Liberalism, Radical Feminism and Prostitution
A Reassessment of Two Perspectives on Prostitution
Hampus Björklund

Abstract: The current philosophical debate about prostitution is mainly concerned with two different points of view: (a) the permissibility of prostitution and if paternalistic interference on behalf of prostitutes is legitimate in a liberal democracy, and (b) feminist objections claiming that it is the unjust structures of the patriarchy that enables and affirms the institution of female bodies being sold on an open market for the sexual desires of males. The aim of this paper is to investigate if both of these perspectives take on too narrow a view when trying to address the phenomenon of prostitution. If so, the conclusions drawn may lead to unwanted consequences making it necessary for a more context-sensitive approach and/or a broader theoretical foundation.
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1. Introduction

Prostitution can, on one hand, come with an array of different wrongs and associated consequences that are ethically problematic. It can be a demeaning expression of domination and subordination, an effect of extreme liberalism in a capitalist market, and it may also threaten the ability to form loving stable relationships for those involved. On the other hand, it can be a rational choice made by autonomous individuals, a legitimate occupational decision, and/or an alternative conception of intimacy challenging traditional views on sexuality.

One could argue that the number of contextual variations might make it impossible to discuss prostitution as a single phenomenon. Those variations include the financial situations of individuals, progress on gender equality, cultural differences regarding sexuality, and conceptual differences on what constitutes good life, to name a few examples. Isolating prostitution as one issue, whether it be about actions and sanctions to individuals within a liberal society or eradicating negative effects of social conditioning in a gendered power structure, comes with a risk of neglecting other perspectives. For example, discussions about liberalism and paternalism or about gender inequality or global justice will, and have, in one way or another condemned prostitution in some form and proposed legislative action to be taken. In doing that, those discussions have failed to look at the different situations for people choosing to engage in acts of prostitution and why in some cases it may be the best choice from a set of options of which none are preferable from an objective standpoint. With this in mind it is important to ask the question if it is necessary to take into account contextual differences and how this will shape the debate? Is it even possible to have one single debate about prostitution or must we look at the variance of the act and form our response accordingly? And with that in mind, is it possible to talk about government action seeking to regulate prostitution, minimize harms associated with prostitution or at the other end, discuss legalization in contrast with the feminist view of prostitution being an expression of the patriarchy?

Benevolent prostitution laws could become more justifiable in some circumstances where other more beneficial long-term opportunities most likely exist, assuming that prostitution makes those engaging in it worse off than these other opportunities would. I argue here that even though this may be true, if our laws and/or government actions regulating prostitution are justifiable for the welfare of sex-workers in our context, this will shape our understanding and our way of addressing the issue when looking at other countries or contexts. There is a risk in that involving the exportation of a conception of what constitutes a good life, or what means are most suitable for
achieving it from our point of view. With this in mind some carefulness needs to be taken when looking at different parts of the world. At the other end, there is also a possible similar risk in discussing prostitution from a Western feminist standpoint, one that can be criticized as viewing justice from a privileged perspective.

The goal of this paper is not to advocate either the legalization or the criminalization of prostitution and I do not intend to reach an exhaustive answer to the issue of whether or not there is anything wrong with the act of prostitution itself. The kind of prostitution I am concerned with here is mainly when individuals choose to engage in it, and what the main reasons to do so are. Furthermore I would like to examine what appropriate responses should be taken to deal with different negative effects of those choices. An important distinction I will be making is between what can be considered as voluntary and involuntary prostitution (involuntary in the sense of coercion and/or lack of autonomy as in the case of trafficking or child prostitution) and this paper will focus solely on the former. I will not try to give an exhaustive list of the harms associated with prostitution nor to provide empirical evidence that the assumptions made are true or that prostitution is intrinsically wrong or morally objectionable. Prostitution will for the remainder of this paper refer to a transaction of a sexual service between two or more consenting adults where the main goal of the transaction for the seller(s), or any associated third part, is not the supposedly pleasurable experience of the sexual act itself but rather some other gain, be it financial or material. This is not saying that the person selling the services cannot enjoy the experience at the same time but rather that the encounter would not take place unless there was some kind of recompense included in the agreement.

In this paper I will examine two different types of arguments on prostitution that seem to be common in the debate in general and therefore somewhat widespread and my goal is not to argue whether the conclusions drawn are correct or not. Instead I will begin by trying to find what each of

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1 What my discussion excludes are all those cases when prostitution is not a direct choice. One could claim that trafficking for example has as its goal the sale of sexual services, it should be included in any discussion about prostitution since it is ultimately (and harshly expressed) one means of production in the sex industry. However, even though the conclusion that trafficking precedes prostitution is an accurate one it does not follow that it is one and the same issue. Trafficking is kidnapping someone and forcing them into prostitution, sometimes with the help of highly addictive drugs subduing the victim and keeping them subjected to the will of their kidnapper or pimp. Choosing freely to engage in prostitution is not the same thing. See: Carter, V., Giobbe, E., 1999, "Duet: Prostitution, Racism and Feminist Discourse", in: Spector, J. (ed.), 2006, Prostitution and Pornography: Philosophical Debate about the Sex Industry, Stanford: Stanford University Press, p. 24, 27.
the arguments are missing and investigate whether they need broader foundation in order to more accurately address the issue of prostitution. Instead of pitting the two perspectives against one another, I believe it to be more beneficial a goal to find what lessons can be drawn from both. First, I will address the view that prostitution is harmful for those who do it and for those purchasing sexual services and that it therefore should be criminalized or at least regulated. Second I will turn to feminist debates about prostitution claiming that it is an expression of female subordination and gender inequality in a patriarchal society. Third, in the conclusion I will try and reach some insight into what lessons can be utilized from both arguments.

