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"The world's oldest oppression"

An intersectional abolitionist look at the sex trade

ABSTRACT

Falsely referred to as the world's oldest profession, prostitution has been the object of numerous legitimization attempts at the service of patriarchal and neoliberal capitalist elites. This paper confronts some of the main arguments put forward for the legalization and regulation of prostitution and makes the case for its abolition using an intersectional and radical feminist lens. The discussion starts by exploring the connection between prostitution and the patriarchal, neoliberal capitalist, and racial cultural systems of oppression and domination. In this respect, this paper contends that understanding the sex industry as a vestige of such three systems makes it an intolerable practice to any democratic and egalitarian society. Secondly, this paper confronts pragmatic arguments advanced by legalization advocates by exploring the unbreakable ties between "voluntary prostitution" and sexual exploitation and trafficking on the one hand, and the demonstrated practical unworkability of regulatory models, on the other. Based on such considerations, this paper portrays abolitionism as the most feasible solution to the prostitution dilemma.

KEYWORDS

Prostitution, Legalization, Abolitionism, Systems of Oppression, Sex trafficking, Intersectionality

BIO

My name is Marina Pinedo, I am a young researcher from Spain. Seeking to build a career as a human rights advocate, I moved to the United Kingdom to study Law at the University of Warwick and later a Master's degree in Gender Studies at the London School of Economics and Political Science. With a wide array of interests, including feminist politics and philosophy, refugee protection, and human rights advocacy among others, I am currently looking to make myself a space as a lawyer or researcher in the humanitarian sector, and hoping to learn enough along my journey to be able to one day become a feminist scholar and academic in Spain.

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Deciding on the most appropriate legislative approach to prostitution remains an open debate encompassing many different positions. Catherine MacKinnon referred to the main two as the “sex work” and the “sexual exploitation” approaches.¹ The former, also known as the legalization model, conceives prostitution as a legitimate job and an empowering expression of the prostitute’s autonomy. As such, proponents of this model advocate for the implementation of regulatory frameworks that put an end to the current precarious working conditions of sex workers.² This model has been adopted in countries such as, inter alia, Germany, the Netherlands, and New Zealand.³ On the other hand, the “sexual exploitation” approach sees prostitution as a vestige of patriarchy and an industry that profits from the vulnerabilities of women with limited alternatives. Supporters of this model hence vindicate for its abolition often through the imposition of criminal sanctions against pimps and buyers.⁴ This approach has been adopted in countries like Sweden, Norway, Iceland or Northern Ireland.⁵

This paper makes an argument for the abolition of the prostitution business by attending to both ideological and practical considerations. It commences by analysing the relation between prostitution, patriarchy, capitalism, and neo-colonialism in order to understand the sex business as an inherently oppressive institution that should not be legitimized by appeal to an individual right to bodily self-determination. Secondly, it explores the often-ignored connection between “voluntary prostitution” and sex trafficking and exploitation. Finally, it counters pragmatic arguments within “sex work” approaches by evidencing the law’s limited capacity to make this industry safer for prostituted people and to achieve the objectives sought by such approaches.

¹ Catherine A. MacKinnon, "Trafficking, Prostitution, and Inequality" [2011] 46 (2) *Harvard Civil Rights Civil Liberties Law Review* <<http://0-heinonline.org.pugwash.lib.warwick.ac.uk/HOL/Page?handle=hein.journals/hcrcl46&div=14>> accessed 20 May 2020

² *Ibid*

³ Lizzie Porter, "Where is it legal to buy sex in Europe?" *The Telegraph* (12 April 2016) <<https://www.telegraph.co.uk/news/2016/04/12/where-is-it-legal-to-buy-sex/>> accessed 20 May 2020

⁴ Catherine A. MacKinnon (n1)

⁵ Lizzie Porter (n3)

Free will and the exploitative nature of prostitution

The main pro-legalization argument stems from the neoliberal capitalist conception that everything is subject to be sold in the market provided all parties consent to it.⁶ According to this view, since women's decision to enter the sex industry and trade their sexual services for money or other compensation is free and rational, prohibitions of such exchange constitute an attempt against their liberty and bodily self-determination.⁷ However, it is arguable that the *raison d'être* of the State is precisely to set limits on our free will so as to ensure it complies with the moral principles that we, as a society, value and endorse.⁸ If consent were the criterion to decide whether something constituted a violation of our human rights, practices such as slavery would have never been abolished given that "an important element of slavery was the acceptance by many of their condition as slaves".⁹ Despite this, Abraham Lincoln claimed that no citizen could have the right to possess, buy, or sell another human being.¹⁰ As with slavery, there exist strong reasons why states should limit citizens' freedom to commercialize their bodies and sexuality. Not only does prostitution affect the image of what women are and what can be expected and done to them, conveying to society that it is possible to get sexual access to their bodies as long as it is paid for.¹¹ But most importantly, our bodies are arguably the most intimate sphere of our subjectivity, the location of ourselves. Its fragility requires protections because, as Pilar Aguilar claims, "it constitutes us but can also destroy us".¹² Our bodies should, for this reason, constitute the last barrier against market forces.

