowadays members are regional sex work networks from all over the world. Some organizations work with all genders, some with only transgender people or women. A number of member organizations work

with sex workers' children. However the organization is led and represented by sex workers, who are meaningfully involved at all levels. Organizations wishing to apply for membership must complete an application and consent form indicating the geographic region they wish to join (Europe, Latin America, North America and the Caribbean, Africa, Asia and the Pacific).

The NSWP Board of Directors consists of eleven members; two representatives from each of the five regions and an elected President. Regions determine their own criteria and method for appointing the Board members. The NSWP Secretariat was established in January 2010 in Edinburgh in Scotland, where the Global Coordinator, the Office Manager (administration and financial management systems) and the UNAIDS Advisory Group Liaison Officer are based.

To the end of our analysis about the separation between prostitution and exploitation, it is important to notice that in the list of documents and aims of the NSWP there is no reference to trafficking of human beings, smuggling or coercion. Instead the NSWP describes as a small victory the replacement of the term "prostitution" with "sex work", and this stresses again the paramount struggle for the recognition of sex work as a job. Evidently this does not mean that exploitation does not exist, but the NSWP deals with sex work intended as the outcome of a voluntary choice. The NSWP aims to improve working conditions of people – male, female and transgender – who consciously and autonomously have opted for this kind of employment. In this framework there is the need to oppose the forms of criminalization and to preserve sex workers' health. This is why the NSWP organizes regularly International AIDS Conferences by providing a number of documents available online against the dissemination of this global epidemic. The NSWP publishes annually the Research for sex work, whose first issue goes back to 1998. Since then the various versions have dealt with subjects such as empowerment, peer education, health services, migration, mobility, money, law enforcement and pleasure. There is no reference to exploitation, not because it does not exist, but

because it does not fall in the field of interest for the NSWP that intends sex work as a free choice.

### **4.3 The French STRASS**

Since 2009 it exists in France a trade union for sex working, which is also a member of the International Committee for the Rights of Sex Workers in Europe<sup>97</sup> and, like this one, of the NSWP. It is worth reporting the presentation of the STRASS as it appears on the website<sup>98</sup>:

“We allow sex workers to take back their voice in the public debate about their professional activity. We have had enough of being silenced by other speakers presented as specialists on the subject (doctors, Catholics and other moralists, abolitionists...). We fight against moral judgment that makes us victims or anti-role models. We inform the general public of the reality of France’s policy against sex workers, particularly its disastrous effects on our rights and our freedom as individuals. We go and meet sex workers, we inform them about their rights and give them practical leaflets on how to use them. We try to give advice and support them in what there’re doing”.

From these paragraphs it is evident what is the nature of this combative and determined trade union. It is not a case that French sex workers decided to organize themselves in a “syndicat”: their claims concern civil and social rights. They oppose the abolitionist culture which is, in their view, the product of a moralist approach to society. They ask for “emancipation” on the grounds that “every sex worker has the same rights as anyone and any worker”.

It is also interesting the mixture of specific skills that the STRASS represents: “We are prostitutes (street workers or working indoors), porn actresses/ actors, erotic masseuses, professional dominatrix, sex phone/webcam operators, strippers, erotic models, escorts etc. The STRASS is particularly attentive to women-by

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<sup>97</sup> The ICRSE is a European network of sex workers and allies. it was formed in 2004 to organize the 2005 “European Conference on Sex Work, Human Rights, Labour and Migration” in Brussels.

<sup>98</sup> The site is available at <http://site.strass-syndicat.org/>.

adopting a feminist perspective based on the right of every woman to control their own body – and to migrants – by adopting a critical perspective towards immigration policies that put them in danger”. Women’s right “to control their own body” recalls the principle of self-ownership, as formulated by the Enlightened philosopher John Locke, and it reveals a libertarian feminist approach.

The main target of the STRASS is represented by the limitations imposed by the state that, in the French case, is quite prohibitionist toward sex working. They ask for recognition of their job, for a better social security system (in return for their taxes), they fight for the repeal of the French law that criminalizes public soliciting. In this regard the STRASS explains that this limitation increases police’s arbitrary action against women working on the street who risk to be fined and jailed (up to two months). This is a crucial point: anti-prostitution ban “isolates” sex workers making them more precarious and more vulnerable to STDs. Moreover, the STRASS activists advocate the repeal of legal provisions against pimping because it is an obstacle to organize the job in group as well (sharing, for instance, the same workplace to reduce the costs individually supported). Moreover, since anyone who benefits from sex workers’ income may be blamed of “pimping”, this provision is particularly detrimental to prostitutes’ welfare as it contributes to isolate them, even from their family.

The STRASS platform refers to exploitation only in one sense: it severely condemns forced prostitution by assimilating it to servitude, slavery and trafficking. In 2013 I grasped the occasion to meet the STRASS’s leader Morgane Merteuil, a 26-years old prostitute living in Paris. That meeting gave me a concrete experience of the gap existing between prostitution as it is “described” by external observers and prostitution as it is actually “lived” by persons involved. I asked to the young leader what policies the STRASS demands against exploitation. Her frank answer was that such issue is not their main concern at all, rather they consider it a “marginal matter” because it does not involve STRASS membership. The trade union’s members are voluntary prostitutes who do not feel either exploited or forced to do anything. This is

why their position on the matter does not go beyond the due condemnation of criminal activities. Besides the STRASS makes clear that the law against exploitation and minors' sex working already does exist; consequently they oppose the attempt to "go further by sanctioning the clients of adult sex workers in absence of any abuse or violence". In other words, if the state imposes further anti prostitution bans on behalf of the struggle against exploitation, the STRASS will consider it "a blow to our sexual freedom". This is the point: those who try to assimilate prostitution and exploitation, in most cases their very aim is to find an excuse for anti-prostitution legislation.