1.1 Terminology

Before I begin there is a need to describe what is meant by the different types of legislative actions at hand in today’s society. The terms are gathered from Peter de Marneffe’s book *Liberalism and Prostitution* and I will use roughly the same terms as he does but with one difference; for all of the following terms de Marneffe uses the distinction permissive and impermissive. The former permits activities related to prostitution such as kerb-crawling, street solicitation or brothel-keeping but the sale and purchase is prohibited (in the case of permissive prohibition for example). The latter refers to legislation where none of the related activities are permitted. Since this distinction is aimed at related activities beyond the act of prostitution it is not relevant for my purposes.

I will use the term prohibition for when the sale, purchase and other related activities such as street solicitation and running a brothel are all criminalized under some form of punishment, be it fines or, in its harsher form, imprisonment. The second term is abolition which refers to when the sale of sexual services is permitted but the purchase, and activities related to purchase, are criminalized. Regulation are those policies that do not criminalize selling or purchasing or any related activities but impose age limits and/or requiring certain conditions to be met by those involved such as the mandatory use of condoms or regular screenings of sex workers for sexually transmitted diseases, or restrictions on where commercial sex trade can be practiced. I will use the term decriminalization in the same way as regulation, that is, when prostitution or any related activities are not punishable offenses, but still not treated as any other form of trade. Legalization is the term I

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3 Ibid, p. 28f.


5 Ibid, p. 29f.
will use for when prostitution should be treated and subject to the same rights and responsibilities as any other form of work and any related activities such as running a brothel will be seen as running any form of business. Male sexual norm will refer to a social structure surrounding most, if not all, parts of society and people of any gender inhabiting it.\(^6\) It is a conditioning norm shaping the way we perceive gender roles and our views regarding sexuality and behaviors.

2. Two Views on Prostitution

2.1 The Harm
First let us begin with the assumption that prostitution can be harmful and that it involves risks. It is plausible that prostitutes, even in the best cases, can find themselves in situations where the probability of physical abuse, such as assault or rape, is higher than in most other occupations. True as this may be, these harms are not connected directly to the act of selling sexual services. It is in my view equally plausible that the same risks can be a part of promiscuous behavior, for example a promiscuous person accompanying strangers to their homes each night to have sex with them, or even non-sexual behaviors such as hitch-hiking. Abuse is equally wrong if it happens with or without the exchange of money and is therefore not to be treated differently in the case of prostitution, and more importantly in this case does not belong inherently to it.\(^7\) One type of harm that separates prostitution from promiscuous behavior is that it can possibly involve some level of coercion from brothel keepers, pimps or even from oneself due to financial incentives and that this causes the prostitute to engage in sexual activities that he or she does not want to perform.\(^8\) As mentioned above with the case of trafficking, third-party coercion also differs from voluntary prostitution and is in itself a serious crime, one that should be treated on par with, or close to rape. If the coercion stems from the prostitutes’ own want or need of financial gain, and with the lack of better employment opportunities, there is the possibility of the prostitute proceeding with an unwanted sexual act after the transaction has been made. This however, is a three-fold argument.

\(^6\) Labelling the norm as male, instead of a gender neutral term is not only fitting the feminist discourse but also a reflection of an unequal society where the supremacy of a privileged gender creates subordination and sometimes even violence towards others. It is not an illicit labelling of one gender but an accurate pinpointing of an unequal power relationship.

\(^7\) A flawed argument in this case would be that since prostitutes market themselves in sexually enticing ways they have some responsibility for the potential risk of violent and abusive customers but this is absurd. If that were true it would be equally justifiable to claim that a victim of a sexual encounter where abuse has occurred, such as a rape victim, is somehow blameworthy for what choice of apparel that person made.

\(^8\) Ibid, p.20f.
First, it makes the assumption that once the payment has been made there is no backing out of it. Such assumption is somewhat diffuse. Although likely to be true in some cases it does not give any support that it is always going to be so. For example, where prostitution is prohibited it is more likely to be the case since the fear of being reported to the police as a prostitute puts the seller in a more risky situation than if the purchase alone is criminalized. It may also be more likely if the prostitute is in such a financial situation that turning down a sale could be worse than putting up with just one more client.\(^9\) On the other hand it may be just as likely to be the opposite case, where a prostitute can and will turn down a client for whatever reason and this will not have any noticeable negative effects other than the loss of income which in turn is not necessarily worse than proceeding with the transaction. Second, it does not give any indication of how severe one’s financial situation must be in order to warrant the conclusion that it is a form of coercion. Does it require one to be on the brink of starvation, of loosing one’s home, or under more favorable circumstances such as there being more money to be made in prostitution than one can receive from social welfare benefits, or even greater short-term financial gain than other available employment opportunities? There is a range of different situations one can find oneself in and it is difficult to conclude that all are a form of coercion without contextual awareness. Third, it makes an implicit assumption that prostitution must be inherently harmful in the sense that any act of prostitution is always going to be unwanted since the main incentive for the prostitute is not the sexual experience but the financial gain and hence always being harmful. This claim however, makes it difficult to separate prostitution from other forms of labor being harmful in the same way\(^10\), and although this is surely not as plausible, it nevertheless implies that the sexual act for financial gain always must come with detrimental effects, but it is not certain that it will always be the case for all prostitutes. Also, arguing that all cases of prostitution must be unwanted is suspicious if at the same time we can agree on the assumption that the mere sale and purchase of sexual services is not inherently harmful, as if the idea of cases where prostitution can be harmless is simply impossible.