The patriarchal roots of prostitution

In addition to the above, it is also significant to understand the roots of the prostitution business. Evidence shows that at least 80% of people in the sex trade are women and girls, the majority of them being immigrants, racialized, and impoverished.¹³ As Professor Rosa Cobo notes, this is because

⁶ Rosa Cobo, *La prostitución en el corazón del capitalismo* [Prostitution at the heart of capitalism] (Los libros de la catarata, 2017)

⁷ Ibid.

⁸ Pilar Aguilar and others, *Debate prostitución. 18 voces abolicionistas* [Prostitution debate. 18 abolitionist voices] (First edition, La Moderna, 2019)

⁹ Kathleen Barry, *The prostitution of sexuality* (New York University Press, 1995)

¹⁰ Reinesylviane, 'La prostitución no es sindicable' [Prostitution cannot be syndicated] (*Lluís Rabell*, 2 September 2018) <<https://lluissrabell.com/2018/09/02/la-prostitucion-no-es-sindicable/>> accessed 20 May 2020

¹¹ Pilar Aguilar and others (n8); A 2018 research conducted by Pierrette Pape studied the impact of prostitution on the mentalities of young people in the South of France, exposing the ways in which prostitution can contribute to an unequal and unhealthy representation of women and men's sexuality. For more information look at: Pierrette Pape "Prostitution and Its Impact on Youth: Violence, Domination and Inequality" (2018) *Indian Journal of Women and Social Change*, 2(2), 146-154.

¹² Pilar Aguilar and others (n8)

¹³ Luisa Posada Kubissa, "Critical reflections on prostitution from the abolitionist model" [2019] 9 (S1) *Oñati Socio-legal Series* <<http://opo.iisj.net/index.php/osls/article/viewFile/1023/1156>> accessed 20 May 2020.

prostitution arises in the intersection of three systems of domination: the patriarchal, the neoliberal capitalist, and the racial/cultural.¹⁴ These connections will now be explored to question whether most women indeed enter prostitution of their own volition or rather owing to underlying social, political and economic inequalities which turn this “work” into a form of sexual exploitation.

Arguably, prostitution is the most brutal and evident example of a patriarchal order where women are resigned to the role of sexual object – a commodity which exists for someone else and not herself – and who is then bought and used by men – conceived as sexual agents with the right to have their ‘natural and irrepressible’ sexual urges satisfied. Far from resembling a contract among equal parties, prostitution reproduces unequal relations of dominance and subordination between men and women as well as normative conceptions of masculinity and femininity.¹⁵ Solid evidence may be found in its historical context. In the 80s and 90s, the sex industry reached unprecedented dimensions due partly to an ideological rearmament of patriarchal societies that responded to the advances of radical feminism in the previous decades.¹⁶ One of the main feminist critiques addressed the so-called ‘sexual contract’.¹⁷ This “contract” provided that men could have sexual access to women both through marriage and prostitution, these two being fundamental patriarchal institutions which defined women’s essence based on their reproductive and sexual functions respectively. According to Professor Cobo, the feminist redefinition of women’s identity as independent subjects, separated from these sexual and reproductive roles, caused significant damage to patriarchal power structures and ideas of traditional masculinity. This radical phenomenon led numerous men to the brothels in an attempt to strengthen such masculinity and to reconsolidate female sexuality as exclusive for male use.¹⁸ For this reason, Nancy Fraser asserted that prostitution was used by male clients not to “buy a body, nor sex, but a fantasy of dominance and traditional masculinity”.¹⁹

Despite its patriarchal roots, proponents of the sex work approach often argue that prostitution can be empowering and transgressive because it involves female sexual expression and thus confronts traditional oppressive ideas of female modesty.²⁰ However, we saw above that feminine sexuality is not a foreign concept to patriarchy. Modesty has always been imposed on the figure of the wife, limiting her sexuality to the confines of her reproductive role. But patriarchal societies have

¹⁴ Rosa Cobo, "Introduction. Pornography and prostitution in the patriarchal order: abolitionist perspectives" [2019] 9 (S1) Oñati Socio-legal Series <<http://opo.iisj.net/index.php/osls/article/viewFile/1108/1154>> accessed 20 May 2020.

