

THE SIGNIFICANCE OF REGULATING PROSTITUTION

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Abstract

This dissertation will focus on the significance of regulating prostitution. The UK Government currently regulates prostitution because the conduct attracts many problems such as drug use, violence, public nuisance, organised crimes, human trafficking, child prostitution, and exploitation. However, these problems are still present in the UK. Thus, there have been suggestions that perhaps the UK should take a different approach to prostitution to tackle these problems more effectively. This dissertation will aim to formulate a framework for the UK Government that will best tackle these drastic problems. This dissertation will present an evaluation of prostitution and prostitution laws in history. This dissertation will specify whether prostitution should be accepted as a trade like any other lawful trades or whether the UK should view prostitution as oppression, slavery, and coercion. Finally, there will be an investigation into the reform proposals to demonstrate the significance of regulating prostitution and whether any changes to the current UK laws and policies on prostitution could be made in order to pragmatically tackle the underlying problems of prostitution.

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Introduction

Prostitution is a trade between sex and money and is known as the 'world's oldest profession'. This dissertation will focus on prostitution as it has raised a serious public policy debate and is on-going in terms of the nature of prostitution and the State's control of prostitution and prostitution-related activities which include soliciting, kerb-crawling, brothel keeping and pimping. A person who commissions the sexual intercourse in return for money, or anything that is valuable, is known as a prostitute. Although prostitution requires low skills, it has been rated as one of the most remarkable money making professions. However, prostitution has been central to many problems. The existence of prostitution involves women and children in sexual slavery; increases rates of human trafficking; causes a nuisance to the public; exposes women and children to exploitation and violence; leads to social orders such as drug use; causes the spreading of venereal diseases amongst the nation; and is essential to organised crime. Thus, countries all over the world have taken different legal approaches to prostitution in order to tackle these problems and maintain a safe and secure nation. The UK regulates prostitution to achieve this by prohibiting on-street prostitution and prostitution related activities. However, the fundamental problems of prostitution are still in existence in the UK. It is argued that the UK regulations increase unsafe on-street prostitution and encourage underground prostitution, which in effect increases these problems. Thus, there has been a call for reform. This dissertation will examine whether the legal approach to prostitution in other countries better tackle these problems, or whether the UK should continue regulating prostitution as it currently is and additionally seek to remedy the routes to prostitution.

Chapter one will examine the scope and history of prostitution to assess why people engage in prostitution. This is to tease out the routes to prostitution so that the extent to which prostitution should be regulated can be specified. For example, some people use prostitution as a source of income whilst others are forced into prostitution by a third party. In a situation like this, to what extent should the State act? Furthermore, this chapter will identify the fundamental of problems of prostitution that led the State to regulating prostitution.

The second chapter will discuss whether the State has the right to govern prostitution. This dissertation is based on regulating prostitution so before even discussing regulations; the starting point is to establish whether the State even has the power to regulate prostitution. This establishment will also eliminate arguments that say that the State should not interfere with prostitution because it has nothing to do with the wider public. This chapter will then move on to discussing the development of law that was passed with the aim to remedy the underlying problems of prostitution. This discussion will examine whether the legislation succeeded in tackling these problems or whether it made things worse. This will identify the significance of regulating prostitution and whether any changes to the law should be made. The critics of the legislation presented in this chapter will build a framework for the Government to keep in mind if changes are to be made.

However, before considering reforming the law, what must be addressed is the on-going debate on whether prostitution is sex work or whether prostitution is sexual slavery. This debate must be taken into account as the Government must be sure to encounter ethical issues that may arise from making changes to the law or even from the current law. Ethical issues here will include rights, autonomy, humanity, equality, and morality. The third chapter will therefore raise a discussion on the philosophical debates on prostitution in order to determine whether a prostitute is an employee or whether a prostitute is a victim. This will direct the Government to what may be most ethical for the country; whether that is to treat prostitution as a form of business or to separate prostitution from all other lawful trades.

