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PROSTITUTION AND THE CASE FOR DECRIMINALIZATION

Responses to prostitution from the left have been radically contradictory. Marxist thinkers, for example, are committed to study social phenomena in terms of systems of production and their related labor forms. But they rarely treat prostitution as a kind of work; instead they treat it as a side effect of the moral decay, corruption, or cultural collapse that occurs under particular social conditions. Why? Leftists generally respect working-class people and their political and economic struggles. Yet they rarely exhibit respect toward prostitute organizations or their political activists and intellectuals. For the most part, such groups and individuals are ignored.¹ Again, why?

Many on the left want to believe that prostitution would not exist or would not be common or tolerated in a world free of economic, gender, and sexual exploitation. The problem of prostitution would solve itself once other problems are solved. Yet speculative judgments like this one are abstract and academic. Prostitution isn't any single thing—a unitary social phenomenon with a particular origin—and so it doesn't make sense to argue about whether it would or wouldn't be present in this or that type of society. Working from crosscultural and historical studies, I have examined institutionalized and commodified exchanges of sexual services between women providers and their male customers in many different social contexts.² I conclude that there are (or have been) places and times where exchanges of sexual services between women and men are (or were) relatively free of gender and class domination. How then should leftists respond to the varieties of prostitution in the contemporary United States, where the labor practices involved

are shaped by pernicious class and gender asymmetries?

I want to argue that we should include in our political agendas the dismantling of the legal and social structures that criminalize prostitution and stigmatize prostitutes. In conjunction with this project, we will need to invent regulatory alternatives to the current punitive systems of control. These are the primary aims of numerous prostitute civil rights and labor groups, and I think both feminists and socialists should support them, though not for the libertarian reasons many representatives of these groups give. Arguments for decriminalizing prostitution can be made by appealing to notions of workers' rights and the dignity of low-status work; they need not appeal to the libertarian ideal of total freedom from governmental intrusion into the lives of presumably independent individuals. These arguments can also be strengthened by accepting a robust pluralism with regard to sexual customs and practices. I don't mean that we cannot criticize sexual practices, only that the criticism must take into account different cultural conceptions of human sexuality and not dismiss out of hand those that are unfamiliar. Again, this desire to understand alien customs should not be confused with a libertarian *laissez-faire* morality. The libertarian sees sexual desires as a natural force that society should respect; the pluralist understands that desire, including the desire for noncommodified sex, is shaped by cultural and social forces.

Feminist theorists have argued that prostitution involves the sexual and economic subordination, degradation, and exploitation of women and girls. Many forms of prostitution are indeed

brutal and oppressive: the near slave conditions that have been reported recently in brothels in Thailand, the use of “comfort women” by the Japanese during the Second World War, the prostitution that exists around U.S. military bases and in many contemporary urban spaces (“streetwalking,” “massage parlors,” “escort services,” and so on). Women and girls have been tricked, or physically and economically coerced, into the prostitution business and then kept in it against their will. Women have contracted fatal diseases; they have been beaten and raped. These are common aspects of contemporary prostitution that anyone concerned with social justice must address. But we must also ask whether the legal structures that have been set up to control and discourage prostitution—including voluntary prostitution where it exists—also oppress women. Both women who work as prostitutes and women who are suspected of doing so (usually poor women of color) are frequently harassed, manipulated, and exploited by police officers and others who have power over them. Criminalization contributes to the stigma that prostitutes bear, making them more vulnerable to hate crimes, housing and employment discrimination, and other violations of their basic rights.

Because both the operation of prostitution businesses and their legal suppression typically sacrifice women’s interests, feminists generally oppose both prostitution and its criminalization. Many feminists aim to devise nonpunitive, extralegal responses, such as providing other work opportunities. Yet there has been no concerted feminist attempt to undo the laws that define acts of prostitution as criminal offenses and impose penalties on participants—more often the female vendors than the male customers. Certainly feminist groups have not given the decriminalization of prostitution the same priority they have given to other issues, such as ensuring the legality of abortion, reforming rape and sexual harassment laws, and desegregating corporate management and the professions. Moreover, feminists have been more vocal in opposing sex businesses than the laws that criminalize the activities of commercial providers, and thus have contributed to creating a climate conducive to the continued degradation of prostitutes.

Feminists have not mobilized around the decriminalization of prostitution because of our lingering ambivalence about the subject. Some question whether commodified exchanges of sexual services are ever voluntary and regard prostitutes always as manipulated victims rather than autonomous agents—a view that requires us to second guess the motives, desires, and values of all prostitutes. Other feminists argue for decriminalizing only the prostitute’s work while maintaining the criminal status of pimping, pandering, and so on. But this requires the state to determine which of the prostitute’s partners are exploiting her and which are not—unless we wish to punish all the prostitute’s possible business partners, including her spouse, boyfriend or girlfriend, parents and siblings, and other comrades.