¹⁵ Luisa Posada Kubisa (n13)

¹⁶ Rosa Cobo (n6)

¹⁷ The idea of the ‘sexual contract’ was hinted by Carol Pateman in *The Sexual Contract* (1988) Stanford, Calif: Stanford University Press.

¹⁸ Rosa Cobo (n6)

¹⁹ Pilar Aguilar and others (n8)

²⁰ Ayme Roman, 'Abolicionismo de la prostitucion: los datos, los argumentos, las propuestas y los problemas' [Abolitionism of prostitution: the data, the arguments, the proposals and the problems] (*Ayme Roman*, 14 April 2019) <<http://aymeroman.blogspot.com/2019/04/abolicionismo-de-la-prostitucion-los.html>> accessed 20 May 2020.

simultaneously overemphasized the sexuality of the prostitute as a means to satisfy men's sexual urges. For this reason, sex and sexual expression are not in themselves necessarily empowering. Let alone if we leave unquestioned whether such sex is free and physically and psychologically safe for women.²¹ Nor is it transgressive of normative femininity and patriarchal morality to hold that women may consent to sex without necessarily desiring or enjoying it. This rather reinforces patriarchal mandates by conveying that men are the ones who desire and women are passive recipients of such desire whose role is merely to consent to what is done to them.²² Feminist claims like "my body, my decision" should serve to free women from oppressive roles and sexual and reproductive exploitation, not to maintain them.²³

Lastly, the claim that women's decision to enter the sex trade constitutes an expression of their individual autonomy could be put into question by understanding the power that predetermining factors such as unequal gender socialization have over such decisions. As some authors point out, prostitution "is contingent on a culture which constructs women's identity around their sexual availability".²⁴ Women are socialized following a model of femininity articulated around the objectification of their bodies. Sexuality is regarded in this context as the true female ontology, her essence.²⁵ Our subjectivity is heavily marked by this socialization, influencing our personal perceptions, preferences and decisions.²⁶ It is highly significant for example that a substantial number of women in prostitution suffered sexual abuse during childhood.²⁷ Childhood abuse often leads victims to "feel valued and approved when being sexually violated in a context of feeling fundamentally worthless", and several studies prove that it usually leads to later sexual victimization, including prostitution.²⁸ It is dubious whether the choice to assume a role previously assigned to women through socialization can truly be labelled as autonomous.²⁹ If entering the sex industry was a truly independent of these sorts of predetermining factors, we could question, as Wollstonecraft did, why it is that "necessity never makes prostitution the business of men's lives," but countless

²¹ Ibid.

²² Ibid.

²³ Pilar Aguilar and others (n8)

²⁴ Rosa Cobo (n6)

²⁵ Ibid.

²⁶ Ibid.

²⁷ A series of interviews conducted with more than 800 prostitutes and former prostitutes in nine different countries demonstrated that 63% of the interviewees had suffered childhood abuse. Source: Melissa Farley and others, "Prostitution and Trafficking in Nine Countries" [2004] 2 (3/4) *Journal of Trauma Practice* <https://www.tandfonline.com/doi/abs/10.1300/J189v02n03_03> accessed 20 May 2020.

²⁸ Catherine A. MacKinnon (n1); Diana E.H. Russell, "The Secret Trauma: Incest in the Lives of Girls and Women" [1987] 93(1) *American Journal of Sociology* <<https://www.jstor.org/stable/2779698>> accessed 20 May 2020.

²⁹ What is being done here is not to categorically deny the autonomy of female prostitutes given that this is a very complex matter that crucially depends on the conception of autonomy at play. Instead, what this article suggests is that an act which coincides with the sexist norms that form part of women's socialization are not necessarily autonomous and empowering.

women fall into it systematically.³⁰ When questioning whether prostitution should be regularized and legitimized, we should further question whether we wish to legitimize everything it feeds upon.