Once the ethical consequences are established, the practical consequences will be taken into account i.e. whether it actually does tackle the underlying problems of prostitution. To formulate prostitution as a business, it will mean to invest in either a decriminalisation model or, a legalisation model

whereas to view prostitution as oppression, and slavery will mean to adopt in an abolitionist model. Thus, the final chapter will explore countries where suggested laws are currently operating. This investigation will signify whether investing in new laws will be pragmatic and tackle the underlying problems of prostitution or, whether the UK to regulate prostitution as it currently is and take other perspectives to tackle the problems.

Chapter 1: The Background of Prostitution

Prostitution has been in existence since ancient history.² Throughout history, society was patriarchal. A patriarchal society is a society dominated by men in the sense that men possess the economic and legal power.³ In a patriarchal society, women were treated as men's property.⁴ Thus, men believed they had a right to sex from women and so demanded prostitution.⁵ Nonetheless, women met this male demand as they often chose to engage in prostitution. However, this was due to a lack of alternative employment and financial resources available for women in such a society. Also, instability such as homelessness and poverty drove women to prostitution⁶ whilst some were forced into prostitution against their own will and used as money making sex tools.⁷ Overall, there is this notion of prostitution as sex-work and prostitution as sexual slavery, which will be raised throughout this discussion. However, historical evidence shows that prostitution is not just a trade between sex and money; prostitution causes disruption in society as it attracts vile acts such as drug use, organised crime exploitation, violence such as rape and murder,⁸ and human trafficking.⁹ Furthermore, prostitution has led to the transmission of venereal diseases amongst the nation.¹⁰ This chapter will discuss the historical social, political and economic issues that led to prostitution commencing the medieval ages as it was then when prostitution was highly demanded in England.¹¹ An evaluation of prostitution in history will help identify the underlying problems of prostitution that led the state to regulate prostitution and whether the regulations made a difference to the social problems in history. This assessment can be used to assemble the significance of regulating prostitution and whether any changes to the law should be made.

Prostitution in the medieval England

Women in the medieval England were expected to marry, be the homemaker and nurture the family.¹² However, according to historical evidence, many women could not marry due to lack of dowries, sex

² Nils Johan Ringdal, *Love for sale: a world history of prostitution* (Grove Press 2004)

³ Eva Figes, *Patriarchal attitudes: women in society* (Macmillan, 1986)

⁴ Paula Bartley, *Prostitution: Prevention and Reform in England, 1860-1914* (Routledge 2002)

⁵ *ibid*

⁶ *ibid*

⁷ Nils Johan Ringdal, *Love for sale: a world history of prostitution* (Grove Press 2004)

⁸ Melissa Farley, 'Prostitution, Violence Against Women, and Posttraumatic Stress Disorder' (1998) *Women & Health*, 27 (3): 37-49.

⁹ *ibid*

¹⁰ Lucy Delap, *Feminism and the periodical press, 1900-1918, Volume 2* (Routledge 2006)

¹¹ P. J. P. Goldberg, *Women in England, c. 1275-1525: documentary sources* (Manchester, Manchester University Press 1995)

¹² Sandy Bardsley, *Women's roles in the Middle Ages* (Greenwood Publishing Group, 2007)

ratios, and the small population of men in a position to marry. Therefore, such women had to financially and socially support themselves.¹³ Yet, women lacked economic and legal power in the medieval society.¹⁴ According to Jaques Rossiaud, prostitution was one of the very few options that were available to women in a patriarchal society.¹⁵ Thus, “any woman attempting to live independently of men, all poor women, foreigners and slaves who worked outside the home”,¹⁶ although not all, turned to prostitution. In addition, when sufficient money was not being made from the women’s normal occupation, which was then likely to be low paid factory work,¹⁷ women used prostitution to make up the difference.¹⁸ Therefore, prostitution was used by women as a cyclical source of income. Furthermore, women and young girls of families of lower classes were encouraged to engage in prostitution to raise the family income.¹⁹

