

Abstract and Keywords

This chapter argues that individuals have the right to sell and buy sexual services. It reviews the commodification and gender inequality objections to prostitution, and outlines ways in which the practice can and should be regulated.

Keywords: autonomy, commodification, exploitation, feminism, gender inequality, personhood

7.1 Introduction

Let us take stock of what has been said so far. As Chapters 2–5 demonstrated, individuals need both body parts and personal services in order to live a minimally flourishing life, and (with qualifications) have rights to them against able-bodied (or, as the case may be, dead) third parties. In Chapter 5, however, we saw that sexual and reproductive services are not the kind of services which one can be held under a duty to provide as a matter of justice. In addition, it was argued in Chapter 6 that individuals have the right to sell their body parts in all those cases where they are not under a duty to provide them for free; conversely, they have the right to buy body parts from those willing to sell, in all those cases where they do not have a claim to get one for free. Can we infer from the foregoing claims that individuals have the right to hire their body for sexual and reproductive personal services, and to buy those services from those willing to provide them? To put the question in the starkest possible terms, on what grounds, if any, do individuals—women *and* men—have the right to prostitute themselves or to buy a prostitute's services? On what grounds, if any, do women have the right to lease their womb out to prospective parents who cannot, by themselves, have a child? And on what grounds, if any, do the latter have the right to buy their services?

In this chapter, I address the issue of prostitution. Section 7.2 argues that engaging in prostitutional acts, whether as a client or as a prostitute, is not inherently morally wrong, and that individuals have the moral right to do so. In other words, they have the power, as granted by a moral rule, to **change their relationship with others by transferring some claims over their body to sexual ends, and such power is protected by claims that the state not only not interfere with them, but also recognize the transaction as valid.** I thus offer a defence of the legalization of prostitution—that is, not merely of its decriminalization, but of its **regulation under labour and contract law.** In section 7.3, I examine and rebut some claims, mostly but not only put forward by feminists, to the effect that prostitution is morally wrong and therefore should be criminalized.

Before I start, a point of terminology, and three caveats. Defining prostitution is harder than it seems at first sight. Consider the *OED*'s definition (current online edition): (p. 155)

2. 1.a. Of women: The offering of the body to indiscriminate lewdness for hire (esp. as a practice or institution); whoredom, harlotry.
4. 1.b. *Personified*
6. †1.c. *transf.* A prostitute, a harlot. *Obs.rare.*
8. 1.d. Of men: the undertaking of homosexual acts for payment.

Setting aside some odd disparities between its accounts of female and male prostitution (according to the *OED*, male prostitutes, unlike female prostitutes, do not, by definition, seem to offer their body *indiscriminately*), note that the *OED* counter-intuitively rules out from its definition (because of 'indiscriminating') the high-flying prostitute who carefully selects a small number of wealthy clients and only deals with them for a number of years. In addition, it does not quite capture what is involved in practices as diverse as offering manual or oral sex only, phone sex, Internet sex, and so on. To some, those practices are not similar enough to the paradigmatic definition of prostitution to count as instances of it. However, I take for granted that they do. Finally, the *OED* does not take on board the fact that, however rare they are, male prostitutes whose clients are women do exist. ¹ In section 7.2.1, I shall offer an account of prostitution which does embrace many (although, as we shall see, not all ²) of those various phenomena. When doing so, and indeed throughout the chapter, I shall call 'heterosexual' a prostitutional act which takes place between two individuals of opposite sex, irrespective of their sexual orientation; conversely, I shall call 'homosexual' a prostitutional act which takes place between two individuals of the same sex, again irrespective of their sexual orientation. Thus, a prostitutional act between a heterosexual male prostitute and a homosexual male client is a homosexual act; so is an act between two heterosexual men, who would both rather, and normally do, have sex with women, but cannot do so under the circumstances in which they find themselves.

And now the three caveats. First, in so far as my task, in this book, is to delineate the rights individuals have over their own and other people's bodies, I shall focus on prostitutes' and clients' rights, and ignore pimping. I shall only, and presently, dispose of some objections to it. It is sometimes argued that pimping is morally wrong because it amounts to making a profit on the back (so to speak) of the prostitute. But if that is morally wrong, then so is capitalism itself, no matter how it is structured and regulated. Could it be that pimping is wrong because pimps make a profit from prostitution without doing any work for it? Not so: (p. 156) some pimps actually do protect their prostitutes from abusive clients, and thereby provide a service to them. Moreover, this

particular argument proves too much, in so far as it condemns as morally wrong, and recommends the banning of, all forms of profit#making which do not involve work, such as having someone invest for us in the stock market. In so far as profit#making of that kind occurs with the consent of all parties, it is unclear to me that it should be banned (indeed, that it is even morally wrong). Perhaps the point is that one should not make a profit out of other people's sexual desires, period. But that too seems to prove too much: consider a movie producer whose (non#pornographic) profit#making movies have steamy sex scenes and for that reason (amongst others) attract vast audiences. Is he acting wrongly? Surely not. And so perhaps the point is that one should not make a profit from getting people to have commercial sex, for commercial sex is wrong, debasing, uncondusive to human flourishing, and so on. I shall argue against that view of commercial sex (and, by implication, against this particular objection to pimping) in sections 7.2.1 and 7.3.1 .

Second, my focus is on **voluntary prostitution**, to wit, **on transactions whereby someone provides sexual services to some other person(s) against payment, without coercion**. Nothing I say here should be taken to imply tolerance towards pimps who terrorize vulnerable individuals into prostituting themselves by physically or sexually abusing them, and/or getting them hooked on drugs, or towards clients who themselves abuse and rape prostitutes, or who, even though they are not themselves guilty of such wrongdoings, nevertheless know that the prostitutes they visit are not on the game voluntarily. **This is not to say that, as prostitution under its current forms more often than not involves such acts of violence, it should be criminalized**. In fact, as I shall argue in section 7.3.2 , criminalization is one of the surest ways of ensuring that prostitutes remain vulnerable to both pimps and clients. Rather, it is to say that involuntary prostitution is morally unacceptable, and that abusive clients and pimps should be put behind bars.

Third, my argument, you recall, is located in ideal theory, which implies that individuals fulfil their obligations of justice to one another. More specifically, in most cases, individuals' needs for the material resources necessary to lead a minimally flourishing life are already met, so that they have access to housing, minimum income, or health care. Accordingly, prostitutes, in this chapter, are less likely to be individuals who find themselves, through no fault of their own, in desperate poverty (a claim which I shall qualify in section 7.3.1). One might think (and indeed this objection has been made to me) that prostitution under such conditions is unlikely to occur, for two reasons. For a start, it is mostly desperately poor, and unlucky, women who prostitute themselves. If so, one might press on, my argument in support of the right to sell sexual services loses much of its bite: for it may well be that prostitution under those conditions is legitimate, but what matters is whether prostitution as it occurs now, under non#ideal conditions, should be legalized.

(p. 157) In addition, one might object that we simply do not know how individuals would relate to their body in a society devoid of gender inequalities; in fact, one might insist, in such a society it is highly unlikely that women would consider providing sexual services as a way to raise income, or that men would deem it acceptable to engage in such relationships. On that second point, however, we simply do not know how individuals would relate to their own and other people's bodies in a society free from discrimination against women. And we have no reason to believe that in such a society, no one would want to sell or buy sex. **In fact, in so far as the view that women ought not to sell sexual services is informed, more often than not, by patriarchal norms about what counts as acceptable womanly behaviour, it might be that an egalitarian society would be one where more women than is currently the case would raise some income through sex.** Either way, it is worth considering whether individuals, in such a society, have the power to sell and buy sexual services.

Furthermore, although the issue of prostitution under non-ideal conditions matters a great deal, it nevertheless remains important to assess whether prostitution under ideal conditions should be protected by rights. For a start, as we saw in Chapter 1, a just society is not one where poverty is completely eradicated, and so whether or not the destitute, in such a society, should be allowed to sell sexual services is not moot. Moreover, it is false that only the very poor prostitute themselves. In addition, many objections against the legalization of prostitution would apply, if they do at all, in a society where distributive justice obtains—such as the objection that sex ought not to be regarded as a commodity. Thus, in so far as there is no reason to believe that no one would want to prostitute themselves in a society where distributive justice obtains, the question of the legitimacy of prostitution in such a society remains salient.

7.2 A Case for the Right to Buy and Sell Sexual Services

In what follows, I first make a case for the right to buy and sell sexual services in a just society, and I then sketch out some of its policy implications.

7.2.1 A Right to Buy and Sell Sexual Services

A number of philosophers have challenged the view that prostitution is morally wrong and therefore should be criminalized. **Their challenge, unlike mine, rests on the view that prostitution is just like any other kind of service work, and should accordingly be treated as a contract between a worker, to wit, the prostitute, and a buyer, to wit, the prostitute's client.** Their argument can be formalized as follows:

2. (1) We all use our body to earn a living, and many individuals do so by providing services to others.

- (p. 158)
- 6. (2) Prostitution is simply one way to use one's body so as to provide a service and thereby earn a living.
- 8. (3) Using one's body to earn a living, including providing services to others, is morally permissible, and is protected by a moral right. Therefore:
- 10. (4) it is morally permissible, and individuals have a moral right, to earn a living by providing sexual services, provided they do not violate other people's rights in so doing. ³

My case for the right to buy and sell sexual services differs from the **contractual argument** I have just sketched out. To be sure, it is true that, as per (1), individuals use their body to earn a living. In that sense, an employment contract is a contract over the use of the worker's body. However, as Pateman notes, the prostitution contract differs from other employment contracts: 'The employer is primarily interested in the commodities produced by the worker; that is to say, in profit ... In contrast to employers, the men who enter the prostitution contract have only one interest: the prostitute and her body.' ⁴ And, indeed, the employer of a chicken#factory worker whose work involves considerable bodily effort is interested not in the worker's body, but in the chickens she helps produce. The same can be said about service work. Consider the cases of a masseuse and a colonoscopy model. ⁵ **At first sight, one might think that their body is central to their relationship with the other party:** the former provides relaxation and relief from pain to her client, through the use of her hands and arms. The latter provides the medical student who looks into her body through her anus with the means to acquire knowledge about the colon. Is not the employment contract, in those cases, over the masseuse's and colonoscopy model's body itself? And are not those employment and the prostitution contracts similar in that respect?