Prostitution in capitalist economies

Prostitution can also be framed in the context of a neoliberal capitalist system where men are the demanders and women the raw material offered.³¹ This system takes advantage of the economic necessities of women who are impoverished, homeless, drug addicts, uneducated or unemployed, many of whom see prostitution as their only means of survival. According to several studies, “urgent financial need is the most frequent reason mentioned [...] for being in the sex trade”.³² It is also significant that 75 percent of the 800 female prostitutes interviewed in a multi-country study was homeless.³³ Despite this, few of them get out of poverty through prostitution and rather get further impoverished, sometimes ending up in debt bondage, regarded as a form of slavery.³⁴

The sex industry reached international dimensions with the globalization of markets in the seventies and eighties.³⁵ As a result, women from countries with high rates of poverty and cultures of contempt for women were transferred to wealthy countries where the national demand was not met by local women.³⁶ As S. Jeffreys pointed out, the prostitution by rich countries of women from poor countries in the 20th century could be considered as “a new form of sexual colonialism”.³⁷ Nowadays, prostitution has become a key development strategy for countries with weak economies, which benefit from the money sent back by women abroad.³⁸ Sex tourism has also become a way to generate income and attract hard currency mostly in Asian countries.³⁹ This form of prostitution consists in punctual migrations by demanders, usually from wealthy countries, for the purpose of buying cheap sex with racialized women and often children.⁴⁰ The Thai prime minister himself stated that “a generation of women must be sacrificed to achieve economic development in the country”.⁴¹ This way, the number of foreign visitors in Thailand raised from 2 million in 1981 to 7 million in

³⁰ Mary Wollstonecraft, *A vindication of the rights of woman, with strictures on political and moral subjects: with a biographical sketch of the author* (Outlook Verlag GmbH, 2018)

³¹ Rosa Cobo (n6)

³² Catherine A. MacKinnon (n1)

³³ Melissa Farley and others (n27)

³⁴ Catherine A. MacKinnon (n1)

³⁵ Rosa Cobo (n6)

³⁶ Ibid.

³⁷ Sheila Jeffreys, *La industria de la vagina, La economía política de la comercialización global del sexo* [The Vagina Industry, The Political Economy of the Global Sex Trade] (Paidós, 2011)

³⁸ Mariana Carbajal, 'Vamos hacia una pedofilización de la trata' [We're moving towards a pedophileization of trafficking] (*Pagina12*, 7 June 2009) <<https://www.pagina12.com.ar/diario/sociedad/3-126224-2009-06-07.html>>

³⁹ Ibid.

⁴⁰ Rosa Cobo (n6)

⁴¹ Mariana Carbajal (n38)

1996.⁴² In addition to this, prostitution constitutes around 8% of the Chinese economy and generates approximately about 14.5 billion euros per year in Germany.⁴³ It also generates around 5 to 7 billion dollars to criminal organizations, and international institutions such as the World Bank and the IMF have encouraged countries to develop an “entertainment and leisure industry” to ensure debt repayment.⁴⁴ Prostitution could thus be considered a form of exploitation at the service of capitalist interests.

Analysing who are the main beneficiaries of the sex business reveals who are many times behind efforts to regulate sex work as well as the real motives behind them, which are more economic and egotistic than feminist and humanitarian. Due to the numerous benefits yielded from prostitution, patriarchal and capitalist elites have attempted to hide its exploitative nature by masking it as just another market transaction. As noticed earlier, for many women, prostitution is a matter of survival rather than choice. Their lack of real alternatives would under normal circumstances render their consent as vitiated and the sexual act as a crime of rape in many countries. However, within the capitalist logic, money acts as a legitimizing agent, burying all moral and political considerations and turning prostitution into an unquestionably lawful exchange.

The consumption of exoticism

Lastly, women belonging to cultures, races, or world regions that the ethnocentric West has traditionally regarded as inferior are disproportionately more susceptible to falling into prostitution.⁴⁵ Evidence shows that 90% of prostituted women in Europe are impoverished immigrants.⁴⁶ In the United Kingdom, for example, three-quarters of the women in prostitution are of Balkan, African or South-East Asian origin.⁴⁷ This, on the one hand, owes to the fact that prostitution often represents the only means of generating income for women with irregular migrant status.⁴⁸ On the other hand, results from the western oppression and devaluation of non-whites as well as the hypersexualization and fetishization of racialized women following sexual stereotypes of cultural exoticism and promiscuity. Such stereotypes portray these women as eroticized sex objects, exotic, sexually loose and insatiable, who are “eager participants in prostitution and pornography”.⁴⁹ Racial fetishization makes women of colour more prone to end up in prostitution because of the heightened demand of

⁴² Rosa Cobo (n6)

⁴³ Ibid.

