

When Prostitution Is Nobody's Business

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Moral and political philosophers distinguish among different forms of privacy: physical, informational and decisional. When it comes to sex, we tend to have a strong expectation that we'll be granted all three.

Physical privacy involves having access to a space, on a permanent or temporary basis, where we are permitted to do things, sexual or otherwise, without being viewed by others. Informational privacy grants a reasonable amount of control over who has access to our personal information, including information about our sexual lives, habits and partners. Decisional privacy is having freedom from undue interference from others in the decisions we make about our lives, and people commonly want to make decisions about their sexual activities and relationships without such interference from family members, friends, co-workers or governments.

By contrast, other social relations, such as market transactions, come with different expectations of privacy. Commerce typically takes place in public venues, and we expect there to be informational transparency about the goods and services we purchase. We often want market transactions to be scrutinized or regulated by third parties in order to insure that they are fair and equitable, especially when full transparency is not available, as in the cases of pharmaceuticals, health care and real estate. So for the greater good, all three types of privacy are limited during market transactions in ways that would be unreasonable in regard to private sexual activity.

But when sex and commerce meet, the rules regarding sexual and market privacy quickly get murky. For example, should exchanges of sexual services for monetary gain take place with guarantees of privacy or transparency? If the former, then we expect them to be free from the intrusion of others. If the latter, then we expect them to be subject to social regulation. But where, exactly, is the border between the private exchange of money or gifts and the impersonal profit-making of the market?

When sexual partners exchange money and gifts between themselves, we generally see this as a private exchange. However, what do we do if a person has several sexual partners, and regularly receives money and gifts from each of them? Traditionally, a woman who had more than one sex partner from whom she received various forms of material support was likely to have been regarded as a "public woman," that is, a prostitute, whore or sex worker. Although there has been significant social tolerance historically for men who have and support multiple mistresses, moral disapprobation for women who have multiple lovers has resulted in laws in which women who have several sex partners from whom they accept gifts can face arrest for prostitution.

Can we really draw a bright line between a person who has casual sex, in private, with various lovers, and a person who has sex in private, with various short-term and long-term lovers, from whom she accepts monetary support?

Having multiple, casual or ongoing partners from whom one receives monetary support is not the same as running a brothel, or setting up a home business that advertises publicly and accepts customers based on their ability to pay. Yet the line between these kinds of activities may be hard, at times, to make out. For example, should a person who is, say, polyamorous, and has multiple lovers who economically support her, have a right to physical, informational and decisional privacy in regards to her sex life?

Consider the case of Brandy Britton, a former university professor and mother who was separated from her abusive husband. Britton sought dates and accepted gifts from men whom she entertained in her home, with a goal of staving off the foreclosure of her house. In 2006, she was subject to an undercover arrest and charged with four counts of prostitution. A week before she was to be tried in court, she committed suicide.

Or consider that some young women today choose to seek “sugar daddies,” typically well-off men who can help them pay their college tuition and living expenses, by using online dating sites. In exchange, the women offer these men companionship and other forms of intimacy. Should the activities of these women, or Britton, be treated as a form of prostitution, which is a criminal offense in the United States?

Laws and customs in America have evolved to the point where fewer consenting adults are charged with a crime when they privately engage in nonmarital sex. Laws against adultery have mostly been repealed or are unenforced. *Eisenstadt v. Baird* (1972) recognized the right of unmarried people to have access to contraception, and therefore to engage in nonprocreative sex. *Lawrence v. Texas* invalidated state anti-sodomy statutes that targeted private, consensual, same-sex intimacy between adults.

Can we really draw a bright line between a person who has casual sex, in private, with various lovers, and a person who has sex in private, with various short-term and long-term lovers, from whom she accepts monetary support? Dating couples often exchange money and gifts. Such exchanges of money do not transform their relationships into business transactions.

Anita Allen has argued that when people belong to groups that have been socially stigmatized, they often find it more difficult to defend and demand respect for their privacy, particularly in courts of law. For example, women, African-Americans, lesbians and gay men, the disabled, the poor or working class, and especially people at the intersection of two or more of these categories often lose in court when their privacy rights have been violated. Promiscuous, unmarried women and girls are often publicly shamed as “sluts,” and denied their rights to privacy when others morally disapprove of their lifestyle. Although men also perform sex work, they are rarely subject to arrest or detention, or in other words, invasions of their sexual privacy.