And yet, *pace* claim (2), **prostitutional contracts differ, on the whole, from most other employment contracts.** For the masseuse's client and the medical student are indifferent as to how they acquire, respectively, relief from pain and knowledge of the human colon: if they could get what they want by other means (say, a particularly good massage robot in the former case, and computer simulation in the latter), they would be willing to do so. It is not inherent in their relationship with the model and masseuse respectively qua student and patient, that they derive satisfaction (physical or intellectual) from their use of her body. By contrast, **it is inherent in the prostitutional relationship that the client should seek, and expect to get, sexual pleasure from his interaction with the prostitute.** (p. 159) And in many such relationships it is the body, hands, and mouth of the prostitute he wants (or of whomever he imagines her to be): otherwise, he would simply masturbate on his own, or be content to use an inflatable doll.

This, I believe, can often be true even in prostitution which revolves around phone sex, that is, which does not require that the client actually see and touch the prostitute's body. For **even then**, it can be, **indeed often is, about her body that the client fantasizes; it is her body that he imagines doing things to him.** In other words, it can be through the body of the prostitute as mediated by the latter's voice that he derives sexual satisfaction. In fact, some people engage in phone sex not (merely) because it is safer than actually going to see a prostitute, or because, for those of them who are in a committed relationship, it is not as morally wrong (on the grounds, for example, that one is more unfaithful to one's partner by having actual sex with someone (whether or not that involves penetration) than by having phone sex with them). **They do so primarily because they derive more pleasure from fantasizing about the prostitute's account of how she would use her body to pleasure them than they would from actually engaging directly with her.** In some of those prostitutional phone encounters, the body of the prostitute can in some ways be more central *as body* to the sexual relationship than it is in actual sex, since it can be much more easily divorced from the person whose body it is.

To be sure, some clients do not want the prostitute's body as such: they want it because there does not exist a mechanical vagina which could 'do the work' as well; should such a vagina exist they would be happy to resort to it. Other clients want the prostitute to sit behind a screen and tell them how worthless they are: it is not from the use of her body (as opposed, trivially, to her voice) that they get sexual pleasure. Yet others pay prostitutes to watch them masturbate without touching them: there too the prostitute's body may not matter at all. Others still are fascinated not by the prostitute's looks, but by her personality, her intelligence, and so on. As I pointed out at the outset of this chapter, **prostitution is too diverse a phenomenon to be accounted for in general terms.** It remains the case, though, that **the body of the prostitute is the locus and focus of most prostitutional encounters.**

There is another difference between many prostitutional relationships and other service relationships. Not merely can the client often get what he wants only from interacting with another person, to wit the prostitute; **in most cases his relationship with the prostitute, unlike (most) relationships between buyers and purchasers of services, is gendered.** Of course, this is not so in all cases: for (to put it bluntly) some clients may want only a hole to penetrate, be that of a man or a woman. Still, usually, the prostitute's gender is central to his or her relationship with the client: **a male client seeking a female prostitute wants a woman, as a woman, as a means to his sexual gratification;** similarly, a male client seeking a male prostitute wants a man, as a man, as a means to his sexual gratification. A male client who would rather have sex with a woman but who has to resort to a **(p. 160)** male prostitute (for example, in prisons, where homosexual

prostitution is *rife*) cannot but see his interaction with him as gendered, precisely because his sexual provider is, from his point of view, of the wrong gender.

In short, in many cases hiring one's body out for sex is not just like any other service. Accordingly, any argument in favour of the moral permissibility and legalization of prostitution has to take into account the characteristics it displays in those cases where the body of the prostitute is central to the encounter. What do prostitutes sell, then, if anything? We have just seen that the contractual approach to prostitution overlooks the fact that many (although admittedly not all) clients in a prostitution contract, unlike in other employment contracts, are interested in the body itself of the prostitute. However, so to object to the contractual approach cannot be taken to imply that the prostitute, in those contracts, *sells her body itself: for to sell a thing consists in the complete transfer to someone else, against payment, of the rights, duties, and liabilities over that thing.* Needless to say, the prostitute does not sell her body: prostitution is not sexual slavery (where slavery is understood as the complete relinquishing of rights over oneself). Rather, the prostitute in those contracts hires her body out; and if she sells anything, it is time and labour, over which she gives her client exclusive rights (but over which she does not necessarily give him *unlimited* rights: some prostitutes will not, for example, do anal sex). In those prostitutional encounters where the body of the prostitute plays no role at all (other than in the trivial sense that she uses, for example, her voice to excite her client, or her eyes to watch him masturbate), what she sells is merely time and labour.

Thus, prostitutes who actually have sex with their clients sell a service, and in many cases a service which consists in granting access to their body, for certain sexual purposes and/or for a certain amount of time. Prostitutes who operate phone lines also sell sexual services—a service whereby they facilitate, against payment, clients' sexual fantasies; and they often do so by describing what they look like, what they can do, or indeed are (allegedly) doing with their body, and so on. In sum, what makes prostitution different from other occupations, whatever the background conditions under which it takes place, is the fact that prostitutes sell sexual services, which in many cases cannot but be provided through (non#trivially) the use of the body, and cannot but be gendered. And *that* is what clients pay for. Accordingly, when defending the view that prostitutes have the right to sell, and that clients have the right to buy, sexual services, one is not committed to the claim that bodies can be sold and bought; but one cannot merely invoke the claim that prostitution is just one branch of the service industry. *To reiterate, one must take on board the fact that it is often through the direct, sought# after, and gendered use of their body that prostitutes provide their services. And one must therefore ask whether buying and selling that kind of service is morally wrong, and if so, whether one might nevertheless have the moral right to do so.*

(p. 161) It is hard to see why using one's body or parts of it in sexual ways, to earn a living, is morally wrong, unless one invokes either the view that sex should only be given out of love, or at least out of desire, or the view that any prostitutional act reinforces discrimination against women. I offer detailed rejections of those claims in sections 7.3.1 and 7.3.2 respectively. To anticipate, **it simply is not true that sex should be so given because it is the only way to flourish as a human being.** As a matter of fact, we do experience sex in a myriad of different ways in the course of our lives. Why should we think, for example, that a Franciscan monk who has given up on sex so as to better worship God leads a less flourishing life than someone who finds sexual fulfilment in a loving relationship? Why should we think that a superb poet who chooses to make a living by writing cheap airport novels of the worst kind alienates less of himself than a woman who could enjoy emotionally meaningful sex but decides to prostitute herself instead? ⁶ **There is no reason to think that sexuality in general and emotionally meaningful sex in particular play a more central role to the formation of our identity, and are more important to our flourishing, than many of our other capacities.** To claim that it is morally impermissible to have sex with someone unless one loves, likes, or desires them, smacks of moral fanaticism.

To be sure, prostitution consists in **letting one's body be used in more or less invasive ways;** and so, in many of its instances, it differs from many professions. But it also differs from them in another crucial respect. Although it can be more physically invasive, **it need not be correspondingly more intimate.** In fact, many people earn a living by engaging in activities which are much more emotionally and psychologically demanding than prostitution, and the performance of which touches to a greater degree on their sense of themselves. For example, although a philosophy professor does use her body to work—as we all do, in a trivial sense—she does so in ways which are not central to the work itself: it is not inherent in teaching, for example, that one may have to walk to a lecture theatre (one can lecture by video link); nor is it inherent in researching that one should use one's hands to write (one can dictate one's thoughts to a recorder, or indeed a computer). What is central to her work, though, is the fact that she is using her brain to communicate and defend her beliefs—sometimes very deeply held beliefs. And that is a very intimate thing to do, whether she does so in the solitude of her study or in the presence of her students. ⁷ For those reasons, a long-term relationship between a professor and her student, even a strictly professional one, is more intimate, in many ways, than the ten-minute relationship—if one can call it that—that obtains between a prostitute and an occasional client. **However invasive sex can be, it is not necessarily the only, or the most, intimate way to earn a living.**

(p. 162) It is, however, and admittedly, a potentially harmful way to do so. **Prostitutional sex often impairs prostitutes' ability to enjoy sex, and more widely, to enter committed, loving and long-term sexual relationships,** as it becomes extremely difficult for them to

divorce sex from the mercenary context in which they routinely have it.⁸ Furthermore, unlike other professionals, prostitutes tend to find it hard to think of their work as something to be proud of, as something which it matters to do well. Besides, female prostitutes are more vulnerable to abuse—both from clients and from pimps—than their male counterparts. In addition, many prostitutes are drug addicts and/or alcoholics, caught as they are in a never-ending, vicious circle whereby they resort to prostitution as a means to pay off their addiction to substances, the consumption of which inures them to the difficulties inherent in their work. Finally, female prostitutes, unlike their clients (and male counterparts), incur the risk of being pregnant, and in turn the risks attendant on pregnancy itself. Prostitution is undoubtedly a risky business. But then again, many jobs are psychologically harmful to individuals, incompatible with a successful love life, physically harmful, or tightly linked to drug and alcohol abuse. If we deem it morally permissible to choose them, then there is no reason to deem prostitution impermissible.

In a nutshell, then, it is not morally wrong for someone to earn a living by hiring his or her body for sex. Accordingly, they have the moral right to do so. Moreover, if individuals generally ought to have the legal right to earn a living through the intimate use of their body, and in ways which can be harmful to their health, prostitutes too should have that right.