⁴⁴ Mariana Carbajal (n38)

⁴⁵ Rosa Cobo (n6)

⁴⁶ Pilar Aguilar and others (n8)

⁴⁷ Sheila Jeffreys (n37)

⁴⁸ Rosa Cobo (n6)

⁴⁹ Cheryl Nelson Butler, “A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America” [2016] 27 (1) Yale Journal of Law & Feminism <https://digitalcommons.law.yale.edu/yjlf/vol27/iss1/3/?utm_source=digitalcommons.law.yale.edu%2Fyjlf%2Fvol27%2Fiss1%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed 20 May 2020.

ethnic women makes them clear targets of human trafficking;⁵⁰ and because the internalization of denigrating sexual stereotypes usually leads them to believe “society would give and expect nothing more of them”, thus resigning themselves to prostitution.⁵¹ The “choice” of entering prostitution is hence for many women of colour not free, but rather induced through coercion and oppressive racial socialization.

After demonstrating the connection between prostitution and the patriarchal, neoliberal capitalist, and racial/cultural systems of domination, it is relevant to make two concluding remarks. Firstly, if prostitution is understood as the embodiment of gender, racial and class oppressions, its legalization would necessarily legitimize, reinforce and reproduce such oppressive structures and undermine the eradication efforts carried out for decades by numerous human rights movements and democratic societies. This essay argues that the struggle to achieve a just society free of inequalities will be futile with the simultaneous legitimation of an industry that profits precisely from such inequalities and the vulnerabilities they create.

Moreover, contrary to claims that, for the most part, women enter prostitution freely and that their decision should therefore be respected, further analysis shows that such is rarely the case, and that their decision is usually induced by coercion, necessity, or misogynistic socialization. A series of interviews conducted with more than 800 prostitutes in nine different countries demonstrated that 89% of them wanted to escape prostitution, and, even in Germany, where sex work is legalized, 85% of them wished to leave.⁵² Considering additionally that approximately 48% of women in prostitution are under the age of 18, and that, as we will see later, a significant percentage of people in the prostitution market have been trafficked, it is arguable that consent does not indeed exist in a large number of cases.⁵³

Richard Poulin claimed that arguing women choose to end up in prostitution is like saying there were countries that made the decision to be colonized.⁵⁴ Just like colonialism, prostitution is a system of domination, not a matter of choice.⁵⁵ But we face a liberal reasoning that individualizes each case by reducing them to acts of personal choice and conceals their political nature: “The critiques of power relations that characterized the feminist movement in the late 1960s and early 1970s have been replaced by the apolitical emphasis on the personal choice of hopelessly mired individualism”.⁵⁶ When considering the prostitution debate, we should avoid confining freedom within the limited concept

⁵⁰ Ibid.

⁵¹ Cheryl Nelson Butler (n49)

⁵² Melissa Farley and others (n27)

⁵³ Mariana Carbajal (n38); European Parliament, 'Sexual exploitation and prostitution and its impact on gender equality' [2014] <[https://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf)> accessed 20 May 2020

⁵⁴ Mariana Carbajal (n38)

⁵⁵ Ibid.

⁵⁶ Kathleen Barry (n9)

of consent, and should consider the full array of experiences of oppression and exploitation visited upon *women as a class*.⁵⁷

The “shadow” of trafficking over the prostitution debate

As noted above, trafficking constitutes a major supply source of the sex trade. Some countries estimate that between 60% and 90% of people in their national prostitution markets have been trafficked.⁵⁸ However, sex-work advocates argue that considerations about trafficking only cloud the prostitution debate and ask for them to be set aside in favour of discussions about legal protections for non-trafficked prostitutes. Lora Deltoro, for example, claims that while instances of forced prostitution must be criminally prosecuted, “voluntary prostitutes, even if they make up only 5%, [should still] be considered employees or self-employed workers and enjoy the protection afforded by labour legislation”.⁵⁹ In this way, sex-work advocates deny any real connection between both phenomena.