However, prostitution was not just a source of income for the prostitute but for men.²⁰ Prostitution was considered to be “necessary to the functioning of society because it was central to the construction of gender in medieval culture”.²¹ Therefore, women were forced into prostitution to meet the male demand for sex, and were used as a money making sex tool by pimps and brothel owners.²² Brothels are premises used by more than one woman for the purposes of prostitution.²³ Prostitution allowed pimps to achieve a higher standard of living through the work of the prostitute.²⁴ Ruth Mazo Karras writes that in some situations, the pimp kept her earnings, with the prostitute “keeping only the tips”.²⁵ On the other hand, brothels may have been a benefit to prostitutes who were homeless and, to women who chose to engage in prostitution as they had the ready premises to carry out their work.²⁶

¹³ Richard M Smith, *Some Reflections on the Evidence for the Origins of the European Marriage Pattern’ in England* (Keele, 1979)

¹⁴ Roberts, N., *Whores in History, Prostitution in Western Society*, (Page 15, HarperCollins 1993)

¹⁵ Jaques Rossiaud, *Prostitution, Youth and Society in the Towns of Southerneastern France in the Fifteenth Century, in Deviants and the Abandoned in French Society* (Baltimore, Johns Hopkins University Press 1978)

¹⁶ Roberts, N., *Whores in History, Prostitution in Western Society* (page 15, HarperCollins 1993)

¹⁷ Women’s work in history < http://www.bbc.co.uk/history/british/victorians/womens_work_01.shtml> accessed 3rd November 2011

¹⁸ Ruth Mazo Karras. *Sexuality in Medieval Europe: Doing Unto Others* (Routledge, 2005)

¹⁹ Hilary Evans, *Harlots, Whores & Hookers: A History of Prostitution* (1979) *Journal of the History of the Behavioral Sciences Vol. 18, Issue 2 pp225*

²⁰ Melissa Farley , ‘Prostitution: Factsheet on Human Rights Violations’ *Prostitution Research & Education* <<http://www.prostitutionresearch.com>> accessed 3rd November 2011

²¹ Ruth Mazo Karras, *Common Women. Common women, prostitutes, and whores* (page 7, Oxford University Press 1996)

²² Melissa Farley , ‘Prostitution: Factsheet on Human Rights Violations’ *Prostitution Research & Education* <<http://www.prostitutionresearch.com>> accessed 3rd November 2011

²³ Singleton v. Ellison [1985] 1 QB 607

²⁴ Ruth Mazo Karras, *Common Wome: Common women, prostitutes, and whores* (page 33, Oxford University Press 1996)

²⁵ Ruth Mazo Karras, *Common Women: Common women, prostitutes, and whores* (page 33, Oxford University Press 1996)

²⁶ Leah Lydia Otis, *Prostitution in Medieval Society* (London, The University of Chicago 1985)

However, the keeping of brothels was illegal in medieval England as it was deemed to be immoral.²⁷ Nonetheless, prostitution was on-going exposing women to exploitation and violence.²⁸ Prostitutes themselves portrayed a need for protection from this inhumane treatment.²⁹ Thus, brothels were eventually institutionalised, subject to regulations, (although it is illegal in England today)³⁰ because it was thought to provide prostitutes protection from violence, coercion and exploitation.³¹ In addition, the state believed that institutionalising brothels will restrict prostitutes to working in certain districts under strict regulations, which in turn will control social orders such as public nuisance and drug use.³² By the Elizabethan times, the sale of sex was running like a commercial business and there was a well binding operation between a woman's need for a decent earning and a man's need for sex.³³ Brothels were institutionalised in London and situated in the Bankside, Southwark, subject to specific regulations³⁴ with the aim to protect prostitutes "from being beaten, or being kept in the brothel against their will".³⁵ Legalising brothels appear to have given women the confidence to engage in prostitution without fearing violence and abuse.³⁶ Furthermore, "some women were successful and enterprising enough to own and operate brothels".³⁷ This indicates that women themselves accepted prostitution as a 'commercial business'.