So much, then, for the right to sell sexual services. What about the right to buy them? It is hard to see how one can deem buying sex morally wrong unless one invokes the view that one is morally allowed to have sex only with those who are willing to do it for free—out of love, desire, or affection. But why should that be? Of course, it may be preferable for individuals to have sex under those circumstances only. But it does not follow that it is morally mandatory for them to do so, unless one thinks that prostitutional sex debases not merely the prostitute, but also the client, and that one is under a moral obligation not to debase oneself.

As I argued in Chapter 1, debasing oneself is morally wrong. As I also argued there, though, one does have a right that others not interfere with self-debasing acts. In any event, that prostitutional sex necessarily debases the client is doubtful. To be sure, many purchasers of prostitutional sex think that they are engaging in demeaning acts, that there is something pathetic, really, about someone who simply is not attractive, or manly enough, to get sex for free. That clients should regard themselves as such is one thing; that we should endorse their judgement is (p. 163) quite another. Let me quote, here, from a reader's letter published in the British weekly the *Observer* on 6 April 2003:

as a single man who visits prostitutes, I object to being branded ... a sad creature who must pay for his thrills. Most clients of these patient,

sympathetic and compassionate ladies are, like me, disabled, elderly, disfigured, ugly or socially or sexually inadequate. The prostitute provides the only opportunity for a brief, life-enhancing taste of physical affection. God bless her! (Name and address withheld)

It is not true, of course, that the 'disabled, disfigured, elderly, ugly or socially or sexually inadequate' can only get sex by paying for it. What is true is that they do not want to have sex with other disabled, elderly, disfigured, ugly, socially, or sexually inadequate individuals: they want to have sex with persons whom they regard as desirable. But what is wrong with that? To the extent that these clients would rather be in loving sexual relationships with such persons, the fact that they have to resort to prostitutional sex should, if anything, elicit compassion and sympathy, rather than moral condemnation.

Having said that, there is strong evidence that, contrary to what the letter's author asserts, the majority of prostitutes' clients are married or in long-term relationships. Is it not wrong on *their* part to engage in prostitutional sex? After all, some opponents of prostitution may press, they cannot invoke disability or lack of social skills as a justification for seeking prostitutes. Nor, in fact, can many of them invoke the fact that they are not in a sexual relationship. For them, qua married clients to pay for sex is morally wrong, I believe, if and only if they do so without their partner's knowledge, or if they do so with their partner's knowledge but in full awareness that he or she will not leave them for so doing, no matter how difficult they find it to bear. However, the fact of their visiting prostitutes is not morally worse than their having an adulterous affair unbeknownst to their partner, or with her knowledge and notwithstanding her resulting unhappiness. What is morally objectionable in the client's behaviour is not the fact, per se, that he is paying for sex. **Rather, it is the fact that he lies to his partner, or exploits her love and emotional dependence to get what he wants: the stability and companionship one finds in a long-term relationship, and the thrills—such as they are—of extra-marital sex.**

Thus, the mere act of paying for sex is not morally wrong: its permissibility or wrongness depends on the reasons why one does so. Accordingly, clients have the moral right to do so in all those cases where their reasons for paying do not taint the act of paying. In fact, there is a further point in support of this claim. If it is true that, as was argued in Chapter 5, those who do not have a claim for body parts at the bar of justice can nevertheless buy them from those willing to sell, then there does not seem to be any good reason to deny those who need or want sexual services but cannot get them for free the possibility to pay for them. In fact, it would be arbitrary to deny it to them. For consider: we saw in Chapter 5 that someone who, for example, has lost one of his kidneys and wants a second one so (p. 164) as to be able to engage in competitive sports cannot get one for free, but should be allowed to buy one. We also saw that someone

who would like to undergo non-reconstructive plastic surgery and would need a blood transfusion during the operation does not have a right to that blood, but should be allowed to pay for it. In the first case, the buyer wishes to meet an important need. In the second case, the buyer wishes to satisfy a want. Now, for many, if not most people, having sex is a need, certainly not as basic as the need for food and water, but a need nonetheless, and quite an important one at that. Accordingly, it would be odd to allow the athlete to meet his need and the surgery patient to satisfy his want, but to disallow the sexually deprived the possibility to do either.

I claimed two paragraphs ago that the permissibility of paying for sex depends on the reasons why one does so. I believe that the only instance where paying for sex is in itself morally wrong is where the client regards payment as a means to humiliate and degrade the prostitute (whether or not she actually feels humiliated or degraded). Conversely, it is also morally wrong for a prostitute to demand payment in exchange for her sexual services as a way to humiliate and degrade the client. For in so treating the other party, the prostitute, or the client, treats them merely as a means to their ends; they fail to confer proper weight to the fact that the other is a moral and rational agent, with his or her own ends, and thereby deny them an opportunity for self-respect.

In those cases, then, where exchanging and getting sexual services for money is morally wrong for the reason just adduced, do prostitutes and clients have the right to do it? In Chapters 1 and 6 I argued that, although we have the right not to treat ourselves as persons worthy of equal respect, we do not have the power to let ourselves be so treated by others. A fortiori, we do not have the power willingly to enter transactions where we will be so treated. Accordingly, selling sex to someone who pays for it as a means to treat us as unworthy of respect cannot be protected by a power. The point applies, *mutatis mutandis*, to buying sex from someone who sells it as a means to humiliate us.

That we lack the moral power to buy and sell sex in those cases entails that we lack a right that the state recognize such transactions as valid, since, as we saw in section 1.2.2C, if no interest of ours to enter such a transaction can justify conferring on us the moral power to do so, then no interest of ours can justify conferring on us a right that the state turn our non-existent moral power into a legal power. However, it does not follow that parties in those transactions lack legal protection of any kind. Suppose that a prostitute agrees to have anal sex with a client for £200, and that the transaction is entered by both with the intent to humiliate the other. Once the sex has taken place, the client leaves without paying. To consider the transaction as legally null and void is to say that the state does not recognize that the prostitute has a right to the money. It is not to say, however, that the prostitute cannot press charges at all: she can, in fact, do so, on the grounds that the client in fact had with her a kind of sex which she made very clear she would not agree to—to wit, anal sex for free. It is that right of hers, to (p. 165)

enter a sexual encounter only on her own terms (provided the other party gives every evidence that he agrees to it), which warrants protection, not her right to get £200 in exchange for acceding to the client's desire to humiliate her. Suppose, conversely, that the prostitute accepts the money and runs off without submitting to anal sex: to say that the client lacked the power to enter such a transaction in the first instance is to say that he lacked a right to have anal sex on those terms with the prostitute. But this does not amount to denying him any legal recourse: on principle, he can, in fact, press charges, on the grounds that the prostitute took money from him which he would not have given otherwise.

Thus, that parties lack the moral power to enter that kind of prostitutional encounter is not tantamount to denying them legal protection altogether. Moreover, that they lack that power does not imply that the state can interfere with such transactions. Indeed, there are some good reasons against interference. Put simply, **it would be impossible to enforce a law against paying for sex with intent to humiliate, since we could not tell when either party is guilty of that charge or innocent of it.** Even if one were to scrutinize every single prostitutional act—at the unacceptably high cost of undermining clients' and prostitutes' interest in privacy—one would not be able to establish intent to humiliate in all cases where it would be present, since prostitutes and clients would not necessarily express such intent. In so far as the law could not discriminate between prostitutional encounters which violate the requirement of respect and those which do not, and in so far as there are good reasons, as we have seen, to desist from interfering with the latter, the former will, in effect, be legally protected. Thus, although we lack the moral power to buy and sell sex when payment is meant to humiliate the other party, we nevertheless have a right that the state not interfere with our prostitutional encounters in general.

To recapitulate, using one's body to earn a living through prostitutional sex, and buying sexual services, are morally permissible, and should be protected by rights, at least in those cases where payment is not meant to humiliate. In those cases where it is so meant, parties nevertheless have rights that others not interfere with them and recognize the transaction as valid. I shall examine some objections to that view in section 7.3. For now, I want to deal with two questions which some opponents of the legalization of prostitution sometimes ask. Would one really want to live in a society where prostitutional sex becomes the norm? Would one really want to consider prostitution as a career option suitable for one's children? To the extent that one would not want either, the approach taken here, it is argued, is irredeemably flawed. ⁹

But that argument is simply wrong. Consider the first question. One may consistently claim, on the one hand, that prostitution should be legalized, indeed that it is morally permissible, and, on the other hand, that a society where (p. 166) prostitutional sex is

the main form of sex is not a particularly attractive one to live in. Reasons standardly advanced in support of the latter claim include, amongst others, the uncontroversial view that non#prostitutional sex is more emotionally meaningful than prostitutional sex: it would be a shame, the argument goes, to end up in a society where most people would not experience such potentially glorious fulfilment. So far, so good. But that cannot constitute a reason for criminalizing prostitutional sex—any more than the claim that an attractive society is one where haute cuisine is available constitutes a good reason for prohibiting the sale of hamburgers.

Some opponents of the legalization of prostitution also ask, rhetorically, whether we would want our children to work as prostitutes, and assume, without argument, that we would not, from which they conclude, again without much argument, that prostitution should be illegal. Now, it is true that most of us would not want our children to embark on such a career, for all sorts of reasons. I for one would not want my son to work as a prostitute, because it may hinder him in finding emotional fulfilment: but then again, nor would I want him to engage in any profession which would carry a similar risk. Or perhaps we would not want our children to work as prostitutes because we regard it as degrading of human beings. But then presumably we should not want them to work as a corporate raider either, and thereby lose their ability to regard individuals as ends in themselves, and not merely as means to making a profit. Or perhaps we do not want our children to work as prostitutes because of the social, legal, and economic conditions under which prostitutes are currently forced to work: it is physically unsafe, unrewarding, and so on. But then presumably we would not want our children to do mind#numbing factory work either; indeed, nor should we want them to expose themselves to the dangers inherent in, say, professional motor racing. In other words, there are many careers we may not want our children to pursue, for a host of reasons. If those reasons are not strong enough to justify outlawing those careers, then they cannot be strong enough to justify outlawing prostitution. At best, they justify regulating it: to this I now turn.

