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Pros and Cons of the Legalization of Prostitution

Prostitution has often been called the oldest profession in the world. In the modern world, though, many nations, perhaps most notably the United States, have legally banned prostitution, primarily on moral grounds. The purpose of this sample essay provided by Ultius is to explore the pros and cons of the legalization of prostitution. The essay will begin by providing a brief history of prostitution in the world. Then, it will proceed to first consider the pros of legalizing prostitution and then turn to the cons. Finally, the essay will reach a considered conclusion in which the case will be made that prostitution should in fact be legalized, on the grounds that the practice will be around one way or another anyway, and that legalization would at least improve the safety of everyone involved.

**Brief History of Prostitution**

To start with, the empirical evidence would in fact seem to support the basic statement that prostitution—or women selling sex to men in exchange for money—is a very ancient practice. As Fanni has written: "Wherever we find evidence of human culture, we find evidence of prostitution. When the earliest known human societies emerged in the fertile crescent of Mesopotamia, the sex trade evolved alongside temples, customs, markets and laws" (paragraph 1). In ancient cultures, prostitution was often associated with religion itself, with women who called themselves sacred prostitutes performing sex in temples as a part of religious rites. More generally, the practice of prostitution was often associated with one goddess or another, with the goddess herself often being given some deliberately "whorish" elements for her overall personality structure.

In today's world, prostitution is legal or quasi-legal in many nations, including Canada, India, Australia, most of South America, and most of Europe; and it is illegal across most of Africa and most of the Middle East. Within the United States, prostitution per se is illegal (except in the state of Nevada), although there is a fuzzy line when it comes to "escort" services, which technically according to the letter of the law do not promise sex (although of course that is the implicit agreement present between the parties involved in the transaction). In many European nations, a distinction is made between the prostitution per se in and of itself, and associated practices such as pimping or operating brothels: it is often the case that the former is legal whereas the latter is not. Clearly, then, there is a great deal of diversity in the world today when it comes to laws regarding what has often been called the oldest of all professions. In this context, it is worth conducting an analysis of the pros and cons of the legalization of prostitution.

**Pros of Legalization**

One of the most important arguments in favor of the legalization of prostitution consists of the simple insight that legalization would mitigate any risks of violence associated with the profession. As Reisenwitz has written: "As with the drug trade, much of the violence associated with sex work is exacerbated by its illegality. Violent people are more likely to prey on sex workers, confident that they won't be reported to police. This leaves workers dependent on pimps and madams for protection, which often leads to more violence" (paragraph 3). If prostitution was legalized, on the other hand, then prostitutes would have the same options of legal recourse against violence as everyone else, and they would not need to worry about incriminating themselves when pursuing those options. This line of argument would suggest, then, that the legalization of prostitution would in fact be hugely beneficial with respect to the safety of prostitutes themselves.

One of the main assumptions underlying this line of argument is that one way or the other, prostitution as a practice is going to be around, whether it is legalized or not. As the disastrous War on Drugs has shown, drugs do not go away because they are repressed by the law; rather, they are simply pushed underground to the black market, where they cause much more serious problems than they would have if they had just been allowed to remain above ground and carefully regulated by the government. Similarly, even if the goal were to do away with the practice of prostitution, legally banning prostitution cannot be understood as an effective way of achieving this objective. Whether one is morally repulsed by the very concept of prostitution is thus not really a relevant point here. The point is that one's moral revulsion is not going to make prostitution go away one way or the other, and that the best way forward would thus be to work toward creating a situation that empirically maximizes the safety of everyone involved.

Moreover, it is worth bearing in mind that this is generally the perspective expressed by prostitutes themselves, which should perhaps carry some weight in this kind of discussion. As Hershberger has indicated: "At the end of the day, the people who can best speak for sex workers are the sex workers themselves. And while sex workers as a whole are not united in their opinions about the sex trade . . . they and their advocates don't support the Sweden model, calling it 'indirect criminalization'" (paragraph 11). This refers to a policy according to which selling sex is decriminalized but actually buying sex is still illegal (see Gonchar). In general, prostitutes would seem to believe that such a policy still puts their safety and well-being more in jeopardy than would just straightforward legalization and accompanying regulation. Of course, some prostitutes may like the charm and profits of working on the black market; but it would that this is more or less a minority view among members of the profession.