However, in 1546, Henry VIII's ended England's "toleration" for prostitutes who he called "dissolute and miserable persons".³⁸ He ordered for the closure of the brothels in London, which led to prostitutes working in unspecified locations and carrying out their work in venues such as theatres and alehouses.³⁹ The Puritans, a group of people who grew discontent in the Church of England and worked towards religious, moral and societal reforms,⁴⁰ ordered for all London theatres to be closed down. This did not last long; the Restorations brought back the theatres and prostitution once again

²⁷ Ruth Mazo Karras, *Common Women: Common women, prostitutes, and whores* (page 33, Oxford University Press 1996)

²⁸ Leah Lydia Otis, *Prostitution in Medieval Society* (London, The University of Chicago 1985)

²⁹ Maria Johanna Doutora, 'The female prostitute as "the other"'

<<http://www.aps.pt/vicongresso/pdfs/780.pdf>> accessed 13th November 2011

³⁰ Sexual Offences Act 2003

³¹ Hilary Evans, *Harlots, Whores & Hookers: A History of Prostitution* (1979)

³² A brief history of brothels < <http://www.independent.co.uk/news/uk/this-britain/a-brief-history-of-brothels-523962.html>> accessed 13 November 2012

³³ *ibid*

³⁴ Joseph Timothy Haydn, *Dictionary of dates, and universal reference* (London, Bradbury and Evans Printers)

³⁵ Ruth Mazo Karras, *Common Women. Common women, prostitutes, and whores* (page 34, Oxford University Press 1996)

³⁶ Barbara A. Hanawalt, *Growing up in medieval London: the experience of childhood in history* (Oxford University Press)

³⁷ Roberts, N., *Whores in History, Prostitution in Western Society*, (Page 71, HarperCollins 1993)

³⁸ Henry Ansgar Kelly, 'Bishop, Prioress, and Bawd in the Stews of Southwark', (2000) *Speculum* Vol. 75, No. 2, pp. 342-388

³⁹ Melissa Hope Ditmore, *Encyclopedia of prostitution and sex work, Volume 1* (Greenwood Publishing Group)

⁴⁰ Puritans <<http://www.nd.edu/~rbarger/www7/puritans.html>> accessed 3rd November 2011

was operating like a business.⁴¹ Prostitution was not an offence in England common law for years onwards.⁴² However, prostitutes were prosecuted under “laws against adultery or fornication or for being ‘common nightwalkers’--women who strolled the streets at night for immoral purposes”.⁴³ Thus, women were most likely to be prosecuted for on-street prostitution.

Prostitution during the Victorian era (1837-1901)

Medieval England ended in 1837 when Queen Victoria ascended to the throne. The Victorian era was also a patriarchal society where men were in charge of running the market business.⁴⁴ Prostitution and its related activities were on-going.⁴⁵ Paula Bartley, a radical feminist, emphasises on the fact that women were men’s property and were sold on the market for the purposes of prostitution.⁴⁶ Other women engaged in prostitution as a means of survival. Thus, prostitution was associated with working class women, which included women “between starvation, the workhouse, or the street”.⁴⁷ Research into the Victoria era shows that women went into the lowest paid occupations such as factory work, mostly stitching, and domestic service for the upper working class.⁴⁸ “The alternative debasement, should moral precepts give way to economic necessity was prostitution”.⁴⁹ Women who could not find a good paid job turned to prostitution to supplement their earnings.⁵⁰ Furthermore, it was published in the Lloyd’s Weekly London Newspaper (1844) that girls as young as the age of twelve and under were forced into prostitution by their own families in order to pursue an income for the family.⁵¹

⁴¹ Ruth Mazo Karras, *Common Women. Common women, prostitutes, and whores* (Chapter 5, Marriage, Sexuality, and Marginality, Oxford University Press 1996)

⁴² Eleanor M. Miller, PhD, Kim Romenesko, MA, Lisa Wondolkowski, ‘The United States, *Prostitution: An International Handbook on Trends, Problems, and Policies*’, (1993)