7.2.2 In Practice: Prostitution as a Job

Advocates of the decriminalization of prostitution are divided on the ways in which society should treat that phenomenon. Some recommend complete deregulation, whereby consensual sex between adults simply falls outside the remit of the law, whether it is commercial sex or not; others favour regulation, whereby commercial sex is regulated just as any other kind of service work.¹⁰ If, however, prostitution is to be regarded as work, as I have argued that it should, (p. 167) deregulation is not an option, any more than deregulation of working practices in general is.

That leaves us with regulating it. Some countries already do so, in somewhat alarming ways. In Germany, prostitutes have to work in designated areas; in Turkey, they are required to register with commissions for the prevention of venereal diseases; once they do so, they are compelled to submit themselves to regular check#ups, and must exchange their national identity card for one which brands them, explicitly, as prostitutes. Brothels are legal, provided that they obtain a state licence, pay taxes, and report to the police prostitutes who move to another brothel and fail to undergo medical checks. The state, however, does not regulate relationships between brothel owners and employees: whereas all employees are guaranteed a statutory minimum wage, brothel owners can take as much off prostitutes' earnings as they want and control most aspects of the transaction, with the effect that prostitutes, crucially, have very little leeway to turn clients down and are therefore extremely vulnerable to sexual and physical abuse.

11

The case of Turkey illustrates a kind of regulation which is entirely incompatible with the approach taken here; for it is one where prostitutes, but neither clients nor brothel owners, are regarded as second#class citizens, and where prostitution is viewed as a shameful, albeit ineradicable, activity which warrants tight state control over prostitutes but no control at all over the ways in which they are treated by brothel owners. Regulation should not take that form. Moreover, it should cater for independent prostitutes as well as prostitutes who work as employees in brothels or massage parlours. In the former case, we have a ready model in the UK in the form of massage parlours owned and operated by one person, which act as a front for prostitution. (Although prostitution in the privacy of one's home is not illegal, advertising for it is, which is why those prostitutes have to portray themselves as masseurs/masseuses.) Some of those prostitutes actually do register their massage business, and pay taxes on it. There does not seem to be any good reason why they could not openly declare themselves as 'prostitution practices'. This, in turn, would mean that those who want to establish themselves as independent prostitutes should be able to buy business premises for sex openly and wherever they want, without being subject to tighter zoning laws than apply to all other commercial establishments.

Prostitution in brothels and massage parlours where prostitutes are employed by an owner should also be regulated in the way other businesses are. Most (p. 168) importantly, those places should be subject to health and safety regulations. This is not to say that prostitutes themselves should be checked against their will for sexually transmitted diseases. Some other writers on the subject might disagree. After all, in some countries, such as Canada, surgeons are under a contractual obligation to undergo HIV tests every few months. But the difference between surgeons and prostitutes is that we have much less of a choice as to which surgeon will operate on us than as to which prostitute to see, and, relatedly, that our need for an operation is likely to be more acute

than our need for sex (and so we are in a much weaker position to refuse an operation at the hand of an HIV#positive surgeon than we are to refuse sex with an HIV#positive prostitute.) Accordingly, whereas we may have a good reason to protect patients from HIV#positive surgeons by asking surgeons, under employment laws, to take regular tests, we may want to let prostitutes decide whether or not to take a test, and simply ask them to provide a health certificate if their clients request one.

To insist that brothels and parlours should be subject to health and safety regulations, then, does not imply that prostitutes should undergo compulsory health checks. Nor is it to say, *pace* Shrage, that clients should do so, by way of blood tests taken from them on the premises by the prostitutes themselves, who in turn would enforce a waiting period until the results come through: ¹² the idea of a client turning up at a brothel for sex, having to undergo a blood test, and being told to come back three weeks later seems rather bizarre. In any event, it would be impossible to ensure that the client has not had unsafe sex during the three#week waiting period. Rather, one could apply some of the provisions included in numerous health and safety acts throughout the world to the specific case of brothels and parlours. To advert to the British case, the Health and Safety Act of 1974 stipulates that employers are responsible for ensuring that their employees are not subject to violence, intimidation, and harassment, which would mean that brothel and parlour owners and managers should support prostitutes who are abused by their clients. The Act also dictates that working conditions for expectant and new mothers should be adjusted, which would mean, for example, that managers should support a prostitute's request not to engage in penetrative sex if she is pregnant.

¹³ Other clauses in the Act provide for various safety measures such as fire escape and salubriousness, which would mean that managers should take care not to let their employees work under squalid conditions. They also provide for breaks during the day, as well as for restrictions on the number of hours worked, particularly at night, which would render illegal current practices whereby prostitutes work up to sixteen hours a day, with hardly any break between clients. And so on.

(p. 169) Not only should brothels and parlours be subject to health and safety regulations: prostitutes, as employees, should be paid a wage by the brothel's owners, under the protection of minimum wage legislation, on which they would pay exactly the same taxes and National Insurance contributions as other employees. Such a wage system is less exploitative, in some ways, than current practices, whereby prostitutes have to give to the brothel owner anything between 40 per cent and 70 per cent of the money they get for each transaction. Prostitutes typically have to work very long hours, and/or take more clients than they can endure, and/or consent to sexual demands they find repugnant, in order to make a living (many, in fact, do not make a living, and often get into debt to the brothel owner, which makes it that much more difficult to get out of

prostitutional work). A guaranteed decent wage would protect prostitutes from having to work under those exploitative conditions.

Note, though, that a decent wage system is more exploitative in some ways than current practices because, unless it is accompanied by further legal safeguards, it makes the prostitute more vulnerable to clients' demands. In section 7.2.1, I argued that prostitutes who engage in 'body to body' sex with their clients sell a service which consists in granting access to their body, for certain sexual purposes *and/or* for a certain amount of time. Indeed a distinction must be made between contracting with a client for the use of one's body for, say, an hour, and contracting with a client for the performance of specific sexual services. The former contract is more open to abuse than the former, as clients may tend to interpret it as allowing them to do whatever they want with the prostitute. Accordingly, prostitutes who are paid a wage to work a certain number of hours a day in a brothel or a massage parlour should by law be allowed to refuse to perform certain sexual acts (such as unprotected sex) or to be used by their clients in ways harmful to them.

Independent prostitution and brothels are not the only ways in which one should be able to work as a prostitute. There is evidence of what one may call collectives of prostitutes, that is, houses or flats shared by two or more sex workers, who each work independently, and who share expenses such as mortgage, electricity, wages for receptionists and cleaners, and so on: rather like (tongue in cheek) barristers' chambers. Collectives are, for many prostitutes, better than street work (for the presence of other prostitutes on the premises offers some protection against abusive clients) and brothels (for they have complete control—or at least as much control as independent workers in general—over the number of hours they work, the kind of clients they take, and the kinds of service they provide). Again, there is no reason why collectives should not be allowed, and why their members should not pay taxes and National Insurance contributions.

One might think that the regulation approach to prostitution has the following, and to many, odd, implication. If prostitution is a service, and should be regarded as such by all parties, then does it not mean that, just as a customer can sue a service provider for harming her, or for unsatisfactory performance, a client (p. 170) could sue a prostitute, for example, for passing on an STD to him, or for failure to please him? I do not think that he could. To be sure, for a prostitute to produce a certificate of good health is no guarantee that he or she is healthy. A client could sue a prostitute whose certificate was not genuine, on the grounds that he would not have run the higher risk of contracting an STD by having intercourse with a prostitute who does not undergo tests, or does not undergo them frequently enough. But he could not sue a prostitute from whom

he believes he has contracted an STD even though she had produced a genuine health certificate.

Nor would it be wise to enable clients to sue a prostitute for non-performance, or failure to provide a good service, for two reasons. First, sex being as complicated as it is, it would be impossible for the courts to establish the facts of the case. A client who pays a prostitute to masturbate him, but does not climax, may be left dissatisfied not because the prostitute is bad at manual sex, but because for some obscure reason he was unable to reach an orgasm on that particular occasion. How on earth is the court to know? Second, and more importantly, it is a well-established principle of contract law that one cannot be forced to perform a personal service one has agreed to perform.¹⁴ Thus, a singer who has agreed to give a number of performances at a given theatre and who, halfway through her run, goes to sing elsewhere because the pay is better, cannot be forced to go back to the first theatre to sing. All she can be forced to do is pay damages. One can see that this principle is particularly apt in the present context. As we saw in section 5.4, individuals have the right to decide whether or not to have sex, which includes the right to change their mind at any time should they have already agreed to have sex with someone. Failure to stop at one's sexual partner's request constitutes a rape; so does forcing her to have sex even though she had consented, earlier on, to have sex. The fact that money may have changed hands is irrelevant.

That prostitutes should not be forced to perform is one thing; that they owe nothing to the client for non-performance is quite another. Should the latter, for example, be able to claim damages, above and beyond simple restitution of the money he gave? Or should we let losses go? It all depends on the kind of prostitudinal encounter at issue. One could conceive that a prostitute hired by a parlour ought, and can be made, to pay damages to her employer if she decides to stop working before the end of her contract (if her contract is temporary); one cannot conceive that a prostitute who finds her clients on street corners can be made to pay damages if she stops halfway through a prostitudinal act.

Entering into the details of legal prostitudinal contracts lies beyond the scope of this book. By way of a final word on those practical issues, regulation as (p. 171) sketched here would not suffice for prostitution to be regarded as a kind of work acceptable to a just society: wider programmes are needed to change attitudes towards, and prejudices against, commercial sex in general and prostitutes in particular. But, although regulation is not sufficient, it is a necessary step towards making prostitution a just way to earn a living.