Even though there is a possibility of this argument being unclear about what it is that makes prostitution non-preferable it does give some indication to a part of what constitutes the harm

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\(^9\) This is not saying that any situation is of such severity that purchasing sexual services is a form of exploitation but rather that the prostitute chooses a short-term negative experience for financial gain that is not necessarily so desperately needed that it is a matter of life and death. Exploitation can and surely does occur as well and what the limit is for what should count as exploitation is debatable however I will not try to answer such questions here.

\(^10\) This is not claiming that prostitution cannot be uniquely harmful but that such an argument would make any form of labor for financial gain unwanted in the sense that it is the financial gain that is of importance for the worker and not the joy or possible rewarding experience of performing a meaningful service or excelling in one’s occupation, and therefore being the cause of some harm in the same way.
involved.

If someone decides to offer their sexual services in exchange for money or some other type of gain, and the buyer has received the service specified in this deal and if everyone is content with what has occurred, it still could be argued that some harm has been done. One way of trying to identify it is to claim that it involves the prostitute to take interest in the clients sexual satisfaction, and part of that may involve feigned affection and desire. In doing so, the prostitute is surrendering a part of his or her sexual autonomy, as in having to ignore his or her own desire for the sake of the clients. The suppression of one’s own sexual preferences for the gain of another’s can possibly give rise to feelings of degradation, and adding the factor of volition, it is possible that this further increases the outside view of the act of prostitution as even more degrading. The harm in question is not a result of public denunciation of the act but rather that the public denunciation accurately identifies the psychological harm that is self-degrading consensual sexual acts for financial or some gain other than the pleasurable experience itself.

This is not claiming that the harm involved is a result of stigmatization since there are other forms of labor that can give rise to stigmatization, being an exotic dancer or cabaret performer, or there are other sexual acts that can involve some level of self-degradation. These differ from prostitution in two important ways; the self-degradation in question is mutually beneficial and sometimes perhaps even the goal of the act itself, whereas the self-degradation in prostitution is presumably not one of the main constituents for either part. In the case of an exotic dancer/cabaret performer it is an enticing performance in front of an audience and not an isolated action of pleasuring another person sexually. Consequently the awareness of this type of harm amongst both those involved in the sex industry and those not could possibly be related to another type of harm; the emotional stress that this awareness causes in feelings of shame or trying to hide one’s involvement in such activities and therefore being excluded from a fully functioning role in society. At the same time one could possibly argue that there are others involved in the sex industry with stories contesting the

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11 Ibid, p. 12, 19.
13 I am not claiming that these professions or sexual acts are not subject to stigmatization in some parts of society but that if they in fact are stigmatized it is unlikely to be considered as harmful as the stigma attached with prostitution, and therefore it is plausible that stigma in prostitution is not the source of the harm.
statements made here. Nevertheless if we can agree that in some cases prostitution can be harmful, in the way I describe here on in any other plausible way, this can possibly warrant governmental intervention on paternalistic grounds and I make the assumption that prostitution can be harmful in some way as well, but without entering a discussion about the permissibility of paternalism.\textsuperscript{15} Instead we can turn to what interventions are available and what foreseeable consequences any such harm-reduction policy entails.

2.2 Prohibition

Prohibition is common in many countries and the aim is to reduce prostitution by criminalizing it and any related activities on behalf of prostitutes and/or society in general. The idea is that various forms of punishment will be the best deterrence for individuals not to engage in acts of selling sexual services. The form of punishment can vary from country to country and even within different jurisdictions within one state, such as in the U.S, but the aim for this type of legislation is to reduce prostitution by invoking the idea of deterrence through sanctions. If this would prove to be the most effective way of reducing prostitution and its related ills, it is possible that this idea carries some appeal. However, there are a few issues.

The desired deterrent effects of sanctions may not always turn out to be what the policy-makers intended to begin with. The effects of sanctions depend on a vast number of variables such as how the policy is construed, how it is implemented, how the people affected by it come to learn of it and how they perceive it, how these effects come to change over time, and what the differences in short- and long-term effects are.\textsuperscript{16} The outcomes of different sanction-policies are also context dependent, even within the same state or nation\textsuperscript{17} and if we add to that the assumption that prostitution can be at least as contextually variated, then any one sanction or sanction-policy can be questioned to be implementable in a variety of societies and contexts. Implementation of policy can also produce varied results since it is not always the case that the outcome of one implemented policy resembles the intention of the legislative body of government due to inadequate resource allocation, increase in sanction severity leading to increasing incarcerated populations and perceptions of unfair

\textsuperscript{15} Peter de Marneffe does give a thorough account of one such argument in \textit{Liberalism and Prostitution} in chapters 3-5 and though I will not address the issue here some of my notes will refer to remarks made in these chapters. The reason for excluding this discussion is that it is simply beyond the scope of this paper and for the following argument on consequences I will assume that paternalism in some form can be justified.


\textsuperscript{17} Ibid, p. 6.
sanctions amongst actors in the criminal justice system.\textsuperscript{18} Given these practical difficulties, implementation of an effective prohibition policy seems less attractive but for the sake of argument let us assume that it could turn out to work and that sanction policy would be the best way to reduce prostitution by punishing anyone involved in it.