⁴³ *ibid*

⁴⁴ Margaret Roman, *Sarah Orne Jewett: reconstructing gender* (University of Alabama Press 1992)

⁴⁵ Robert C. Long, M.D., ‘*Sexuality In The Victorian Era*’

<<http://www.innominatesociety.com/Articles/Sexuality%20In%20The%20Victorian%20Era.htm>> accessed 4th November 2011

⁴⁶ Paula Bartley, *Prostitution: Prevention and Reform in England, 1860-1914* (Routledge 2002)

⁴⁷ Paula Bartley, *Prostitution: Prevention and Reform in England, 1860-1914* (Routledge 2002)

⁴⁸ Deborah Anna Logan, *Fallenness in Victorian women's writing: marry, stitch, die, or do worse* (University of Missouri Press 1998)

⁴⁹ Robert C. Long, M.D., ‘*Sexuality In The Victorian Era*’

<<http://www.innominatesociety.com/Articles/Sexuality%20In%20The%20Victorian%20Era.htm>> accessed 4th November 2011

⁵⁰ Roberts, N., *Whores in History, Prostitution in Western Society*, (Page 189, HarperCollins 1993)

⁵¹ “Prostitution of Young Females in London.” *Lloyd's Weekly London Newspaper*. (London, England), Sunday, May 26, 1844; 79

<<http://victoriancontexts.pbworks.com/w/page/31011369/Prostitution%20of%20Young%20Women%20in%20London>> accessed 3rd November 2011

By the 19th century, prostitution became known as 'The Great Social Evil'.⁵² "No greater social problem was perceived by society than that of prostitution".⁵³ Also, prostitution became delinquent when woman's rights were gradually modified at the hands of feminists, particularly The Suffragettes. The core objective of The Suffragettes was to enhance the rights of Women, mainly allowing women to vote and raise their economic opportunities.⁵⁴ The Suffragettes encountered prostitution as a feminist issue because they believed in women's purity they saw prostitutes as moral degenerates.⁵⁵ Therefore, the Suffragettes asked the Government to control women in prostitution. In addition, The Suffragettes associated prostitution with women's lack of economic power. Christabel Pankhurst, daughter of Emmeline Pankhurst, said that men were the cause of prostitution because they were prepared to pay big money for sex therefore, "By force, by trickery, or by starvation enough women will, they believe, be drawn into the Slavery of vice".⁵⁶ Christabel wrote a series of articles about 'the great scourge' of venereal disease where she emphasised that prostitution infected the nation, particularly men.⁵⁷ She said that a man and woman cannot maintain a good relationship while women are economically and politically unequal⁵⁸ because it pushed women into prostitution, which in turn infected relationships between man and wife with the possibility of infected children.⁵⁹ Thus, she tried to manipulate a reduction in the demand for prostitution by informing men about the risks to their health, thereby reducing the number of women in prostitution, so that women are given economic powers to manage their own affairs in other ways other than prostitution. Christabel's message was, "The real cure is a two-fold one – Votes for Women, which give women greater self-reliance and a stronger economic position, and Chastity for men".⁶⁰ This created a great concern for regulating prostitution in order to preserve the health of the populace. Thus, "a Public Health movement was introduced for the physical and moral wellbeing of the population".⁶¹ Those concerned with this movement helped push through the extended Contagious

⁵² Judith Walkowitz, *Prostitution and Victorian Society: Women, Class and the State*, (Cambridge University Press, 1980)

⁵³ Fraser Joyce, 'Prostitution and the Nineteenth Century: in Search of the 'Great Social Evil'' *Department of History, Oxford Brookes University*
<http://www2.warwick.ac.uk/fac/cross_fac/iatl/ejournal/issues/volume1issue1/joyce/> accessed 4th November 2011

⁵⁴ Jane Marcus, *Suffrage and the Pankhursts* (Routledge 1987)

⁵⁵ Christabel Pankhurst, *The Great Scourge and How to End It* (London 1913)