7.3 Two Arguments against the Rights to Buy and Sell Sexual Services

Proponents of the view that prostitution is morally wrong and therefore should be criminalized standardly advance three arguments. The first argument claims that prostitution is wrong (and should be prohibited) on the grounds that prostitutes, just like wage workers, are the product of the exploitative economic and social conditions under which they are forced to sell their services. The second avers that prostitutes sell their body, and thereby themselves, and that in so far as the sale and purchase of human beings is morally wrong and should be (indeed is) criminalized, prostitution too is morally wrong and should remain (as it is in most countries) a criminal offence. Finally, the third argument claims that prostitution takes place against a background of, and reinforces, fundamental inequalities between men and women. On that view, prostitution is morally wrong because it partakes in discrimination against women; and it is precisely for that reason that it should be outlawed.

In this section, I focus on objections to prostitution which are specific to it. Accordingly, I do not address the exploitation objection. Others have done so already;¹⁵ moreover, my rebuttal of the exploitation objection to organ sales applies here, *mutatis mutandis*, and I shall not, therefore, revisit it.

7.3.1 Selling and Buying Sex; Selling and Buying Persons

On the view I consider and reject in this section, prostitution does not consist in selling sexual services; rather, it consists in a transaction whereby a client contracts for the use of the body, and therefore the person, of someone else, with a view to achieving sexual satisfaction. Carole Pateman, whose works on what she calls the 'sexual contract' offer the best exposition of such a view, argues that in so far as there is 'an integral relationship between body and self' and 'identity is inseparable from the sexual construction of the self', 'in modern patriarchy, sale of women's bodies in the capitalist market involves sales of a self in a different manner, and in a more profound sense, than ... sale of command over the use of the labour (body) of a wage slave'.¹⁶

(p. 172) Pateman's objection, in effect, is that the client treats the body of the prostitute, and therefore the prostitute herself, as a commodity. One may think that my reply to the commodification objection to organ sales applies here. That, however, would be too hasty. For, whereas, in expelling waste from our body, our *kidneys*, not we, are doing something; in contrast (as I noted in Chapter 5), it is *we* who write, and not our hands, and it is *we* who smile, and not our mouth. Similarly, it is *we* who have sex, not our

penis or vagina. At first sight, the claim that in selling sex one is selling oneself is more plausible than the claim that in selling one's kidney or blood one is also selling oneself.

Now, *if* prostitution really involves the sale of selves, it is morally wrong and it should be criminalized. For, after all, selling oneself and buying persons are generally thought to be morally wrong, from which it would seem to follow that, if prostitution involves the sale of persons, prostitution too is morally wrong. Moreover, in so far as the sale and purchase of human beings is outlawed, and rightly so, it would seem to follow that prostitution too should be criminalized.

However, as I shall argue presently, prostitution does not involve selling oneself, procuring human beings for sale, or buying them. And even if it did, it would not follow that it is always morally wrong from the point of view of all concerned; and even if *that* did follow, further argument than is offered by the objection under study is needed to establish the claim that prostitution should be criminalized.

The objection's central tenets, you recall, are the following:

2. (1) The transactions of buying and selling persons are egregiously wrong and cannot be protected by rights.
4. (2) The object of the transaction between prostitute and client, unlike that of the transaction between workers and capitalists, is the prostitute's body itself.
6. (3) There is an integral relationship between body and self.
8. (4) One cannot separate one's identity from the sexual construction of one's self. Therefore:
10. (5) In selling sex, the prostitute sells not only her body, but also herself. Similarly, in buying sex, the client buys not merely the prostitute's body, but also the prostitute herself. Therefore:
12. (6) The transactions of buying and selling sex are egregiously wrong and should not be protected by rights.

Claim (1) is obviously not in dispute. And, as we saw in section 7.2.1, it is true that prostitution differs from other kinds of labour, even the most intensely (p. 173) physical kinds, such as working in a factory: there is a point to claim (2). However, as we also saw in that section, it is not true that a prostitute sells her body itself, and, even if she does, it does not follow that she sells *herself*. For *pace* (3), although there is, to be sure, an integral relationship between body and self, in that we cannot conceive of ourselves unless we have a body distinct from that of other people's bodies, that relationship is not all there is to say about the self: the self is not reduced to corporeality. And if that is correct, then in selling our body (assuming that this is what one does in prostitution¹⁷), we do not sell ourselves.

Claim (4) would seem to suggest otherwise. For, **if our identity is bound up with the sexual construction of our self, in selling our body for sex, are we not selling that which constitutes us as distinct, separate individuals?** Are we not, in fact, selling ourselves? Not really. It is true, of course, that we construct our identity, our sense of ourselves, as sexual beings; but just as there is much more to ourselves than our body, there is much more to our identity than our sexual construction, such as our moral beliefs, our relationship with our family, our long-term plans and attachments, and so on. If that is correct, then in selling our body *for sex*, we only sell a part of what constitutes us as distinct selves.

At this juncture, some proponents of claim (4) might be tempted to reply that our perception of ourselves as sexual beings is more central to our self than our moral beliefs, long-term plans and attachments, and so on: for it is only by experiencing sex as something which must be given freely—not necessarily out of love, but at least out of desire—that one can truly flourish as a human being.¹⁸ Accordingly, as D. Satz puts it in the course of rebutting that claim, ‘the sale of sex is taken to cut deeper into the self, to involve a more total alienation from the self’.¹⁹

On the one hand, testimonies from some prostitutes lend credence to that view. As we saw in section 7.2.1, it appears that engaging in prostitution diminishes one's capacity to experience sexual desire, to give oneself to sexual intimacy, to engage in meaningful relationships, and so on. On the other hand, some prostitutes report acquiring a tremendous sense of sexual empowerment through prostitution.²⁰ Moreover, as we also saw in section 7.2.1, individuals experience their sexuality in a wide variety of ways; indeed, some of them simply do *not* regard it as the fundamental determinant of their identity, or do not put such a premium on sexual intimacy and romantic love. It is unclear, then, that they would sell themselves were they to sell their body for sex.

(p. 174) Suppose that they would, though. Would prostitution thus understood be morally wrong? Proponents of the objection under study here believe that it would. However, the claim ‘prostitution is morally wrong because it involves the sale and purchase of selves’ is made up of two rather different statements the truth of which must be assessed independently: (a) it is morally wrong for someone to sell herself for someone else's sexual gratification; and (b) it is morally wrong for someone to buy another person for his sexual gratification, even if that person consents to the transaction.

Now, purchasing humans is wholly incompatible with treating them with respect, even if they consent to it. This is because for A to consider buying B means that A is willing to put himself in a position of exercising all the rights B is currently holding over herself. That is, A is willing to enter a moral relationship with B where B's autonomy

and personal integrity would be entirely within A's command. It is hard to see how being willing to enter such a relationship with other human beings could ever be compatible with treating them with respect, even if they consent to it, indeed even if the buyer decides not to exercise those rights over his purchase. My claim, note, is not a paternalistic one to the effect that A would be acting against B's fundamental interest in purchasing him; rather, in line with my argument about self-respect and the right to do wrong, as deployed in Chapter 1, it is that there is something wrong about one's willingness to enter a relationship to which the denial of B's moral status as a person is central.

Accordingly, claim (b) is correct. However, claim (a) is not always so. That is, although a prostitute, in selling herself, fails to treat herself with respect, she is not always guilty of moral wrongdoing. To see why, we must distinguish between four states of affairs: (1) prostitutes sell themselves as the only way to meet their needs; (2) they sell themselves to meet their needs, even though they could do something else (i.e. take a factory job); (3) they are not needy but sell themselves in order, broadly speaking, to implement their conception of the good, and prostitution is the only way for them to do so; and (4) they sell themselves to implement their conception of the good, even though they could do something else. ²¹

The first state of affairs, I submit, would most probably not obtain in a just society, since most needy individuals would get the material resources they need in order to lead a minimally flourishing life. Those few that would not do so, on the grounds that they can clearly be shown responsible for their predicament, would nevertheless not act wrongly in resorting to prostitution so as to meet their needs. For they would be presented with the following alternative: either they do not get the resources necessary for a minimally flourishing life, in which case they do not live as befits persons; or they get those resources by selling themselves, (p. 175) even though they will thereby surrender their right to be treated as persons. As I argued in 1.2.3B, in a just society it cannot be deemed impermissible for them to seek to secure their own survival in the only way available to them. Note that such a claim is compatible with the view that it is wrong for a *client* to buy a prostitute for his sexual gratification, since the client, unlike the prostitute, is not in a desperate situation.

Suppose, though, that prostitutes could meet their needs by taking a factory job, or that they sell themselves to raise a surplus of income, because it is the only, or the fastest, way for them to do so. They are not, *ex hypothesi*, in a desperate situation: they do have a choice as to whether or not to sell themselves. In such cases, just as it is morally wrong for their client to acquire those rights over them, it is morally wrong for them to forfeit their rights over themselves. For, in selling myself, I forfeit my right to be treated by all as a rational and moral agent worthy of equal respect, and I thereby destroy

opportunities for self-respect. As we saw in Chapter 1, we lack the moral power so to act, and therefore a right that the state recognize such transactions as valid.

On the assumption that prostituting oneself does amount to selling oneself, only in some cases, then, is prostitution morally wrong, but only in a few of *those* cases do individuals lack the power to engage in it. In none of those cases, though, ought prostitution to be made unlawful. To say that it ought to be criminalized amounts to conferring on the state a right to interfere with prostitutes and clients, which in turn amounts to denying that the latter have a right to engage in prostitutional sex. Now, although one sometimes has an enforceable right to act wrongly, particularly in those cases where one does not harm other people's fundamental interests, one lacks such a right in those cases where one does so harm them. If clients do indeed buy the prostitute herself, they harm her fundamental interest in being treated with equal respect. That she may consent to being treated as something to be bought is irrelevant since, as we have just seen, she does not have the power to waive her right to be treated with equal respect. Thus, clients do not have the right to engage in prostitution so understood, which implies that the state is under no obligation *to them* not to interfere with them.