Despite this, many authors writing on the subject have another way of refuting prohibition, by arguing that its implementation actually makes those involved worse off than under other legislative attempts to reduce it.\textsuperscript{19} The idea is generally that if prostitution is harmful for those who do it, society should not inflict further harm through sanctions whilst claiming it is for the benefit of those involved in the sex industry. For example, if someone, due to financial troubles and lack of better employment options decides to sell sex, it makes little or no sense to increase their financial burden with fines, or decreasing the opportunities available by creating a criminal record (assuming that this reduces the willingness of employers to hire convicted prostitutes) and arguing that this is a benevolent act.\textsuperscript{20}

### 2.3 Abolition

With the consequences of prohibition in mind the other popular solution is to advocate policies of abolition in some form. This is the kind of policy where either only the purchase of sexual services is punishable, or the purchase and all (or some) related activities such as living off the earnings of someone involved in the sex industry or brothel keeping, is punishable. This seems to lift the pressure posed on the workers themselves and targeting the demand part of the transaction. As far as harm-minimizing policies goes, this seems like it has more appeal than prohibition, assuming that clients of prostitutes are not in the same situation where they have to solicit sexual services in the same way a prostitute has to sell them. The form of abolition I will be concerned with here is where only the purchase and not any related activities is targeted. This is because someone living of the earnings of a prostitute could be seen as harmed by such a policy in a similar way that a prostitute is harmed under a prohibition policy and consequently that type of abolition policy would

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\textsuperscript{18} Ibid, p. 34ff.
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be subject to the same refutation stated above.

There are two problems that arise for advocates of abolition targeting buyers; the effectiveness of such policy, and the variation of consequences appearing due to societal contextual differences. The first problem mainly concerns abolition policies in post-industrial economies with a well built welfare-scheme and where there is not a lack of better employment options and/or opportunities. As one report shows, the statistical evidence referred to count in favor of the Swedish abolitionist policy currently in place is not only suffering from scientific uncertainty but also that the deterrent effect on buyers is questionable. Another article summarizing reports written on the effects of the Swedish policy ends with the following negative remark; ”The attempt to change private sexual behavior through the coercive force and threat of criminal law has not worked because the criminal law cannot force people to be ‘more equal’ in their private, consensual sexual lives - even in Sweden.” Keeping in mind that these issues are the topic of discussion in countries where there is some level of welfare-functions in place and where assumedly police corruption is relatively low. If we turn our focus to different places with similar legislation but lacking the official functions necessary to enforce policies in a just manner, situations can take a turn for the worse, which also is the reason for Amnesty International to denounce that kind of legislation, as their summary on the decision explains;

*Outside Sweden and Norway, the application of “end demand” approaches has resulted in grave consequences for sex workers. For example, “rescue” raids of sex*

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21 Of course this statement is debatable on the grounds of what constitutes an available range of better opportunities. In fact one report shows that a majority of those involved in prostitution in Sweden do so to support drug addiction and/or due to mental illness; Ministry of Justice and the Police, 2004, "Purchasing Sexual Services in Sweden and the Netherlands: Legal Regulation and Experiences", a Report by a Working Group on the Legal Regulation of the Purchases of Sexual Services, https://www.regjeringen.no/globalassets/upload/kilde/jd/rap/2004/0034/ddd/pdfv/232216-purchasing_sexual_services_in_sweden_and_the_nederlands.pdf, p. 10. (Collected 2016-03-04). This sheds doubt on how autonomous these choices really are and makes the claim of the availability of better opportunities arbitrary but one can also assume that if there is a well-structured welfare-scheme in place there is also some availability to treatment for such conditions, at least enough so to make a distinction of what qualifies as "better opportunities" between countries with well structured welfare-schemes and those without any social welfare at all.


23 Ibid, p. 15f.

establishments can result in abuses against sex workers. In India and Indonesia, researchers have found that sex workers who were rounded up in raids were beaten, coerced into sex by police, and placed in institutions where they were sexually exploited and otherwise suffered physical abuse.25

The consequences are not alone a result of the policy and the intentions of such a policy is not to cause the types of harms that are being depicted in this report but it shows that it might be a risk in solely advocating one specific policy without contextual awareness. Police corruption and abusive government officials taking advantage of policies intended to benefit certain groups in society are problems in their own and not only related to cases of prostitution-policy but that is one of the main reasons for the need to consider a more context-based approach to prostitution. Abolition or prohibition has at least the theoretical possibility of being a viable option in some places and should then be applied there, but clearly not everywhere. And it does not have to be as severe consequences as these. If the purchase alone is criminalized and there is a demand for sexual services then it is at least plausible that this demand will not disappear with legislation targeting buyers. It can also have the effect that the transactions will take place in places that are further away from society, where other criminalized activities take place such as drug-trafficking for example, or where the prostitutes themselves are more exposed to harmful risks. Not every piece of legislation has to be as sensitive to what the surrounding institutions look like and therefore be the subject of such careful considerations but one that aims to be beneficial for groups already disadvantaged should hold as a minimal condition that the policy actually helps the intended beneficiaries and does not make matters worse.

Although it is not the aim of this paper to advocate or dismiss one policy or another but the point the above discussion makes is that perhaps there is not one policy to deal with prostitution due to the complexity of the phenomenon. It also shows that the adhering contextual differences can produce different positive and negative effects stemming both from the act of prostitution itself and policies designed to handle it. I remain undecided as to what policy is the better one and reserve myself here for acknowledging that there always is the possibility of abolition in some form, or

perhaps even prohibition, can be the most effective and the most beneficial policy for everyone affected by it in some places. The point however is that viewing one alternative as a universal solution is not an adequate way to proceed because it can be the source of further harm depending on where it is applied.