⁵⁶ Margaret Jackson, *The Real Facts of Life: Feminism and the Politics of Sexuality, C1850-1940* (Abingdon, Taylor and Francis 1994)

⁵⁷ Christabel Pankhurst, *The Great Scourge and How to End It* (Pamphlet, Lincoln's Inn House, 1913)

⁵⁸ Melanie Phillips, *The Ascent Of Woman: A History of the Suffragette Movement* (Little, Brown Book Group 2004)

⁵⁹ Christabel Pankhurst, *The Great Scourge and How to End It* (Pamphlet, Lincoln's Inn House, 1913)

⁶⁰ Elizabeth Crawford, *The women's suffrage movement: a reference guide, 1866-1928* (Routledge 2001)

⁶¹ Fraser Joyce, 'Prostitution and the Nineteenth Century. In Search of the 'Great Social Evil'' Oxford Brookes University <http://www2.warwick.ac.uk/fac/cross_fac/iatl/ejournal/issues/volume1issue1/joyce/#2> accessed 3rd November 2011

Diseases Acts, which aimed to combat diseases that stemmed from prostitution and other individual actions.⁶² These Acts will be discussed further in the second chapter.

Conclusion

Overall, an evaluation into the causes of prostitution in history shows that poverty, homelessness, experience of abuse in childhood, independent living, lack of employment available for women and girls led them to prostitution. The abuse of male power encouraged them to turn to prostitution as it men were willing to pay big sums for sex. Some women and girls, on the other hand, were forced into prostitution against their own will to serve the male demand for sex, which men genuinely believed they had a right to.⁶³ This gives rise to the notion of prostitution being a form a sex-work and prostitution being a form of sexual-slavery. It can be arguably concluded that even those who were not physically forced into prostitution were forced in to prostitution by the ill position of women, particularly the low and middle class women, in a patriarchal society. Regardless, all prostitutes were exposed to exploitation and a wide range of violence. In addition, prostitution was causing a nuisance to the public and put the public's health and well-being at risk. These problems still occur today. It was clear that something had to be done in order to reduce, if not remove, the drastic effects of prostitution. The Government eventually passed legislation to control prostitution and to tackle the underlying problems of prostitution. The effects of the legislation will be discussed in the next chapter to see whether the legislation tackled the underlying problems. This will give an idea as to whether today's UK government should invest in new laws to tackle the underlying problems of prostitution or whether this will lead to further crisis.

Chapter 2: Regulating Prostitution

The regulation of prostitution began in the late 18th century and the early 19th century in England with the aim to combat the underlying *problems* of prostitution discussed in the previous chapter. However, there have been debates on whether the State even has the right and power to regulate prostitution where the trade of sex and money is between two consenting adults.⁶⁴ This chapter will evaluate the philosophical explanations of the role of the State to demonstrate that the State does in fact have a duty to govern prostitution. After having established the duty and power of the State to regulate prostitution, this chapter will assess the Government's legitimate objectives of the regulations, whether these objectives were met, and the critics of the laws. This evaluation will present a pragmatic scenario as to whether it is worth investing in new laws and policies to tackle the current underlying problems of prostitution occurring in the UK.

⁶² Acton, W., *Prostitution Considered in its Moral, Social and Sanitary Aspects in London and Other Large Cities and Garrison Towns with Proposals for the Control and Prevention of its Attendant Evils* (2nd edn, London, John Churchill and Sons 1870)

⁶³ Pivar, David J. *Purity Crusade Sexual Morality and Social Control, 1868-1900* (Connecticut: Greenwood Press, Inc. 1973)

⁶⁴ *Sex and Society, Volume 2* (Marshall Cavendish Cooperation 2010)

The role of the State

The state holds political power and exercises this power via law and policies to control the behaviour and conducts of its citizens to protect its nation.⁶⁵ Therefore, the State has a duty to exercise its political powers to control prostitution, as explained by the following theories.