However, there are good reasons not to make prostitution unlawful, which appeal to some important interests of prostitutes themselves. For a start, criminalization is likely to make them very vulnerable to both clients and pimps, as it would deprive them of police protection. Moreover, a blanket prohibition on prostitution would affect not merely prostitutes who wrongly sell themselves, but also those who sell themselves as the only way to meet their needs and who, we have seen, are not acting wrongly when doing so. A discriminating prohibition, one which would seek to target the former and not the latter, could only be enforced at the cost of intolerable invasions of all prostitutes' privacy, since the police would have to arrest all prostitutes, then scrutinize their lifestyles, income, expenditures, and so on, in order to assess whether each one needed to go into (p. 176) prostitution to meet her basic needs. Making prostitution unlawful, in short, would further weaken prostitutes' self-respect.

Some activists suggest that the state should penalize clients and not prostitutes—in other words, that prostitution should be made unlawful but that prostitutes should not be prosecuted.²² This would solve some of the problems identified above; in particular, it would encourage prostitutes to seek police protection against abusive pimps and clients; it would also free them from police scrutiny. However, the proposal is problematic in two respects. First, penalizing clients would not protect prostitutes from abuse at their hands (even though it might help them seek redress *ex post*): laws against kerb-crawling in the UK have not met with favour with prostitutes, as clients are so intent on not being spotted by the police that they leave very little time for prostitutes to negotiate a price and, more importantly, to assess how safe they are.

Moreover, in penalizing clients, the state would prevent prostitutes from selling sex (and thereby, or so the objection would have it, from selling themselves). For, to say that individuals have the right to sell something but that nobody has the right to buy it is incoherent, since a right to sell is not just a right to divest oneself of one's claims, powers, and liabilities over that thing: it is a right to transfer them to someone else. If no one has the right to get those entitlements, powers, and liabilities over it, then it simply cannot be sold. Accordingly, if no one has the right to get entitlements, powers, and liabilities over the prostitute, then the latter simply cannot be sold, and her right to sell herself is not respected. The problem, of course, is that, as we saw above, some prostitutes have the right to sell themselves, when doing so is the only way to meet their basic needs. In those cases, then, neither party should be interfered with when entering the transaction. ²³

To recapitulate: one cannot object to the claim that prostitution is morally permissible and should be legalized on the grounds that it consists in the sale and purchase of human beings, first because it simply does not consist in such transactions, and second because even if it did, it would not always follow that it is impermissible (at least from the prostitutes' standpoint) or subject to criminalization.

7.3.2 Prostitution and Gender Inequality

A second, important, objection to prostitution notes that prostitutes are overwhelmingly women, that clients are overwhelmingly men, and that (p. 177) prostitution takes place against a background of, and reinforces, considerable inequalities between men and women. Most women who choose to go into prostitution do so only because they have few opportunities on the job market, and indeed fewer such opportunities than men; moreover, it is because prostitution rests on negative, stereotypical views of women as men's sexual servants that the former see it as a route out of poverty. Relatedly, men who seek out prostitutes often do so out of a desire to exercise power over women. And even if such desire is not what leads them to visit prostitutes, the very nature of the prostitutional relationship enables them to exercise power over them. ²⁴ Most, but not all, authors who so object to prostitution believe that it is morally wrong, and should be criminalized, precisely for that reason. On that view, prostitution in all its forms, whether or not accompanied by coercion, far from being a victimless crime (as some proponents of legalization aver), is one whose victims are the prostitutes themselves, and whose perpetrators are clients, indeed anyone who benefits from it. ²⁵

It is not always clear whether proponents of that objection believe that prostitution cannot but have the aforementioned deplorable features. In the present context, whether it does or not is crucial; for, if prostitution by definition rests on, and reinforces,

gender inequalities, it is wholly incompatible with the requirement that we give one another opportunities for self-respect, and therefore has no place in a just society. However, I shall argue here that prostitution need not have the foregoing features. As a preliminary point, though, it pays to reiterate that, under ideal conditions, where individuals' needs would be met, the objection under study would lose some of its strength, since the majority of women would not live under conditions of extreme poverty—conditions which, as we well know, are propitious to entry into prostitution.

Setting that point aside, the objection is problematic in six respects. For a start, even though some clients seek prostitutes as a way to exercise over those women a kind of power which they could not exercise otherwise, or at least not as easily, it is not inherent in prostitutional sex that they should do so. Moreover, even though it is obviously true that prostitution as it occurs at present rests on, and reinforces, prejudices against women, it is worth noting that it is also shaped by negative stereotypes of men, which prostitutes themselves often endorse, as enslaved to their sexual desire, stupid, idiotic, sexually pathetic, and so on.²⁶ This is not to deny that female prostitutes are usually held in greater contempt than (p. 178) their male clients; but one should not overlook the fact that prostitution can be, and often is, demeaning to all parties. In those cases where it is, where prostitutes and clients dehumanize one another, it is morally wrong, in so far as it violates the requirement that we treat one another with equal respect. But it does not follow that it should be criminalized, if only because criminalization, as we saw in section 7.3.1 and as I shall stress again below, renders prostitutes more vulnerable than they already are.

Second, many an institution and many a profession take place against a background of, and reinforce, discrimination against women: consider nurses, secretaries, cleaning staff, supermarket cashiers, nursery and primary school teachers. The overwhelming majority of members in those professions, all of which involve serving others in some capacity or other, are women. To be sure, unlike prostitutes, they do not serve men primarily; but they do tend to be directly subordinate to male bosses, or to work in professions the upper echelons of which are usually occupied by men (consider nursery school teachers v. university lecturers, GPs v. hospital consultants, etc.). Women enter those professions, instead of more prestigious ones, partly because of restricted educational and professional opportunities, the reason for which in turn lies in conventional views of women as care providers. If the institutions which use women in those ways—in corporations as secretaries, in hospitals as nurses, in schools as teachers—are not morally wrong per se, and should not be banned (as we all agree—I hope!), why should prostitution be?

The reason, or so some would reply,²⁷ is that prostitution rests on, and reinforces, deeper prejudices against women than nursing or teaching. Most people think that

prostitutes degrade themselves; very few believe that nurses and secretaries do. Moreover, and relatedly, unlike other female workers, prostitutes are considered by other parties in the transactions as objects, not as persons.

Now, I concede—who would not?—that prostitutes are seen in a far worse light than nurses and secretaries. But there are many more nurses and secretaries than there are prostitutes; and whilst most people—men and women—do, at some point in their life, come across secretaries and nurses, relatively few, in comparison, will come across prostitutes. **Accordingly, the gender stereotypes which are conveyed by the prevalence of women in, say, the nursing profession are likely to have greater weight than those conveyed by the prevalence of women in prostitution.** Moreover, the kind of stereotypes conveyed by prostitution can also be (p. 179) found in activities and professions which proponents of the sex#discrimination objection probably would not want to see criminalized: witness degrading sexual images of women in advertising, film, literature, fine arts, and so on. In fact, **it is plausible that the prevalence of such images in those areas, and the prevalence of those areas themselves, contribute far more to negative stereotyping of women than does prostitution, which is far less visible.** In so far as one would not want to ban advertising and literature, even those works which do project such images of women, one needs further reasons than those adduced so far to ban prostitution for projecting similar images. ²⁸

At this juncture, the opponent of prostitution would insist that none of the foregoing points adequately takes on board the claim that prostitutes, unlike nurses and secretaries, are more often than not **treated as objects by their clients**, in the manifold sense that they are **seen as fungible** (a prostitute is not seen as a distinct individual but is deemed as good as any other provided she does what the client wants), proper subjects for abuse and destruction, and instrumental to the clients' ends. However, **it is not inherent in a prostitutional encounter that the client should abuse the prostitute.** Nor is it inherent in it that he should see her as fungible. For a start, as a matter of fact some clients do not want just any prostitute, but instead would rather have sex with only one prostitute over time. Furthermore, just as fungibility does not imply commodification, commodification does not imply fungibility: that one can buy something does not mean that one regards it as interchangeable with a similar good, or that one regards that thing's seller as interchangeable with any other seller. Finally, it is not inherent in prostitution that the client should treat the prostitute purely as a means to his ends, any more than it is inherent in any market relationship that the purchaser treats the seller purely as a means to his ends. **The important thing is that clients treat prostitutes not merely as means, but as ends as well.**

A third problem with the gender inequality objection to prostitution is that it does not deal adequately with all forms of prostitution, since it applies mostly to heterosexual

prostitutional relationships, where the client is male and the prostitute female. Whilst most prostitutional relationships are of such a nature, an increasing number are not: witness the considerable increase in male prostitutes who sell gay sex to other men (even though they might be straight themselves), the small, but apparently growing, number of male prostitutes whose clients are (p. 180) women,²⁹ the admittedly marginal but nevertheless persistent phenomenon of lesbian prostitution. It is true, of course, that many male prostitutional relationships replicate traditional gender roles: the male prostitute gives pleasure at the behest of his male client, and is often reduced, in the latter's eyes, to the status of a woman (which in part explains why many heterosexual men who engage in homosexual prostitution refuse to be subject to anal penetration). But there is no reason to believe that *all* male and gay prostitutional relationships are of such nature. To those, the objection would not apply. Nor would it apply to prostitutional relationships where the client is female and the prostitute male.

The foregoing points suggest that it is simply not true that prostitution *inherently* reinforces sex discrimination: some forms of prostitution may do so, indeed do so, under current conditions; others do not. Accordingly, the objection does not successfully show that prostitution as an institution is morally wrong and should be criminalized. If it shows anything—which remains to be seen—it only shows at best that those forms of prostitution which reinforce sex discrimination are morally wrong and should be criminalized.