Although feminists are fully aware of the varieties of abuse prostitutes suffer, many of them fear that decriminalization will lead to more prostitution and thus more exploitation of women and children. So they are willing to tolerate the often brutal enforcement of laws against it. Yet realistically, we are more likely to discourage the exploitation of women and children by regulating the labor practices followed by sex businesses. If businesses that provide customers with personal sexual services could operate legally, then they would be subject to the same labor regulations that apply to other businesses (given the nature of the work, additional regulations might be necessary).³ Such businesses would not be allowed to treat workers like slaves, hire underage workers, deprive them of compensation for which they contracted, or expose them to unnecessary risks. The businesses could be required to enforce health and safety codes, provide workers with a minimum income and health insurance, and allow them to form collectives to negotiate for improved working conditions, compensation, and benefits.

Many feminists find it frightening to imagine a society where sex can be purchased as easily as soap, where selling sex is an occupational option like selling shoes, and where businesses that profit from commercial sex are as legitimate as Ben and Jerry’s. Such imaginings usually lead to the question, “What next?” This is the slippery-slope argument, which is elaborated as fol-

lows: "Are we now going to allow the sale of x ?"—where x is your favorite tabooed object (babies, vital organs, bombs, and so on). The answer to this question is "No—not unless by tolerating the commercial distribution of x we can better protect the rights of particular people or better realize some moral ideal." By tolerating the commercial distribution of sexual services within certain limits, we can better protect the rights and interests of those who seek these services and, importantly, those who choose to earn income by providing them.

Though it is useful to ask what social forces lead some people to seek the relatively *impersonal* provision of *personal* sexual services, we should be equally critical of the cultural assumptions embedded in this question and in our various answers. At best, such excursions may help us understand how prostitution is shaped by large and small capital interests, as well as dominant gender, racial, and sexual ideologies, and thus how to devise regulatory instruments that discourage the recognizable forms of abuse, exploitation, and humiliation.

The argument I am making is simply this: that the forms of exploitation and abuse suffered by prostitutes are similar to those suffered by other workers (though they are often more intense because of the illegal status of this work). Therefore these abuses should be addressed by mechanisms that improve the condition of workers generally. Sweatshop conditions should not be tolerated, violations of workers' constitutionally protected rights should not be tolerated, customers should not be permitted to engage in behaviors that endanger the workers' health or well being, care should be taken to avoid harm to noninvolved third parties, contracts for compensation and services should be voluntary and take into account the interests of all affected, and when these conditions are met such contracts should be respected (though not necessarily enforced by outside authorities). If the sex trade were regulated like other businesses, we would not have a perfect world—labor would still be underpaid and exploited and needs would still go unmet—but the world would be modestly improved.

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The prostitute has often served as a symbol for the degraded status of the worker in capitalist societies, and prostitution itself has been evoked as a metaphor for the general relationship between workers and owners under capitalism. It is also used to represent other often exploitative social relationships, between husbands and wives, for example. But the metaphor works only if we assume that prostitution is universally exploitative and degrading, so that activities likened to it are cast as illegitimate. Rather than make the Marxist point that exchanges of sex or labor for money in a capitalist market are necessarily exploitative, the point of the metaphor is that the exchange of labor for money under capitalism is like the exchange of sex for money in *any* circumstances. But the assumption that all sex commerce is inherently exploitative fails to take into account the diversity of actual and possible practices. The degradation of the worker under capitalism is more like the degradation of someone who is forced to sell his/her labor—sexual or nonsexual—but it seems redundant to point this out. By insisting on the inherent and unqualified degradation of sex com-

merce, those who use the metaphor only add to the degradation they presumably oppose.

Prostitutes—like gays, lesbians, and other sexual dissidents—are commonly viewed as threatening to families. But those who see them in this light often have a very narrow notion of what constitutes a family. In her book *The Comforts of Home: Prostitution in Colonial Nairobi*, Luise White describes relationships between prostitutes and their customers that might be compared to informal polyandrous unions, where a variety of physical and social needs are met—needs that more conventional families also serve.⁴ In the United States and elsewhere, many prostitutes have children, partners, and parents that they support through their work. Prostitutes and those with whom they are socially intimate and interdependent, and with whom they share households, are in fact families, and they deserve the same social supports as other families. Laws that criminalize prostitution tear families apart, separate parents and children, and render sex workers and their intimate partners criminals.