2.4 Decriminalization

One could claim that decriminalization is such a solution that can be applied world-wide and not suffer the consequences of other policies. This can of course be true but what does such an approach actually solve from the harm point of view? The assumption made by harm-reduction advocates is that prostitution is harmful and that it is societies obligation to reduce harm, and therefore we should reduce prostitution. If we agree that prostitution can be harmful, and that it is because some inherent quality of such work, a decriminalization-policy would only enable that harm to continue, even if the reason for adopting that policy is to reduce harm caused by any other available legislative suggestion.

An opponent of decriminalization could claim that no progress is made with decriminalizing prostitution and that no effort is being taken to reduce the initial harm. To answer this we could say that there is a difference in the harm caused by working in the sex industry and the harm caused by legislation; that the societal condemnation by arresting someone for prostitution under prohibition or the conditions under which prostitutes would be forced to perform their work under an abolitionist policy are somehow worse. Or that it is even worse to suffer the financial burden of fines or loss of income, either from prostitution or a ”regular” job if anyone only sells sex as a second income, from spending time in prison or from losing that other job or opportunities to perform it under abolition.

This would require a decriminalization advocate to prove that harm is somehow quantifiable and therefore going against the claims made previously in this paper that the individual harm caused by universal solutions proposed to be applicable everywhere is irrelevant, since decriminalization would be such a universal policy. On the one hand we have the opponent of decriminalization saying that it is always the case that harm=harms, and that it is no significant difference where that harm originates or what type of harm it is.\textsuperscript{26} If the aim is to reduce harm in society in general then

\textsuperscript{26} This is not claiming that all opponents of decriminalization thinks that there is no differences in harm. It is rather claiming that there would be no significant situational difference between the harm caused by the inherent qualities of prostitution, and the harm that a policy aiming to reduce the initial harm could potentially cause for those working in the sex industry.
we always have to keep in mind that decriminalization is insufficient with the harm caused by prostitution. But it is not always the case that harm=害. If a person A become unemployed due to a shortage of work this would be one bad thing, since it would result in A not being able to have the same quality of life as when A held employment. If later on A cannot find any other source of income and is unable to afford rent and forced to move to either an alternative housing subsidized by the government, or if sufficient welfare regimes are lacking, become homeless, this would be another type of harm. A would be worse off if A is both unemployed and homeless, than if A is only unemployed. On the other hand we have the advocate of decriminalization claiming that harm≠害. Most people would probably agree that it is not possible to equate harms in this way to render different or aggravated harm insignificant, surely most of us would rather be well-fed and homeless than starving beneath a roof. And it is true that decriminalization alone cannot provide a satisfying solution to the harm inherent in prostitution, but does an advocate of decriminalization have to leave things at that?

There is a key difference between decriminalization and legalization; the intentions of the former policy is to improve things for a disadvantaged group by recognizing the surrounding structures and situational differences between societies as unjust due to a lack of information of, and/or, a lack of better opportunities. The latter policy treats prostitution as another form of labor, one that anyone deemed fit to do so has the freedom to engage in, and that it should not be treated any different from working in a restaurant for example. Decriminalization alone is not, as far as harms go, any different from legalization but paired with the right sort of support could prove to be the least harmful option. What type of support would be the most effective would be dependent on where in the world and in what type of society such measures take place. Some possibilities are outreach programs with counseling for those involved in the sex industry, determining if they actually want to pursue that line of work, if it is harming them in some way and if they are aware of being harmed, and if so, if they view the harm as negligent and not so severe to their person. Some countries might be better off extending (or where there is none, establishing) their social welfare, giving aid to those whom previously have not been given such privileges due to the nature of their

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27 Claiming that people doing sex work by choice are disadvantaged poses a risk of being demeaning towards autonomous individuals who chose a certain occupation based on their own conception of a good life, but this is not the sort of generalization I am making here. Rather, the sense in which I use "disadvantaged" here is to refer to an occupation that is inherently harmful and has negative impacts on individuals lives in ways that other occupations do not have.
work.\textsuperscript{28} The point however is not to make a list of what measures are best fitted with a decriminalization policy, and doing so would also go against the claim made earlier in this paper. If some kind of agreement can be met that prostitution requires a wide array of policies, each adapted to somewhat unique situations, the best policy (whatever it may turn out to be and in what place) from a harm-reducing point of view should also be accompanied by other forms of governmental intervention.

There is however one further issue with looking at prostitution with regard to individual harm alone. Focusing on individuals risks ignoring unjust structures between genders, and prostitution can further entrench and enable the continued existence of such injustices. The contextual differences that requires a more sensitive approach could possibly be irrelevant in a feminist approach to prostitution.