Fourth, the objection seems to claim that any prostitutional act partakes of sexual inequality. But so to condemn prostitution smacks of tainting all its actors, no matter what their behaviour is, by association. Consider the following analogy: fast#food chains clearly exploit their staff. Now suppose that A, who owns a fast#food restaurant, treats his employees very well: he pays them well above the minimum wage, ensures that they get regular breaks during their working hours as well as decent holidays, and insists that managers treat serving staff with respect and consideration. Does A act wrongly simply by investing in a sector which is known for its objectionable treatment of menial employees? Do his employees act wrongly by seeking to work in that sector, even though they work for him? It seems not. Should they be legally prevented from so doing? Even less so. Similarly, a man who buys sex from a willing prostitute, pays her well, treats her decently, and does not acquire or foster negative views of women in general, and a woman who sells sex to a man on the understanding that she will be so treated, do not *thereby* act wrongly, and ought not thereby to fall within the remit of criminal law, even though they take part in a practice which is standardly, and currently, degrading to women. Note that I am not contradicting my earlier point in section 7.3.1 that purchasing another human being can never be compatible with treating them with respect, even if the buyer decides not to (p. 181) exercise his newly acquired rights over his purchase. In such a purchase, one by definition acquires over the person one

is buying all the rights she had over herself: the very act of acquiring those rights is itself incompatible with treating her with respect. By contrast, it is not inherent in a prostitutional transaction that the client acquires rights to degrade the prostitute.

In so arguing, I am making an assumption which many proponents of the objection would reject, namely, that one can assess single prostitutional acts in isolation from the wider context within which they occur. On the contrary, they would say, one must focus on the institution of prostitution, and realize that a standard prostitutional act (involving a male client and a female prostitute) *always* involves sex discrimination against women, no matter how both parties, and in particular the client, behave.³⁰ On that view, prostitution as an institution is wrong, and that, not individual prostitutional acts, is what matters. However—and this is the fifth problem with this variant of the gender discrimination objection to prostitution³¹—it is not clear that prostitution as an institution necessarily takes place against, and reinforces, inequalities between men and women. That it currently does so is beyond doubt: that it would disappear in a society where gender equality would obtain is doubtful. As I noted in my introductory remarks, there is no reason to suppose that, in such a society, individuals simply would no longer purchase sex from one another—although their reasons for so doing might differ from those which they might have in a society ridden with gender inequalities.

Let us suppose that I am wrong, and let us assume, for the sake of argument, that prostitution inherently involves discriminating against women. Still—and this is my sixth point—to say that it is wrong does not make sense unless one means that at least some of the agents implicated in it engage in morally reprehensible actions. Accordingly, in order to assess whether prostitution is morally wrong (a first step towards showing that it should be criminalized), one must assess whether clients and prostitutes act wrongly, on the assumption that, regardless of the particular nature of their individual prostitutional transactions, they contribute to reinforcing gender inequalities.

Now, the claim that clients are acting wrongly is plausible, for surely it cannot be morally right to contribute to reinforcing gender inequalities.³² What about (p. 182) prostitutes themselves, though? Although proponents of the objection under study are quick to point out that prostitutes should not be blamed, they shy away, on the whole, from assessing whether they can be deemed to act wrongly. Let us return to the four scenarios outlined in section 7.3.1: (1) prostitutes sell themselves as the only way to meet their needs; (2) they sell themselves to meet their needs, even though they could do something else (i.e. take a factory job); (3) they are not needy but sell themselves in order, broadly speaking, to implement their conception of the good, and prostitution is the only way for them to do so; and (4) they sell themselves to implement their conception of the good, even though they could do something else.

It would seem that in the first of those four cases, prostitutes are *clearly* not acting wrongly: under (1), in so far as prostituting themselves is the only way for them to meet their needs, their interest in so doing outweighs other women's interest in living in a society which does not discriminate against them. Furthermore, under (3), if everybody else can realize their conception of the good without recourse to prostitution, a woman who does not have other options can use prostitution as a way to do so without moral taint: for, if all other women can further their own interests by raising income through other means, it is hard to see how her own interest in resorting to prostitution can be outweighed by their interest to live in a society free from sex discrimination. Finally, even if women can meet their needs by some other means (as per (2)), or if prostitution is a way amongst others for them to raise income so as to implement their conception of the good (as per (3)), one needs to know why they do not use those other means in order to do so, before one can condemn their engagement in prostitution as morally wrong. Perhaps taking a factory job would enable them to raise as much income as prostitution, but would not afford them the same degree of control over their working lives; or perhaps they feel more demeaned by working on an assembly line than they do by selling sexual services, and so on. In those cases, it is hard to see why their choice to enter prostitution can be deemed morally wrong. In other cases, though, their choice might be so condemnable.

Thus, in so far as clients always act wrongly (again, on the assumption, which I accept as true for the sake of argument, that any prostitutional act partakes of gender discrimination), and as prostitutes themselves sometimes do so, prostitution as an institution is morally wrong. And, although we sometimes have the moral power to act wrongly, we lack that power in those cases where we are guilty of treating others as less than equal—which is exactly what clients do with prostitutes. In so far as clients lack the power to engage in a prostitutional transaction, prostitutes themselves lack that power too. However, **none of this entails that prostitution should be criminalized, simply because (as we saw in Chapter 1) the fact that an act is morally wrong does not suffice to confer on the state the right to interfere with it or to punish those who commit it. Moreover, criminalization reinforces gender inequality, and further restricts prostitutes' opportunities for self-respect.** It is easier, for example, to arrest streetwalkers than their clients, **(p. 183)** as they have to make themselves visibly available; single mothers who work as prostitutes and are sent to prison see their children placed in foster care if none of their relatives can take over, whilst their male clients will not, as they are more likely to share responsibility for their children—albeit usually unequally—with the latter's mother. And so on.

Imposing fines, as opposed to jail sentences, will not do either, as they will be harsher on prostitutes, who are typically financially worse off than their clients, than on the latter. In fact, evidence suggests that prostitutes who are fined for soliciting—as is the

case in the UK—simply do not have the wherewithal to raise the required money other than, precisely, through prostitution. Moreover, as I noted in section 7.3.1, laws against kerb#crawling, which are supposed to penalize clients as well as prostitutes, mean that the latter have less time to assess whether the former are potentially dangerous, and so adversely affects women to a greater extent than men. Furthermore, criminalizing prostitution amounts to denying prostitutes police protection from the various hazards of street work, which in turn leads them to seek it from pimps, who themselves are very often violent. Bans on advertising sexual services, which some anti#prostitution activists advocate as a way to avoid punishing prostitutes more harshly than their clients, will not do either: all prostitutes have to do is advertise for massage services, which is not a criminal offence. Of course, everybody knows, including the police, that massage services as advertised in the back pages of, say, gay magazines are really sexual services. But prostitutes who so advertise their services can easily protect themselves against undercover police officers and prosecution by running a legitimate massage business (which includes paying taxes and National Insurance contribution for whomever they might employ), and never providing sex to their clients unless they ask for it (an undercover policeman who would ask for sex and get it could not use that as the basis for a successful prosecution, since he would be guilty of entrapment). And so on. ³³

To be sure, some of the problems I have just identified may not arise under all circumstances. Imposing a fine on both client and prostitute may not be harsher on the latter than on the former if she happens to be better off than he is; imposing a jail sentence on both may in some cases be harder on the client than on the prostitute if he is a single father whose children would be placed in foster care while he serves his time, and if she is childless. But this could not give grounds for the proponent of the objection under study to dismiss my argument: for that proponent's case rests on an understanding of prostitution as it currently exists—as a practice where prostitutes are impoverished women and clients (relatively) better off men. It is my contention that criminalizing *that kind* of prostitution reinforces gender inequality: it is not my contention that any legal prohibition of (p. 184) prostitution in general would do so (although, as we saw in section 7.3.1, there are good reasons not to criminalize it).

At this juncture it is worth asking, once again, whether one could penalize clients, and not the prostitutes themselves. Perhaps one could impose fines on the former but not on the latter; perhaps one could deny a client convicted of engaging in prostitution access to his children; perhaps one could arrest kerb#crawlers but not prostitutes. I rejected this proposal in section 7.3.1, on the twofold grounds that it would unacceptably interfere with prostitutes who have the right to sell themselves, and that it would make all other prostitutes vulnerable. It is worth returning to it here, if only to note that it fails at the bar of gender equality as well. For it assumes that prostitutes, no matter who they are and what they do, are always victims, whereas clients, no matter who they are

and what they do, are always perpetrators of serious wrongdoing. It is true, of course, that in some cases, including under ideal conditions, a prostitute is a victim—when, for example, she resorts to prostitution so as to get the resources she really needs but which justice does not grant her by right. In other cases, however, she is not, as when she goes into prostitution to finance a high#standard lifestyle which she could not finance otherwise. In those cases, where the prostitute cannot be regarded as a victim, to allow her to sell sex and to punish her clients amounts to **treating her as someone who cannot really be held responsible for their choices**: not a state of affairs which proponents of gender equality should endorse.

7.4 Conclusion

The problem with prostitution, then, is not the act per se of providing sexual services for money: rather it is the **background conditions under which prostitutes currently have to work**, whereby women and gays are victims of deeply entrenched prejudices, a number of individuals lack economic and social opportunities to such an extent that prostitution seems the best of a bad set of options, and sex is regarded as something one should only engage in out of love, desire, or affection. **Those conditions in turn make prostitutes, especially female prostitutes, and, to a much lesser extent, their clients (mostly in the case of male gay prostitution), vulnerable to blackmail, extortion, and violence.** However, whilst prostitution can, indeed often does, take place against a background of violence and sex discrimination which in turn reinforces prejudices against women, it is not inherent in its nature that it should do so. Moreover, while it does not merely consist in selling one's labour, it nevertheless does not consist in selling oneself. Rather, it consists in hiring one's body out for sexual services. As we saw, there is no reason to believe that it is morally wrong to do so; assuming that it is morally wrong, there are good reasons for the state to desist from banning it, for to do so makes prostitutes, and thus those women who work as such, **(p. 185)** more vulnerable than their (male) clients, which is unjust. At the bar of justice, then, there is a strong case for conferring on individuals the right to sell and buy sexual services. This suggests, once again, that the coercive provision of personal services and the confiscation of body parts, compatible as they are with the aforementioned right, leave more scope for individual autonomy than is usually thought.