Contrary to this, it is arguable that even if admittedly there exists a minority of women in a more comfortable financial situation and enjoying greater freedom of action who may be said to enter prostitution freely and voluntarily, it is not possible to regulate such cases while fighting sexual exploitation and human trafficking simultaneously. Trafficking and prostitution are both parts of a same system. Like two sides of the same coin, they cannot exist independently of one another.⁶⁰ This is because the former exists precisely to provide women for the latter.⁶¹ The case of Germany demonstrates that the already strong demand for prostitution drastically increases with legalization.⁶² However, there are not enough women who enter prostitution voluntarily to meet that demand, so the sex market will recruit vulnerable women in need through trafficking and exploitation.⁶³

This is for example evidenced by a 2012 research, conducted in 150 different countries, showing that legalization has often led to higher sex trafficking inflows.⁶⁴ In 2001, in Germany, the minimum estimate of victims of trafficking was 9,870 and the maximum was 19,740. However, upon full

⁵⁷ Kathleen Barry (n9)

⁵⁸ European Parliament (n53)

⁵⁹ Pablo de Lora, '¿Hacernos los suecos? La prostitución y los límites del Estado' [Are we playing dumb? Prostitution and the limits of the State] (2007) 30 DOXA <https://rua.ua.es/dspace/bitstream/10045/13143/1/DOXA_30_43.pdf> accessed 20 May 2020

⁶⁰ Ayme Roman (n20)

⁶¹ Pilar Aguilar and others (n8)

⁶² Ibid.

⁶³ Ayme Roman (n20)

⁶⁴ Seo-Young Cho, 'Does Legalized Prostitution Increase Human Trafficking?' [2013] 41 (1) World Development <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986065> accessed 20 May 2020

legalization, the number of victims increased to 32,8000 in 2004. This estimate is about 62 times higher than in Sweden, where prostitution has been criminalized since 1999 under the so-called “Nordic model”. Similar results have arisen in other countries such as Australia and the Netherlands where legalization and decriminalization have been identified as “pull factors” for traffickers.⁶⁵ As Catherine MacKinnon puts it: “As a business decision, it makes sense to traffic women and children where business is legal because once you get them there, the risks to sellers are minimal even if trafficking is formally a crime, and the profits to be made from operating in the open are astronomical”.⁶⁶ Organized crime is an “opportunity seeking” business which aims to operate in countries with more hospitable legal environments instead of settling in countries like Sweden where the demand is discouraged and pimps and traffickers risk criminal penalties.⁶⁷

Since the demand-supply gap precludes the existence of a prostitution market which does not feed on sex trafficking and exploitation, prostitution cannot be made compatible with the feminist agenda. As Dr Posada argued: “The unanimous feminist condemnation of sex trafficking should be consistent with the challenge of an institution like prostitution which ultimately promotes it and makes it possible”.⁶⁸ Although there exists a reduced number of women who may be said to enter prostitution of their own accord, they make up only a minority of the total number of women in the industry, and regulating their activities in order to guarantee their right to bodily self-determination would be done at the expense of a majority of other women for whom prostitution is not a matter of freedom but of lack thereof. It is to protect those most vulnerable women that this paper presents abolition as the only viable alternative.

Practical arguments against legalization

Finally, sex work advocates often also appeal to more pragmatic considerations and claim that abolitionist policies are unable to eradicate prostitution completely, but regulating it would at least ensure greater state control over its practices and help to improve the working conditions of people in prostitution. However, these expectations have not borne out in practice. The German Government, for example, admitted that “the Prostitution Act had only to a limited degree achieved the goals intended by the legislator” and that “there had been hardly any measurable improvement” regarding prostitutes’ working conditions.⁶⁹

⁶⁵ Catherine A. MacKinnon (n1)

⁶⁶ Catherine A. MacKinnon (n1)

⁶⁷ Ibid.

⁶⁸ Luisa Posada Kubisa (n13)

⁶⁹ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, 'Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act) [2007]

Legislation has not resulted in improved access to labour rights. In Germany, only one percent of prostitutes signed an employment contract, and in the Netherlands, the Ministry of Justice found that 95 percent of them remained “self-employed” and hence did not have access to the social security system.⁷⁰ This failure to register may partly owe to the illegal immigration status of many of them, or their wish to avoid paying social security contributions, which plunges them deeper into illegality and vulnerability.⁷¹ Consequently, legislation has not managed to improve the precarious working conditions of prostitutes, and many continue being subjected to physical and sexual violence. A 2018 study of female prostitutes working legally in the Netherlands found that 78 percent had experienced sexual violence and 60 percent of them had suffered physical violence ranging up to aggravated assault.⁷² Moreover, in Germany at least 84 prostitutes have been murdered since its legalization in 2002, and there have been at least 47 attempted murders.⁷³ A survey carried out by the German government in 2007 also found that female sex workers often suffer from a range of mental health problems: “Around half of them showed symptoms of depression; a quarter had frequent or occasional thoughts of suicide; almost one third had anxiety and panic attacks, and about 1 in 7 had had the intention of self-injuring in the last 12 months”.⁷⁴