The social contract theory

Thomas Hobbes, a famous English philosopher, set forth the political philosophy that the State should constrain people's freedom in order to maintain democracy and social unity.⁶⁶ His main concern is the problem of "how human beings can live together in peace and avoid the danger and fear of civil conflict".⁶⁷ Thus, he created the 'social contract theory'. This is the idea where citizens give up their right to retaliate in return of State protection i.e. law and order.⁶⁸ In the light of this theory, it can be argued that the State should constrain people's freedom to sell and buy sex in order to protect the nation and individuals from the relative social orders, violence, danger, and exploitation discussed in chapter one. It may be argued that one should be able to sell their own body without State interference. Hence, by constraining the freedom to sell and buy sex, it can be said the State is depriving one of their autonomy.

Autonomy is of paramount importance

John Locke also believed in the social contract theory. However, unlike Hobbes, Locke believed that every man is capable of governing himself therefore the preservation of autonomy of civil society is of paramount importance.⁶⁹ Thus, as Locke believed, the State should protect the nation but must only do what is necessary without depriving one's autonomy.⁷⁰ An analysis of the consequences of prostitution carried out in chapter one shows that prostitution causes dreadful social orders, demographical and ethical problems such as violence, trafficking, drug use, coercion, the spreading of infections, and exploitation towards women. Throughout history, the State has not prohibited the selling and buying of sex but has passed laws to regulate the conduct to an extent that is necessary to protect the nation from these harms, as will be seen later in this chapter. Therefore, according to Locke's theory, regulating prostitution is lawful and is not a deprivation of autonomy.⁷¹

⁶⁵ Ayn Rand, *The Nature of Government* More

<http://www.aynrand.org/site/PageServer?pagename=arc_ayn_rand_the_nature_of_government> Accessed 14th December 2011

⁶⁶ Hobbes, Thomas (1588-1679), *Leviathan: The Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil* (1651)

⁶⁷ Hobbes: Moral and Political Philosophy < <http://www.iep.utm.edu/hobmoral/>> Accessed 14th December 2011

⁶⁸ Hobbes, Thomas (1588-1679), *Leviathan: The Matter, Form, and Power of a Commonwealth, Ecclesiastical and Civil* (1651)

⁶⁹ Alex Neil, 'Locke on Habituation, Autonomy, and Education' (1989) *Journal of the History of Philosophy*, Vol. 27, no. 2 pp 225-245

⁷⁰ Raymond Guess (ed), *John Locke (1634–1704): Two Treatises of Government* (Cambridge University Press)

Law and morality

The question now is how should the State shape law and order? Philosophers such as Phil Harris stress that the State should govern society to reflect moral values.⁷² Morality is “concerned with the principles or rules of right conduct or the distinction between right and wrong”.⁷³ The debate over the relationship of law and morality was brought to the fore in the famous Hart/Devlin debate. This debate followed the publication of the Wolfenden report in 1957, The Report of the Committee on Homosexual Offences and Prostitution.⁷⁴ The report stressed that the law ‘should not intervene in the private lives of citizens or seek to enforce any particular pattern of behaviour further than necessary’⁷⁵ to protect others. However, Lord Devlin opposed to the report saying that the law should not be shaped by private morals but rather “morality of the majority”⁷⁶ because that is what holds a society together.⁷⁷ In contrast, Professor Hart said that one’s actions should not be dictated by society but rather by the individuals’ rights and choices.⁷⁸ However, no one person can know what is right or wrong.⁷⁹ Thus, Devlin stressed that the law should keep citizens together under the same protection favoured by the majority.⁸⁰ He said that the legislature should follow three basic principles: Individuals should be allowed to pursue their liberty without compromising morality; the law should be used to punish actions that are immoral and offensive to ‘right-minded people’; and the law should only set the minimum standards of acceptable behaviour.⁸¹ Up till today, Devlin’s doctrine is in practice.⁸² Throughout history, what the UK has sought to regulate is not the freedom to sell and buy sex but rather immoral conducts such as publicised sex work, forced prostitution, child prostitution, and exploitation. This upholds Devlin’s first principle. Individuals who adhere to these conducts are punished by the law. This upholds the second principle. Lastly, upholding the third principle, the laws on prostitution set the minimum acceptable manner to carry out sex work. Thus, according to Devlin, the UK carries out its duty to govern prostitution in order to maintain social unity. However, sexual orientation and activity are intimate to one’s private life. Therefore, controlling one’s sexual activities can be argued to be interfering with the private life of citizens.