3. Feminist Objection to Prostitution

I call the following the "feminist objections" since its proponents focus on what prostitution for women looks like, how it can be problematized within an (although generalized) feminist discourse and with the assumption that most, if not all, societies today are structured patriarchally. When I discuss the feminist objections to prostitution I will not address the issue of male prostitution to any further extent than what is necessary for this paper. One possible consequence of such exclusion is that some might view this discussion and the feminist debates I will be referring to as neglecting the male side of the same issue and therefore being guilty of discriminatory arguments. I believe this to be a common misconception regarding feminist debates in general and not only belonging to prostitution alone. Making claims about gender equality by arguing for the sake of the group being worse off than the other, as in most feminist debates, does not imply that the other group is of no interest or that harm or issues that can be applied to both groups are being ignored. Assuming that most, if not all, societies today are suffering from some level of patriarchal structures where men are better off than women, it is more urgent to address the issues of the more severely disadvantaged group than the one who is better off. One further and perhaps even more serious implication of such arguments is that why should we even address the issue of the other advantaged

group when we are trying to speak about the disadvantaged? Why are we not, when for example discussing global poverty and its related ills causing innumerable deaths every year, at the same time discussing how the richest group of the world also can be victims of disadvantage and negligent actions? Even though I will not explicitly address male prostitution I am going to be making the assumption that the arguments aimed at female prostitution also can be applied to male prostitution.  

3.1 A Matter of Perspective

So far in this paper I have discussed issues surrounding free choices to engage in prostitution, and the available legislative responses to address negative effects of those choices. This involves looking at prostitution on an individual level, or from a micro-perspective. However, feminist critiques of prostitution attempt to define the issues from a macro-perspective, since one of the core ideas is that it is the unjust structures in today’s society that shape the individual choices being made. Furthermore, it involves criticisms of central ideas in liberalism such as autonomy and agency and makes serious charges against these, which in turn makes a discussion from a micro-perspective looking at individuals, whilst not addressing the social structures enabling the institution of prostitution, as going beside the point.

Labelling prostitution as sex work, sexual labor or as a sex industry could be seen as an attempt to empower those practicing it by removing the stigmatization of the common prostitute and giving more weight to the women involved as choosing to take advantage of the existing patriarchal structures for their own financial gain. The prostitute would be rid of both victimization and/or judgmental attitudes if society’s perspective of the act could become a more legitimate one, as an active choice being made by a free and autonomous individual.

There are two consequences of such an approach. The first is that it assumes the prostitute as being able to make that choice without having been affected by the social conditions preceding the choice in the first place, more specifically the gendered social conditions. If the patriarchal norm is

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29 As does Peter de Marneffe, de Marneffe, P., 2010, *Liberalism and Prostitution*, New York; Oxford; Oxford University Press, p. 13. Although he does so whilst assuming that female prostitution is more common than male. Such assumptions may be correct but I have not been able to find reliable statistics for the gender division in prostitution and especially when it comes to male prostitution and therefore I will not be making them here and instead settling with assuming that the same arguments can be applied to both sides.

influencing people of all genders in such ways that we cannot regard choices as outside of it or completely unaffected by it, prostitution becomes not a choice at all, regardless of contextual differences. If anyone chooses prostitution due to poverty or lack of better employment opportunity, we should not be asking if it is permissible or not, but rather why anyone would choose it? What are the underlying structures enabling anyone to make that ”choice”? Second, it is a potentially harmful way of looking at prostitution as labor since it is open for interpretations of it being separable from the self as any form of labor, but this is difficult to imagine how that could be since sex is closely and intimately connected to the self in ways that ”normal” work is not.31 And as apart from other forms of labor, the buyer of sexual labor takes advantage of those social conditions for his own pleasure and/or profit in the case of third-party constituents such as pimps or brothel-keepers, in the same way as the capitalist profits on the workers labor.32 The sex worker, as a worker owning property in herself and selling that property on an open market for the demand of men’s sexual urges and desires becomes difficult to imagine in a realistic sense. Kathy Miriam explains how one such person would have to be disposed:

Rather than owner of property, singular, in one’s person, the protean postmodern self is owner of properties, plural, in one’s (fragmented) person. In this version, freedom is the ability to circulate among multiple “identifications,” allowing then, for an interpretation of prostitution that abstracts the institution from any particular, historical situatedness in patriarchal capitalism. However, the proprietary concept of the (unified) self, remains the hidden precondition of this semiotic free play of interpretation.33

Judging prostitution as a choice of labor enables the patriarchal structures without problematizing them and without viewing as to what background the choice is being made. And if prostitution becomes a form of labor, or the best worst alternative, it enables the view of prostitution as an occupational choice, one empowering for the women who choose it. This in turn entrenches the

31 Ibid, p.3f. Although Miriam does not argue in the same way as I do here with ”normal” labor as being separable from the self, her conclusion takes on the more marxist critique of labor as alienating within capitalism. It is in my view not necessary to make such a conclusion in order to show that prostitution at least differs from other forms of work as being more inseparable from the self due to its intimate nature.

view of women’s subordination as legitimated by their autonomous choices, choices shaped by existing unjust background conditions.  

3.2 Choice in Patriarchy  
Assessing how autonomous a choice is due to the patriarchal structures in society depends on how much weight we give those structures, an assessment bound to be uncertain. It also depends on how much weight the same structures are given in different contexts, for example it is less likely to be an unfree choice if the awareness of those structures is higher in one place than in another, or depending on how far progress has been made with gender equality in one place compared with others. It is also possible that labelling the choice as unfree is condemning those making it as unfree, or at least uninformed and also making the argument open for criticisms of being condescending towards individuals. And along the same lines, there is not any certainty that choices will automatically become unfree even though we acknowledge the existence of unjust patriarchal structures.