As the above statistics indicate, violence is intrinsic to the sex trade and the law’s capacity to make it safer is limited. Instead, regulatory policies tend to generate additional problems. Not only do they result in the expansion of sex trafficking and organized crime, but can also hinder and disincentivize law enforcement efforts to fight it. Additionally, there exists evidence showing that legalization can lead to higher child prostitution rates.⁷⁵ In Amsterdam, for example, the estimated number of prostituted children increased between 1996 and 2001 by more than 300 percent, around 33 percent of them coming from foreign countries.⁷⁶ Legalization also increases the likelihood of engaging in dangerous sexual practices such as unprotected sex due to the pressure resulting from an increased competition.⁷⁷ “For every woman unwilling to perform something risky, there’s another willing to try it”, meaning that women are more likely to give in to the clients’ dangerous requests.⁷⁸

<https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/federal_government_report_of_the_impact_of_the_act_regulating_the_legal_situation_of_prostitutes_2007_en_1.pdf> accessed 20 May 2020.

⁷⁰ 'Prostitution' (*Centre to end all sexual exploitation*, 2019) <<https://ceaseuk.org/prostitution/>> accessed 20 May 2020.

⁷¹ Soledad Muruaga, “Prostitución y salud” [Prostitution and Health] (*Mujeres para la salud*) <<https://www.mujeresparalasalud.org/prostitucion-y-salud/>> accessed 20 May 2020.

⁷² 'Prostitution' (n70)

⁷³ “Prostituiertenmorde in Deutschland” [Prostitute murders in Germany] (*Sex Industry Kills*, 2020) <<https://sexindustry-kills.de/doku.php?id=prostitutionmurders:de>> accessed 20 May 2020

⁷⁴ European Parliament (n53)

⁷⁵ 'Prostitution' (n70)

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

Moreover, legalisation also leads to the normalization of prostitution by portraying it as ‘just another legitimate career option’.⁷⁹ Dangerously, this hampers the recognition by women of the harms done to them through prostitution. As one survivor said: “...how are prostitutes ever able to open their eyes to the violent structure of prostitution when there is no social or political support for recognising prostitution as being violent and harmful?”⁸⁰ The German government also recognized that this normalization also often leads to a failure to offer sufficient exiting strategies for people in prostitution.⁸¹ Since such strategies are not made available for people in other professions, there’s no reason why they should be offered to sex workers.⁸²

Ultimately, legalizing prostitution does not transform the circumstances and common preconditions of entry, nor its oppressive character as a business that profits from the exploitation of women vulnerable due to their economic situation, race, gender, age etc. It does not either remedy the essentially violent and precarious situation of people in prostitution and does not prevent the profound physical and emotional damage which has proved to be commonplace in this industry. Instead, it is arguable that the ones to benefit the most from regulatory policies would firstly be the clients, who would secure their market of women and excuse their participation in it; secondly, the pimps, who see in legalization a way of legitimizing themselves and generating greater profits; and thirdly, the state, for whom prostitution is an immensely lucrative business and which would get its piece of the pie through tax revenue.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (n69)

⁸² 'Prostitution' (n70)

Concluding remarks

This paper demonstrates that there exist a priori as well as empirical reasons to favour abolitionist approaches to prostitution over regulatory ones. Firstly, an overly liberal and individualistic outlook risks bypassing the different dynamics of domination and exploitation at play. Prostitution is the clear embodiment of patriarchal, capitalist, and neo-colonialist systems of oppression which feeds upon the social, economic, and cultural inequalities created by these. This, on the one hand, renders legalization undesirable since it would effectively legitimate and reproduce the aforementioned exploitative practices and power structures; and, on the other hand, undermines the argument that women enter prostitution of their own free will and that their decisions and activities should be hence protected by law. A simple glance at the statistics will show that it is always precisely the most vulnerable and victimized groups the ones who “freely decide” to enter the sex trade. The reason for this lies in the coercion and oppressive gender and racial socialization that mark those decisions. Additionally, even though there exists a minority of people who may arguably be said to enter the prostitution voluntarily, this does not yet justify its legalization since it could only be done at the expense of the freedom and security of women who would be trafficked and exploited to meet the high market demand. These considerations, next to evidence demonstrating the incapacity of the law to improve the working conditions of people in prostitution, point to the abolitionist model as the most feasible solution to the prostitution dilemma.