To better understand the libertarian nature of the STRASS claims, let us consider that one of the main slogans is "Pro porno, pro sex, pro pute" (i.e. in favor of pornography, sex and prostitutes). The leader Morgane Merteuil authored a pamphlet entitled "Libérez le féminisme" (Free feminism), a wit attack against French feminists' moralist approach to prostitution. Merteuil, who started prostituting to pay for her studies, advocates a "pluralistic feminism, that respects the diversity of people and desires as a matter of fact. Feminism intended as a fight against a system oppressing women should struggle so that each woman is enabled to live her life as she wishes". The argument that anti prostitution feminists use is the submission to a male-centered culture, but Merteuil replies that voluntary prostitution does exist, and that the real problem is represented by laws criminalizing sex workers and preventing them to organize themselves (for instance, to rent a flat as a co-working place). Usually Merteuil offers sexual services at the client's place, she does not work at home where she lives with her boyfriend. "We do not want the return to closed houses – she tells me – but the current law condemns us to work in the darkness"<sup>99</sup>.

If you give a look at the STRASS website, in the right column of the homepage you can observe the "Sidaction 2013" symbol: this is a campaign of paramount value for the trade union, as for the NSWP. Still today the danger "number one" for sex workers is the HIV epidemic.

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<sup>99</sup> Chirico, A., "Si chiama Morgane la leader francese Pro porno, pro sexe, pro pute!", Panorama weekly magazine, 10th September 2012.

#### **4.4 The Italian Committee for Prostitutes' Civil Rights**

In 1982 a group of activists found the Italian Committee for Prostitutes' Civil Rights, a no-profit association aimed at the promotion of sex workers' dignity and their empowerment. Let us notice that the Committee has no reluctance to use the term "prostitute", while the STRASS, as we have already underlined, prefers to use a more politically correct term, that is "sex worker". It is worth also noting that the Italian Committee focuses its action on women prostituted, rather than men or transgender.

It must be admitted that the Committee seems less active in the last years, at least with regard to the campaigns which have been actually promoted. The membership is open to all persons sharing the aims established by the lengthy Statute.

The goal of the Committee is summed up in the following payoff: "Because sexual freedom is not negotiable. Neither the State nor the Church can decide in our place! The State must safeguard the respect for diversity". How to better explain the core value of self-determination? This is why the Committee is explicitly devoted to promoting civil rights of people who choose to be prostituted.

In this regard it is worth recalling the attention on a paradox contained in the Manifesto of the Committee entitled "Beyond Tolerance and Compassion for the Recognition of Rights"<sup>100</sup>:

"When we are whores, informers, quiescent, blackmailed or exploited we are tolerated, instead when we claim to enjoy the same rights as other citizens, when we claim for the right to our physical integrity, freedom of choice and self-determination, we are persecuted and mined".

The Committee asserts the existence of a double-standard paradigm: when they are victims of coercion, there is a substantial "tolerance" on the part of public authorities; instead when prostitution is the outcome of a free choice, in absence of any form of violence, prostitutes are treated as a problem and in fact they are victims of persecution. In particular, the Committee dwells on the abuse of power on the part

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<sup>100</sup> The Manifesto is available at <http://www.lucciole.org/content/view/20/11>.

of police and public officials on behalf of repression. The “demand for order” is used, according to the Committee, as a dangerous tool with the aim to stigmatize prostitutes; the only effect is social exclusion.

Exploring the website of the Committee<sup>101</sup> is a useful activity. There is a great deal of “political documents”, philosophical essays, press releases, books (rigorously written by sex workers). Most projects concern prevention measures and awareness campaigns against HIV/AIDs and STDs. The Committee has worked with several prestigious institutions such as the Health Ministry during a campaign against the diffusion of HIV/AIDS. It is also a permanent member of the National Focal Point of AIDS and of the observatory board created at the National Institute for HIV/AIDS prevention. It organizes training courses for peer educators, cultural mediators, street operators, social and health operators with the objective of raising awareness among social services on intervention methods applied by TAMPEP<sup>102</sup>, that is an international networking and intervention project operating in twenty-five countries in Europe with the aim to act as an observatory in relation to the dynamics of migrant prostitution across Europe.

In conclusion the issue of exploitation exists in the theoretical landscape of the Committee, but, as explains the Secretary General Pia Covre, it is not a matter of their concern because the Committee is composed of prostitutes who deal with social and health problems. I ask her if they have treated some cases, and she remembers no case of this type. Exploitation is severely condemned but in fact it is not deeply investigated in terms of policies to carry out. By contrast the Committee stresses the double-standard attitude of those policymakers who care about prostitution only with regard to exploitation without any attention for the “other side of the moon”, namely the freely chosen activity.

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<sup>101</sup> The website of the Committee is available at [www.lucciole.org](http://www.lucciole.org).

<sup>102</sup> The website is <http://tampep.eu/index.asp>. The Coordination Centre of TAMPEP is located in Amsterdam.



## *Conclusion*

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. 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 authoritarian regime than to a liberal democracy.

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. But it is often used as a rhetoric argument against prostitution as such, and 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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