All this said, some may feel that there is still something immoral or objectionable about the prostitute's work, and that we would be better off suppressing the practice and finding other livelihoods for the people involved. At least three articles appearing in academic journals and books in recent years bear the title "What's Wrong With Prostitution?" Each attempts to locate just what it is that distinguishes prostitution from other human activities, although one concludes contrary to the others that nothing is deeply wrong with waged sex work.⁵ Perhaps one way to approach the intuition that there *is* something inherently wrong is to compare commercial sex to other work that is very similar to it. For example, many prostitutes like to compare themselves to sex therapists, educators, and entertainers. Annie Sprinkle likens her work to both bodily and spiritual forms of guidance and help. Either we must show that there is something wrong with these activities or we must show that the analogy between prostitution and sex therapy/education/entertainment doesn't hold. Frankly, I can't see how to show either.

One fear that many feminists have about legalizing prostitution is that this would create just one more female job ghetto where women are coerced into stereotypical and subordinate roles, and low-paying, low-status, dead-end work. Furthermore, the industry's "products" would very likely reproduce status hierarchies among people based on age, race, class, gender, physical ability, and so on. Subordinate service roles would be filled—as they already are in the illegally run sex industry—by age, class, race, and gender subordinates, and their commercial sexual availability would perpetuate myths about the inferiority of persons from the subordinated groups. These are legitimate fears, and supporters of decriminalization have to consider how such outcomes might be avoided.

One of the first things to be said is that although the overwhelming majority of customers for prostitution are male, not all prostitutes are women. It's important to notice that some prostitutes serve customers of the same gender as themselves, the same economic class, and the same socially defined racial category. Though a great deal of contemporary prostitution involves heterosexual white, bourgeois males exploiting working-class or underclass women (especially women of color), keeping prostitution illegal will not affect this situation. Instead, by developing programs and policies that address poverty, racism, and sexism, and by regulating a legal sex industry, we can hope to make those who are socially oppressed less vulnerable to exploitation from those who aren't.

Anyone who advocates the legalization of prostitution needs to address the "But would you want your daughter . . . ?" argument. I suppose the only way to answer this question/objection is to take it personally—I happen to have a daughter who is now eight. This argument is meant to expose the hypocrisy of anyone who has made the assertions I've made. For, not surprisingly, my answer is "No, I wouldn't want my daughter to be a prostitute." So how can I accept this occupation for others? Well, first of all, this isn't all of my answer. The more nuanced answer is that, although I would prefer my daughter to be a mathematician, pianist, or labor organizer, were she to seek employment in the sex trade, I would still want the best for her. Her

Decriminalization of Prostitution

choice would be less heartbreaking to me if the work were legal, safe, reasonably well paid, and moderately respectable. In arguing for the decriminalization of prostitution, we need not go from the extreme of deploring it to the other extreme of romanticizing it. This objection works only if these are our only alternatives.

If prostitution remains criminalized, what can we expect? In Hollywood, some prostitutes will continue to profit from the instant celebrity status that being arrested at the right time and with the right customer can bring. But the average

prostitute will continue to be abused by her (or his) clients and co-workers, exposed unnecessarily to disease, socially marginalized and demonized, harassed by public officials, and separated from her children and other family members; her children will suffer from neglect and poverty. And underage workers will continue to be used, with or without their or their family's consent. Perhaps, a large and coordinated effort to decriminalize prostitution for the sake of workers and their families is one more battle we need to wage with the radical religious right. □

Notes

1. One recent notable exception to this is Shannon Bell's *Reading, Writing, and Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994).
2. *Moral Dilemmas of Feminism: Prostitution, Adultery, and Abortion* (New York: Routledge, 1994).
3. Roger Matthews proposes some general guidelines for regulating prostitution informed by radical rather than liberal principles in "Beyond Wolfenden?: Prostitution, Politics and the Law," in R. Matthews and J. Young, eds., *Confronting Crime* (London: Sage, 1986). See also my discussion of his proposals in *Moral Dilemmas of Feminism*, pp. 83-87 and 158-161.
4. Luise White, *The Comforts of Home: Prostitution in Colonial Nairobi* (Chicago: University of Chicago Press, 1990).
5. See Christine Overall, "What's Wrong With Prostitution?: Evaluating Sex Work" in *Signs* 17 (Summer 1992), pp. 705-724; Carole Pateman, "What's Wrong With Prostitution?" in *The Sexual Contract* (Stanford: Stanford University Press, 1988), pp. 189-218; and Igor Primoratz, "What's Wrong With Prostitution?" in *Philosophy* 68 (1993), pp. 159-182.

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