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“The World’s Oldest Oppression”

Commentary by Erin Rennie “

“The World’s Oldest Oppression”: An Intersectional Abolitionist Look at the Sex Trade provides a discussion on the debate of legalisation and regulation of prostitution from an intersectional radical feminist lens. This article stands in opposition to a surge of feminist activism and a growing body of feminist research and literature through a liberal lens that constructs prostitution as potentially empowering and liberatory for women (see Davina, 2017; Lebovitch & Ferris, 2021; West & Horn, 2021). Many radical feminists oppose this narrative and argue that this is a rather naive and falsely optimistic view of the sex industry. The current article presents a compelling argument against the legalisation of prostitution and concludes that the only feasible option is abolition.

The author demonstrates that the patriarchy, neo-capitalism, and colonialism all facilitate women entering prostitution. They argue that prostitution thrives in the oppression that these social systems create, and that for many women, the sex industry is a means of survival rather than an expression of female sexuality, agency, and active choice. The author evidences this argument with an array of research and statistics, including one example given by the author: ‘90% of prostituted women in Europe are impoverished immigrants’ (p.6). The author offers an intersectional analysis of prostitution and contends that due to racial fetishization and oppression, free choice is further taken away from women of colour and their journey into prostitution is characterised by societal coercion. The author dissects the capitalist logic that normalises women’s bodies as goods that can be exchanged for money and highlights the misrepresentation of prostitution as a liberatory choice rather than a form of violence against women and exploitation.

From this perspective, the article provides a strong challenge to the argument in favour of legalisation to protect women and provides evidence to challenge the effectiveness of legalisation in keeping women safe. The author instead argues that legalisation does not benefit or protect women, but legalisation offers benefits to third parties: clients, pimps, and the state. The author acknowledges that some women do enter prostitution as a free choice, however, they argue that this is rare, and therefore, argues steps must be taken to protect the majority of women involved in prostitution, who are often the most vulnerable members as society. The author concludes that prostitution is detrimental to the lives of women involved and women need to be protected from the dangers associated with prostitution. Based on this analysis, the author concludes that the only feasible option is to advocate for an abolition of prostitution as an industry to protect women as a social group.

Given the contentious nature of this topic a justification of the author’s terminology would have been valuable. While it may appear obvious given the author’s radical feminist perspective, it would

have been beneficial if the author had offered a theoretical explanation of their use of ‘prostitution’ and ‘prostitutes’. While the term ‘prostitution’ works within the author’s conceptualisation of women’s exploitation and lack of choice, the preferred terms by many women involved is ‘sex work’ and ‘sex workers’ to destigmatise women involved and the term ‘prostitute’ is often considered a slur (Stella, 2013). Without addressing this issue, the article may be viewed as offensive by some and dismissive of women’s lived experiences.

The author presents an important article that dissects the normalisation and legitimisation of various forms of prostitution, while centring women’s socio-economic inequality as the driving force for entering prostitution, therefore, genuine free choice is rare, and their involvement is based on coercion and socialisation. This article provides a comprehensive challenge to the view that prostitution is empowering and liberating and as the author powerfully notes, ‘feminist claims like “my body, my decision” should serve to free women from oppressive roles and sexual and reproductive exploitation, not to maintain them’ (p.4).

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Reply by the author:

After reading Erin's excellent review, I want to make a short reply to her comment on the problems with my terminology.

I agree that the terms "prostitute" and "prostitution" are problematic given their connotations. However, please note that this choice of terms was not intended to support any derogatory or homogenizing representation of women in the sex business. We are currently presented with a pool of terms where none seems to be exempt from problems, and yet "sex work" in particular is diametrically opposed to the ideas presented in the paper.

The labels we use to describe phenomena matter. Every term has an underlying ideological baggage and the potential to shift our conscious and unconscious perception of such phenomena. My worry of using the term "sex work" is that it will inscribe this practice within a liberal mercantilist logic which normalizes "sex work" as an ordinary market transaction, separating it from the violent context without which it could not exist. Additionally, this term also normalizes a view of people's bodies as a resource that can unproblematically be sold in the market as an ordinary commodity. Though all the drawbacks of these terms cannot be fully explained in this reply, the point being made is that the terms "sex work" and "sex workers" also have their share of problems and should not be used uncritically.

It is also important to note that there is not a consensus among women who are or have been in the sex business about what terms best represent them and their experiences. Just as an example, Sindy Takanashi and Amelia Tiganus are two Spanish abolitionist activists who refuse to use "sex work" terminology and instead use the terms "prostitute" and "prostitution" consistently within their activism work. All the above underlies my choice of terms in this essay. I finally want to thank Erin Rennie for their comment and for pointing this issue out to me.