Patriarchal structures, or any type of social norms, can surely shape and steer the directions of our choices but do not necessarily remove choices at all, nor do they render volition irrelevant. Is it too strict a condition for what constitutes a free choice that it has to somehow come from the self entirely, without being affected by any external circumstances? It is more plausible in the case of prostitution that the choice to engage in it is largely affected by norms and gendered structures in society, for example by giving more credit to the male sexual norm as being partially a cause of the sexual market. However, the consequences of such an approach on the shaping of choice is that it would weaken the notion of free will in its foundations if we view any choice made under the influence of some norm in society as unfree. This could be less problematic in the case of harmless choices or choices that do not enable, or are the effect of, existing harmful structures and it is only the severe injustices that comes with patriarchal structures or others like it that should be counteracted and labelled as unfree, or at least more so. The troubling idea with such an approach is that any choice made that either causes, or is the effect of, harm or that enables harmful/unjust

\[34 \text{ Ibid, p. 13.}\]

\[35 \text{ This claim however is possibly also open for critiques of free will as being affected by social structures. It is possibly troubling for a discussion on free will if it is weakened by structures and this could also be seen as some form of harm, or harm to free will and thus indirectly to the individual, even if the structures themselves are not directly harmful to individuals. This is more a discussion better suited for another paper but my point is not that a choice made by a weakened free will due to harmless structures is harmless in itself.} \]
structures is that there is no notion of a scale of freedom within it; either the choice is free or it is not, due to its harmful effects or its unjust background conditions. It is however difficult to see how unjust structures can somehow cancel out free will, and if that is the case, then even imaginary examples of how a woman sells sexual services out of the pleasure she gets out of it would have to be seen as on par with trafficking or rape.\(^{36}\)

It is not the choice that is lacking in freedom, and in some cases the choice of prostituting oneself can be seen as less free or perhaps even unfree, in cases of extreme poverty for example. However, what this shows, as earlier stated in this paper, is that there is a range of different circumstances in which prostitution occurs and condemning even the ”best” cases of prostitution as unfree would be mistaken. The error lies within a conflation of the choice lacking in freedom and the option available to engage in prostitution as one that should not be available for anyone to choose due to the unjust gendered social conditions, or the patriarchal structures. There is a difference between a range of options being unfair for one disadvantaged group in society due to gender injustice and the free will to choose being limited or nonexistent by the same cause; the latter ascribes the patriarchal injustice as embedded within liberalism.\(^{37}\) It is not the individual choices at all that are of interest here, but rather that the option of prostitution should not be a choice at all. In an equal society the choice to engage in prostitution should be nonexistent. On this view it is the male demand (on a macro level) for female bodies and bodily services that enables the institution, and option, of prostitution and this is because of how society is socially conditioned in a gendered aspect.\(^{38}\)

So in this sense it is not the choice itself that needs to be addressed, or the choice to purchase sex since we can also assume that it is the same patriarchal structure that approves of and enables the male demand, that the purchase is somehow justified if a prostitute chooses to sell sex, but rather the existence of such options.

### 3.3 Institutionalized Wrongness

This begs the question that if there were no patriarchal structure and hence if there were no gendered injustices, would there still be a demand for the purchase of sexual services, and if so, would there be a possibility of an actual choice to sell them? Assuming that the male sexual norm

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\(^{36}\) Or even worse, if decisions made to simply engage in any sexual act with another person can be seen as an effect of social conditioning and its causal relation to free will, would it also make those acts involuntary?

\(^{37}\) Ibid, p. 10.

\(^{38}\) Ibid.
today reaches to the point that it shapes most of our sexual preferences, as far as what body varieties of any gender we find sexually attractive\textsuperscript{39} but not as far so that it is the source of sexual desire, it becomes reasonable to think that the demand would at least decrease but possibly not vanish if the norm were to vanish.

For some people it would still be difficult to find a sexual partner even if today’s norms of a beautiful and attractive body type were eradicated. Let us imagine a future society in which prostitution and the patriarchal structures has been surpassed to the darker chapters of history. Sexual needs and being able to have intimate physical relationships with another are seen as fundamentally human needs, as a part of what can for some people be a main constituent of a good life (as it probably is in most places today). Yet in this future, there could still be those who cannot find that type of pleasure through no fault of their own, and are therefore lacking a fundamental aspect of quality in their lives, one that is closely tied to what it is to be a fully functioning human being in contemporary society. If the absence of a partner stems from an unjust distribution of individual attributes, it could be a reasonable form of argument claiming that this is an injustice that needs to be addressed. And it is in my view likely that this would create a market, one operated by private contractors, rather than there being a government operated counseling service, due to the possible humiliating experience of having to apply for assistance of this sort via official bureaucratic channels. A private market would probably be better suited for accommodating individual preferences. No matter which alternative would be used and how it would be implemented it would still mean that prostitution, or something with such similarities that it hardly could be separated from it, would exist.

There is a possibility that the desires of people would change in such a radical way that the scenario just depicted would not occur, but if that were to be the case, our remaining views on sexuality would have to be altered in such ways that it is difficult to imagine if they would even still exist. That is, sexual desire would no longer exist. And even if that were not the case, which it probably is not, there would still be a small minority excluded from a normal intimate life, whose needs would create a market and one we would necessarily have to endorse, or at least not condemn if the needs of a group less equipped for leading a full life are to be taken into account. What the scenario above

\textsuperscript{39}This is not assuming that everyone today is affected by the male sexual norm in the same way or that it is the case of a majority being affected and a minority being unaffected, but rather that there is a large variance of affect yet that most preferences are under the influence of it. Even those (if it is possible to judge it as such) objectively unaffected can be seen as a reaction to that norm, one that would not exist without the norm being there in the first place. The sexual standard imposed by the male norm however, exists and this can be seen by simply looking at how bodies are being portrayed in the media for example.
shows is that it is at least plausible in some way that it is not prostitution itself that creates the wrongness but the patriarchal institutions that are its source, and what is shaping how prostitution comes into expression in society. This makes it worth noting that the solution proposed to prostitution, and its patriarchal source, is abolition. As I hope that my previous discussion in the harm segment of this paper shows, abolition is at least questionable on some grounds, and that if legislation of that kind does not alter the demand part of prostitution in any groundbreaking ways it should become as questionable that abolition does not alter the institutional wrongness of prostitution. The abolitionist proposal for legislation can be seen as society denouncing the patriarchal institution but that seems to me as far reaching if the effect of such denunciation is only made visible in theory and with its implemented absence, as the reports in the previous section showed.