Notes:

(1) For an interesting first#hand account of such a practice—from the point of view of the male prostitute—see R. Perkin and G. Bennett, *Being a Prostitute: Prostitute Women and Prostitute Men* (Sydney: Allen and Unwin, 1985), pp. 204–10. For a useful review of different kinds of prostitution, see Perkin and Bennett, *Being a Prostitute: Prostitute Women and Prostitute Men*, pp. 4–14.

(2) Prostitution is such a multifaceted practice that any attempt to give a general account of it is vulnerable to the charge of overgeneralization. My aim is to capture its most central characteristics.

(3) M. Nussbaum, ‘“Whether from Reason or Prejudice”: Taking Money for Personal Services’, in M. Nussbaum, *Sex and Social Justice* (Oxford: Oxford University Press, 1999); L. Ericsson, ‘Charges against Prostitution: An Attempt at a Philosophical Assessment’, *Ethics* 90 (1980): 335–66.

(4) C. Pateman, *The Sexual Contract* (Cambridge: Polity, 1988), p. 203.

(5) Those three examples—the chicken factory worker, the masseuse, and the colonoscopy model—are borrowed from Nussbaum, ‘“Whether from Reason or Prejudice”: Taking Money for Personal Services’.

(6) I owe this example to Argyrios Papaefstathiou.

(7) Nussbaum, ‘“Whether from Reason or Prejudice”: Taking Money for Personal Services’.

(8) For testimonies to that effect, see, e.g., Perkins and Bennett, *Being a Prostitute*, pp. 28–9, 224–8. Studies of male prostitution by and large concur. See, e.g., D. J. West and B. de Villiers, *Male Prostitution: Gay Services in London* (London: Duckworth, 1992).

(9) See S. E. Marshall, ‘Bodyshopping: The Case of Prostitution’, *Journal of Applied Philosophy* 16 (1999): 139–50, at 140.

(10) Regulatory approaches are advocated with some qualifications by the English Collective of Prostitutes, the US Prostitutes Collective, and the International Committee for Prostitutes' Rights. The English and US collectives are against legalized brothels, on the grounds, amongst other things, that they ‘prioritize employers’ profits at the expense of sex workers’ rights’. (Sources: <<http://allwomenscount.net>>; <<http://bayswan.org/ICPRChart.html>>). For testimonies by prostitutes who are calling for regulation, see, e.g., Perkins and Bennett, *Being a Prostitute*. For examples of the regulation of prostitution in various countries, see, e.g., J. West, ‘Prostitution: Collectives and the Politics of Regulation’, in R. Matthews and M. O’Neill (eds.), *Prostitution, The International Library of Criminology, Criminal Justice, and Penology* (Burlington, Vt.: Ashgate, 2002).

(11) J. O’Connell Davidson, *Prostitution, Power and Freedom* (Ann Arbor: University of Michigan Press, 1998), pp. 25–6.

(12) L. Shrage, *Moral Dilemmas of Feminism* (London: Routledge, 1994), p. 161.

(13) I am not implying, of course, that brothels' managers can coerce or even pressurize a prostitute into having penetrative sex if she is not pregnant or recovering from childbirth. They most emphatically cannot. Rather, I am suggesting that a prostitute who was willing—and hired—to do so until she got pregnant should be allowed not to once she is pregnant.

(14) I am not contradicting my claims, in Chapters 2 and 3, that the able-bodied are under an obligation of justice to provide personal services to those who need them. In both those cases and the case of prostitutional contracts, one party is under an obligation (in one instance contractual, in the other instance, not contractual) to provide a service. But in neither case ought the penalty for failure to perform be specific performance (army deserters are not punished by being forced to serve: rather, they are sent to jail, or dishonourably discharged).

(15) See, e.g., Ericsson, 'Charges against Prostitution: An Attempt at a Philosophical Assessment'.

(16) Pateman, *The Sexual Contract*, pp. 206–7. See also E. Anderson, *Values in Ethics and Economics* (Cambridge, Mass.: Harvard University Press, 1993). Interestingly, Anderson notes that, in a just society, there might be scope for professional sex therapists whose aim would be to help 'people liberate themselves from perverse, patriarchal forms of sexuality' (p. 156). Although those therapists would be paid for their work, their practice would not be governed by market norms (or so she claims), and would not, therefore, fall foul of the objection under scrutiny here.

(17) I argued in section 7.2.1 that prostitutes do not sell their body. My target here is the inference from selling one's *body* to selling *oneself*.

(18) For example, Radin, *Contested Commodities*, p. 100.

(19) D. Satz, 'Markets in Women's Sexual Labor,' *Ethics* 106 (1995): 63–85, at 70. For another good rebuttal of what one may call the 'sentimentalist charge' against prostitution, see Ericsson, 'Charges against Prostitution: An Attempt at a Philosophical Assessment'.

(20) The best-known examples come from prostitute activists from the movement COYOTE (Call Off Your Tired Ethics), founded by Margot St James in 1979.

(21) Not all prostitutes do sex work out of financial need. See, e.g., Perkins and Bennett, *Being a Prostitute*, pp. 220–2; and Davidson, *Prostitution, Power and Freedom*.

(22) I thank Clare Chambers for pressing me on that point.

(23) Note that I am not contradicting my earlier claim that clients do not have a right to engage in prostitutional sex even if the latter involves the purchase and sale of prostitutes themselves. On the interest-based theory of rights, you recall, X has a right to do A if his interest in doing A is important enough to ground some duties on third parties. In so far as the state's duty to let clients enter the transaction is grounded, not in the clients' interest in so doing, but in the prostitutes', the former do not have a right.

(24) For arguments to that effect, see D. Satz, 'Markets in Women's Sexual Labor'; L. Shrage, 'Should Feminists Oppose Prostitution?', *Ethics* 99 (1989): 347–61.

(25) See, e.g., C. Pateman, *The Sexual Contract*, pp. 192 ff; Satz endorses this objection to the claim that prostitution is morally permissible, but denies that it entails the view that prostitution should be criminalized. See Satz, 'Markets in Women's Sexual Labor'. For a similar argument, see E. Anderson, *Values in Ethics and Economics*, pp. 154–6.

(26) For testimonies by prostitutes who do have that view of men, see, e.g., R. Weitzer (ed.), *Sex for Sale: Prostitution, Pornography and the Sex Industry* (London: Routledge, 2000), pp. 47–8.

(27) For example, Satz, 'Markets in Women's Sexual Labor', p. 81. In addition to the two points mentioned in the text, Satz notes that prostitutes are subject to violence (assault, rape, abuse) at the hands of men to a greater degree than any other female worker. That is entirely plausible: but at best it tells, not against the moral permissibility of prostitutional acts per se, but against the license of such violence against prostitutes (for example, it tells against the view that prostitutes know what they let themselves in for and do not have a claim not to be beaten up by their pimp or clients; it also tells against the view that the police cannot be blamed for not pursuing prostitutes' complaints for assault and rape).

(28) To be clear: I am not implying that prostitution is just like, for example, advertising cars by using naked women. Clearly prostitution can, and often does, involve more direct degradation of actual women—the prostitutes—than such advertising does. And that, someone might be tempted to object, constitutes a reason for criminalizing it which would not apply to advertising. That may well be true, of course; but my focus at this juncture is the claim that prostitution should be banned for resting on, and conveying, degrading images of women. Reasons in favour of criminalizing it, such as adduced a few sentences ago in this note, constitute that which I claim in the text above is needed, namely, *further* reasons than the negative stereotype argument. Which is not to concede that those reasons are good reasons: I dealt with them in section 7.3.1 .

(29) It is estimated that a third of prostitutes in metropolitan cities such as London, New York, and Paris are men. As to male heterosexual prostitution, where clients are

women, it takes the traditional form of the older woman–gigolo relationship, as well as the form—to be found mostly in Italy and Greece—of the so-called ‘wolf packs’ of young local men who have commercial sex with female tourists. Women's greater economic independence, and the fact that in some societies they can now enjoy casual and promiscuous sex without eliciting moral disapproval, are thought to account for the rising incidence of male heterosexual prostitution. See R. Perkins and G. Bennett, *Being a Prostitute*.

(30) For example, Pateman, *The Sexual Contract*, p. 182 ff; K. Barry, *The Prostitution of Sexuality* (New York: New York University Press, 1995).

(31) I say ‘this variant’, for the gender discrimination objection need not claim that prostitution as an institution, as opposed to single prostitutional acts, is at issue.

(32) By the same token, indirect beneficiaries of prostitution such as tour operators and travel agents, who act as intermediaries in prostitution-related tourism, as well as, say, company executives who procure ‘escort’ services for important clients, are guilty of moral wrongdoing. By contrast, someone whose partner is a prostitute, and who materially benefits from his or her income, without involving himself in his or her work, indeed without condoning it, does not, I think, act wrongly. For an interesting review of different kinds of pimping, see Davidson, *Prostitution, Power and Freedom*, pp. 42–58.

(33) The foregoing points are well documented in Davidson, *Prostitution, Power and Freedom*; and D. J. West and B. de Villiers, *Male Prostitution: Gay Services in London* (London: Duckworth, 1992). See also D. Satz, ‘Markets in Women's Sexual Labor’.