When we describe the activities of someone like Britton or the dating “sugar babies” as “selling sex” or performing “sex work,” we place their activities in the public sphere. While these women may have sexual relations with a number of short- and long-term boyfriends or girlfriends who give them gifts of money, they are not formally employed as sex workers in a commercial

establishment, nor are they running a business. Services provided in the home or other private spaces are typically understood differently than labor performed in spaces designated for commerce or under contract with an employer. Why should this be different when sex is involved?

In a liberal, democratic society, our basic right to privacy and equal treatment under the law should protect people like Britton when they do not harm others and are not a public nuisance.

If the state were to stop prosecuting women who provide intimate companionship for their one or many lovers, who in turn pay their bills, it does not follow that the state would then have to grant licenses to businesses offering sexual companions on a commercial basis. Commercial and publicly visible exchanges of personal sexual services present different kinds of moral issues. Would such businesses be of value to society, and could the rights of all involved and uninvolved parties be protected? With informal arrangements in our home, where we have a legitimate expectation of sexual privacy, these questions are less relevant.

Moreover, if the state were to stop prosecuting people like Britton for socializing with a flow of lovers in private, this does not entail that we should tolerate people having sex in cars, on the streets or in other public places. People can relieve themselves in a variety of ways in private, which we do not allow in the street. Whether anyone would want to live next door to a person like Britton is a different matter than whether her lifestyle should be criminalized. Surely she could be subject to the same nuisance laws, community rules and norms of politeness as anyone else. This should be sufficient to keep relations among neighbors peaceful and respectful. Some people have swinger parties in their homes without provoking the ire of their neighbors. But if they do offend, complaints are usually handled in a civil, rather than criminal, context.

In a liberal, democratic society, our basic right to privacy and equal treatment under the law should protect people like Britton when they do not harm others and are not a public nuisance. Such a change in our response to private, sexual activities would align our policies with those in Britain and other countries that have adopted the British model, where providing sex for money and offering money for sex are not crimes, as long as these activities take place in private.

This is a different model than the Swedish one, which criminalizes offering money for sex, or the Dutch "harm reduction model," which permits and regulates commercial sex work establishments. These models have had mixed success in protecting the safety and dignity of sex workers, or in stopping trafficking and nonconsensual sex work.

This week, participants in an Amnesty International council meeting in Dublin are considering a proposal to endorse the decriminalization of consensual paid sex between adults. The proposal has elements of the both the British model, which rests on the idea that consensual sex between adults should be protected from state interference, and the Dutch model, which is based on the idea that criminalizing paid sex generates more harm than good. The policy draft I read emphasizes the organization's longstanding commitment to end trafficking, and to insure that,

where paid sex exists, it is voluntary and safe.

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Yet some prominent feminist groups have organized to oppose Amnesty International's proposed policy and to endorse the Swedish model of prohibition. Their opposition is based on the assumption that acts of paid sex are inevitably coercive and that the state should intervene in private sexual acts between adults to protect vulnerable people.

The first assumption has been strongly challenged by many sex worker civil and labor rights groups, and the second assumption is subject to the objection that it is overly paternalistic toward adult women. Moreover, opponents to Amnesty International's proposed policy overlook the fact that it remains neutral on the question of whether there should be public establishments for the purpose of buying and selling sex.

Amnesty International's proposed policy, like the British model, offers an intermediate step that recognizes that an act, such as sex exchanged for monetary support, can have different meanings depending on its context.

Either of these policies, if implemented, would change the way we respond to cases of people like Brandy Britton and the women seeking sugar daddies through online dating, whose activities deserve protection under contemporary moral and legal understandings of "privacy."

While we might believe that having sex for money is neither wise nor good, democratic and free societies now allow adults—married or unmarried—to make their own choices regarding why and with whom they have sex. It's time to stop policing the private, consensual sex lives of adult women who support themselves in morally unconventional ways.

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