



Counterpoint: Sex Work Should Be Decriminalized

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BY LELA KLEIN

Editor's Note: The issue of sex work forms the basis of one of the most heated contemporary arguments among feminists. Those who support the abolition of prostitution often look at poststructuralist/postmodern feminists with confusion and anger. The "pro-sex" position seems like capitulation to male prerogative that lacks any threat to patriarchy; guaranteeing unlimited access to women's bodies is something that men have always demanded, is one of the bases of sex inequality, and damages all women. "Pro-sex" feminists respond with equally strong outrage, seeing dominance feminists as doing exactly what men have always done: telling women what they can and cannot do with their bodies and denying women the ability to take control of their sexuality. To them, second-wave feminists reflect a moralizing conservatism against which feminists have always fought and sex work is a complicated series of actions with the potential not only for women's erotic potential but for empowerment and liberation. These fights are often entrenched, ugly, and rather unproductive. Both sides credibly believe that theirs is the minority position, which makes the argument even more heated.

*There is one thing that all people should agree with, however, and that is a shared interest in improving the lives of sex workers. Across the world, sex workers are raped, beaten, and murdered on a regular basis. The legal system offers little recourse as it is common for police officers to rape and abuse sex workers. Immediate action must be taken to address this problem. On April 16, *Unbound: Harvard Journal of the Legal Left* hosted *Beyond Coercion:**

Radical Voices on Sex Work, Feminism, and the Law, a panel focusing on prostitution and the sex industry, as reported on in this week's Record. The panel featured Sapna Patel, an attorney with the Sex Worker Project of the Urban Justice Center, Eliyanna Kaiser, Executive Editor of \$pread Magazine, and Charito Suarez, an outreach worker with TransCEND.

By Lela Klein

I oppose the criminalization of prostitution, plain and simple. Specifically, I oppose criminalization targeting either prostitutes or “johns.” That said, I agree with Mark Egerman’s comment that it’s rare for this conversation to move “beyond simple classifications as being pro- or anti-sex work,” and I think there is considerable room for nuance within this discussion.

Generally, I oppose criminalization as a strategy. If our concern is the safety and substantive equality of women, transpeople, and others in the sex industry, it is highly problematic to turn to police, courts, and prisons for the solution. The criminal justice system is one of the most racist, classist, and heterosexist institutions in the United States. I question whether putting over two million people in jails and prisons in this country has made our communities and homes any “safer.”

Criminalization increases the stigma and discrimination faced by sex workers. In the United States, where felons are disenfranchised and those with criminal records find it difficult to gain employment beyond low wage jobs, advocates striving to ensure that sex workers have the ability to leave the industry should oppose any policy that subjects sex workers to police and court action.

Criminalizing those who hire prostitutes also has unintended consequences. As Egerman mentioned, the Swedish model criminalizes customers and “pimps,” rather than prostitutes. Many applaud this model as a humane first step in the direction of complete abolition of prostitution. Nevertheless, panelist Eliyanna Kaiser presented evidence from a Swedish government report which found that criminalizing customers results in sex workers facing increased physical danger. To paraphrase, this stems from the “best” customers being driven away from the market, while those customers who remain in the market are more paranoid and violent.

Further, as HLS student Sarah Rodriguez usefully pointed out, we also should consider the race and class dynamics of which communities face the most intervention by the police and courts and, therefore, which communities will be disproportionately prosecuted for hiring prostitutes. Moreover, criminalization drives the industry underground, discouraging collective action, isolating individual sex workers, and decreasing sex workers' bargaining power.

I also disfavor straightforward legalization, as such. I fear that wholesale legalization of prostitution in the United States inevitably would be played out along capitalist lines, with sex workers' labor surveilled, controlled, and exploited, while managers and brothels reap the benefit of their labor (this is a common critique of Nevada). Wholesale legalization also would likely perpetuate current racist conditions, with sex workers of color performing the least desirable, least profitable work.

As one alternative, I favor a system more like New Zealand, which focuses on the needs of sex workers and was designed with input from prostitutes (for more information, see the New Zealand Prostitute Collective's website at (http://www.nzpc.org.nz/page.php?page_name=Law). Instead of creating regulations that limit sex workers' choices, New Zealand regulates operators, defined as any person who has any form of control over a sex worker. This includes owners, directors of companies and managers, but explicitly excludes sex workers who work together cooperatively. In addition, sex workers who want to change jobs are eligible for state benefits without any penalty for voluntary unemployment.

On a more theoretical level, Egerman and I likely agree that patriarchy constrains meaningful choices. Among other things, this means that economic and employment options are limited (especially for women, people of color, transgender, and gender non-conforming people) by explicit and de facto rules about who can or should perform what jobs. We might also agree that neoliberalism overemphasizes people's individual actions and decisions, obscuring societal forces that work to strengthen class, race and gender divisions. Given this analysis, when we see a person choosing between prostitution and waitressing, Egerman and I are likely to ask whether there are systems and structures that prevented him or her from choosing to be an economist (or astronaut, or painter).

Some might go on to say that if he or she chooses prostitution, the decision was coerced by economic circumstance. This is where I'd intervene (and why I titled Unbound's event "Beyond Coercion"). I think coercion versus choice is a false dichotomy, and that all of us, all the time, are experiencing both. Therefore, I think it is wrongheaded and condescending to tell people their choices are not real, or to impute psychological damage or victim status to anyone who would make a choice with which we don't feel comfortable.

When I argue that we should not disrespect the agency of women who choose to be prostitutes, I am not just talking about privileged grad students and artists "slumming," as Egerman cautions. Rather, I think it is both classist and racist to say that the choices of elite women are real but that poor women have no agency.

Arguing from agency does not mean that I don't think we need to question "the conditions under which this agency is executed," as Egerman says, or work hard to tear down the systems that stratify us and limit our life chances and possibilities. Likewise, it does not mean that I think our analysis should end with "it's a choice." Instead, we need to ensure that people can leave sex work when they want to, that they are safe when they are sex workers, and that they have the power to set the terms of their intimate exchanges. My experience as a union organizer tells me that the way to do this is to empower those in the industry, regardless of how they entered, to work together to set standards and improve conditions.

Feminists usually agree that we want women's voices and sexual decisions respected. Some argue that in "post-patriarchy" there will not be a sex industry. I wonder instead whether, in post-patriarchy, women and men will be equally free to seek erotic services from willing providers. But speculation aside, instead of criminalization, let's fight for true substantive equality, and on the way there, let's advocate for policies that ensure that people are safe, happy, and economically stable in whatever their work, whether it's prostitution, housecleaning, stripping, or law.

Lela Klein is a 2L.

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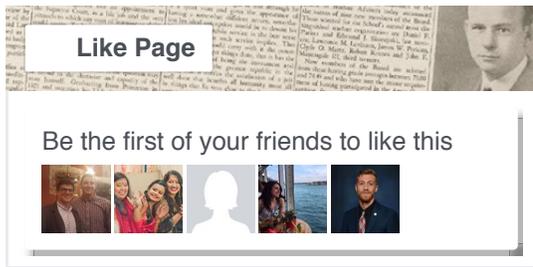


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