Finally, an argument in favor of the legalization of prostitution can also be made from the angle of the autonomy of women. Anderson, for example, has reviewed the ethical argument that the legalization of prostitution is essentially a matter of the sexual autonomy of women: the idea would be that a woman's body belongs to her, and that she can thus do what she would like with it, including selling it for sex. From this angle, efforts to protect women by legally banning prostitution would be morally misguided, insofar as this would actually be reflective of a patriarchal ethos that fails to respect the inherent autonomy of women. This argument is supported by the empirical fact that in the modern world, prostitution is primarily illegal across Africa and the Middle East—that is, regions known for their strongly patriarchal cultures and general oppression of women. In this context, the legalization of prostitution can be understood a fundamental part of the broader struggle for the autonomy of women and their rights, sexual or otherwise.

**Cons of Legalization**

One of the main arguments against the legalization of prostitution is that the practice is inherently so damaging to women that it cannot be treated as quite the same as any other profession, or as a matter of women's autonomy. As Demand Abolition has written: "Prostitution, regardless of whether it's legal or not, involves so much harm and trauma it cannot be seen as a conventional business" (paragraph 2). In other words, the suggestion can be made that the practice of prostitution, as such, has an irreducibly moral dimension, and that it would be wrong to create laws that call such a practice legal. The moral considerations regarding the legal status of prostitution should thus override the pragmatic considerations: it would simply not be acceptable to call something so inherently damaging legal, no matter what consequences may or may not follow from this moral decision.

Moreover, an argument can also be made from the angle of the economics. From this angle, the main idea would be that the legalization of prostitution would not actually improve the situations of women within the sex industry itself. Raymond has suggested, for example, that "some people believe that, in calling for legalization or decriminalization of prostitution, they dignify and professionalize the women in prostitution. But dignifying prostitution as work doesn't dignify the women, it simply dignifies the sex industry" (2). That is, if the sex industry as such is made legal, then this could result in the proliferation of that industry; and as with any industry within the capitalist economic system, this could end up producing not dignity for sex workers but only their further alienation and oppression. At the very least, then, it would be necessary to think about the consequences and long-term implications of giving an entire industry the right to legally develop in this way.

Finally, the argument regarding women's autonomy could be rebutted through an analysis and redefinition of the very concept of autonomy itself. Stoljar, for example, has over the course of her article developed an idea of autonomy according to which one cannot be said to be truly autonomous unless one has the right cognitive resources and possibilities to make an informed decision about what is truly good for oneself. This means that insofar as a person is making a bad decision based on inadequate knowledge, that decision cannot really be called autonomous in any meaningful sense of the word. According to this concept, it would be very likely that the vast majority of prostitutes are not autonomous at all, insofar as they are often coerced into their line of work as a result of social, economic, and environmental forces beyond their control, as opposed to entering the profession as the result of a truly free decision. This means that protecting the autonomy of women would imply working toward ensuring that they do not feel the pressure to become prostitutes in the first place.

**Considered Conclusion**

The above discussion has considered both the pros and cons of the legalization of prostitution. On the basis of this discussion, the considered conclusion can now be reached that prostitution should in fact be legalized, albeit in a qualified way. The primary point supporting this conclusion consists of the simple fact that the practice of prostitution is going to be around anyway, whether it is legalized or not. Given that this is the case, it is inadequate to base policy decisions on any kind of moral absolutism; rather, the decisions must be based on pragmatic considerations regarding what kinds of legal structures would genuinely improve the safety, health, and well-being of practicing prostitutes. This would clearly require at least the qualified legalization of prostitution. Moreover, the argument from the angle of the autonomy of women is a compelling one, and the argument that prostitutes are not really autonomous is too paternalistic to be taken seriously by a free society.

The caveat must be included here, though, that the sex industry as such should not be legalized. That is, much of Europe probably has the right idea by legalization prostitution but continuing to criminalize accompanying practices such as pimping or the operation of brothels. This is appropriate, since it gives women the autonomy to choose to be freelance prostitutes while at the same time inhibiting the systemic structures that often and easily lead to the oppression of women within the sex industry. There would seem to be no good reason to let the industry as a whole become legal, insofar as this would not translate in any meaningful way into improved safety for prostitutes themselves. The conclusion that has been reached here, then, is that while the industry as a whole should in fact remain outside of the bounds of the law, the simple practice of a woman independently deciding to engage in sex work should be within the bounds of the law.

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