4. Conclusion
Judging contextual differences depends not only on the weight ascribed to their causal effects and the variety in which they can possibly appear but also how different approaches can have other effects than those desired. Even if the theoretical possibility of more situationally sensitive legislative actions exists, the practical implications that such actions can produce rest on uncertainty. So even if each state legislative body were to look at the uniqueness of each situation, the global effects of such an approach could still be undesirable. If abolition brings the best results in one area and decriminalization would be better suited in another, it could increase the so called sex tourism from the former area to the latter for example. Or even if prohibition would be a better option from a harm-reduction point of view, evaluations of the humanitarian cost of such legislation cannot be ignored.

I have shown in this paper that each contemporary legislative suggestion to deal with the issue of prostitution have consequences that cannot be neglected if the core idea is to reduce harm. Prohibition can discriminate an already disadvantaged group, abolition can produce similar effects and not solve matters but simply shift the marketplace, and decriminalization does not on its own reduce harm. What this shows is that even though there is a need to be more sensitive to the variance of situations that prostitution can occur in, the global perspective or values other than

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40 Ibid, p. 13f.
reduction through legal sanctions cannot be ignored when contextual variations are taken into account.

The individualistic perspective on prostitution remains accurate in identifying harms and raises questions of the limits on sexual liberties that such a phenomenon poses. As I claimed in the beginning of this paper the discussions were to be isolated to one another and I would not pit them against each other in order to find what they are missing. Perhaps one way of making progress in the case of prostitution is to try and find common ground between different, although not directly opposing views. The feminist objections I have looked at challenge liberalism in its core as enabling the patriarchal structures through a sexual contract with unequal terms for people of different genders. The enormity of overcoming such obstructions to equality exceeds the scope of this paper. This view, although it may correctly identify a behavioral source of prostitution, can only challenge that source at the cost of individual harm. What is at hand is the conflict between micro- and macro perspectives on prostitution where the former neglects to view the social conditioning of patriarchal structures and the latter fails to acknowledge the values of minimizing harm to the individual, whilst both share the common goal of reducing prostitution.

Discrediting individual autonomy on the grounds of gender inequality is not necessary in order to acknowledge the existence of harmful patriarchal structures. Instead it has the possibility of being a suitable point from which to start to examine how much and in what areas those structures affect people. To answer the question of free will and informed choice in a gender-structured society requires an agreement on the male sexual norm as a possible source of sexual behaviors of people of all genders and not only male, a view that acknowledges the existence of such a norm and that it shapes the idea of other bodies as being goods of trade in a sex market. Proving the existence of something obscure as a male sexual norm is impossible, as if trying to prove the existence of any norm as something that can, and is, affecting individuals in their decision making but that is going beside the point. What is more important for the discussion at hand is the possibility of the existence of such a norm, and the aim to redirect the questions of prostitution from the individual choosing to sell sex, to the other part that views such services being legitimately open for purchase. The main

41 However the claim that liberalism can produce inequality between genders does not need to be refuted for the sake of mutual agreement on harmful structures, but more a matter to be dealt with in another discussion and a more complicated one. An example of a discussion of the liberal contract as a sexual one can be found in: Pateman, C., 1999, "What’s Wrong with Prostitution?", Women's Studies Quarterly, 27, 1/2: Teaching About Violence Against Women, 53-64. The Feminist Press at the City University of New York.
obstacle to overcome is how to reduce and finally abolish the influence that the male norm has on everyone in society. The behavior of individuals making choices under some degree of influence of a norm should not be the main target, yet neither should it be ignored, since individual behavior is what should be scrutinized under the eye of a justice apparatus and legal sanctions should not be lifted due to socially conditioned behavior. However the reflective considerations preceding legislation can and should make such deliberations of the possibility of conditioning structures and the effects they have. Just as with individual behavior that cannot be ignored by a society with legal sanctions, the degree of limitations that norms have on individual autonomy and choice must be taken into consideration.

The biggest difficulty is how this is accomplished. It should not be necessary that the ills of prostitutions must be tolerated and wait for the final abolition of gender inequality, as with any issue of that kind. Or that prostitution cannot be reduced without solving issues of poverty and global justice. How can a general view of another person reduced to a product on a market, stemming from social conditioning, be changed whilst retaining due weight towards the responsibilities of individual actions without neglecting either involved part as suffering from the same symptoms of a gender-structured society? The complexity of this question points in a direction where answers are not found in one theory, or one single discourse. It is a place of thought where the liberal free will cannot stand abstracted from its habitat within the individual or where radical feminism cannot treat society as abstracted from its inhabitants of individuals. If there is such a theoretical common ground not suffering from contradiction to be discovered, it should at least be a point for the discussion on prostitution from which to originate.
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