Right to private life

Every citizen has the right under Article 8(1) of the ECHR.⁸³ Section 6(2) of the Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a convention right.⁸⁴ Therefore, interfering in the private lives of individuals in prostitution to govern their conduct

⁷² Phil Harris, ‘An Introduction to Law (seventh edn, Cambridge, Cambridge University Press 2007)

⁷³ Dictionary, Morality <<http://dictionary.reference.com/browse/moral>> Accessed 14th December 2011

⁷⁴ Report of the Committee on Homosexual Offences and Prostitution, Cmnd. 247 (1957), 24.

⁷⁵ *ibid*

⁷⁶ Mathew. G, ‘Law, Morality and Secularisation : The Church of England and the Wolfenden Report, 1954–1967’ (2009) *Jnl of Ecclesiastical History*, Vol. 60, No. 4

⁷⁷ H. L. A. Hart, *Law, Liberty, and Morality* (Stanford University Press, 1963)

⁷⁸ *ibid*

⁷⁹ Michael Martin, *The legal philosophy of H.L.A. Hart: a critical appraisal* (Temple University Press, 1987)

⁸⁰ Wash. & Lee, ‘Collective Morality of a Maturing Society’ (1973) *Law Review* 399

⁸¹ *ibid*

⁸² *R v Brown* [1993] 2 All ER 75.

⁸³ European Conventions of Human Right, Article 8(1)

⁸⁴ Human Rights Act 1998 Section 6(2)

can be argued to be unlawful. However, in the case of *F. v. Switzerland* 1988 it was held that prostitution does not fall within the meaning of ‘private life’ under Article 8(1).⁸⁵ This judgement was given because although prostitution may be carried out as a private transaction between two parties, it concerns the health and safety of those engaged and the public whereby interference is qualified under Article 8(2), which allows the rights under Article 8(1) to be interfered with in the interests of the permissible aims of the state. Thus, there is no entitlement to protection under Article 8(1) in prostitution. As Judge Pettiti said, the fact that sexual behaviour is carried out in private does not automatically mean that it will suffice to ‘ensure complete immunity and impunity’.⁸⁶ As seen in the previous chapters, prostitution and its related activities appears to infect the public, causes public nuisance, disrupts one’s health and safety, deprives one of their liberty, and leads to a number of relative crimes such as rape, murder and sexual assault. Therefore, regulating prostitution is an interference that is in accordance with the requirements of Article 8(2) as it is necessary for the prevention of disorder or crime, the protection of health or morals, protection of the rights and freedoms of others, and public safety.⁸⁷

Overall, the underpinning viewpoint of the State has the right, the power, and the duty to protect its nation and citizens from harm and danger and can lawfully interfere in the private lives of citizens to do, if this interference is necessary. Therefore, it is lawful for the State to regulate prostitution because, as seen in the previous chapter, prostitution causes harm to the public, to the nation and to prostitutes themselves. Paula Bartley writes that the State attempted to govern prostitution in fear that it would infect the respectable world, harm society, and destroy marriages, the home and the family.⁸⁸

Motives, Objectives and Effects of the Legislation

The State aimed to reduce the problems underlying prostitution discussed in the previous chapter by regulating prostitution and its related activities. The motives, the objectives, and the effects of these regulations will now be discussed to analyse the problem that led to passing the law, what the Government tried to remedy and whether this was achieved to draw together whether any problems occurring today can be eliminated in the same way.

Controlling sexual transmitted diseases

One of the first reasons why the UK passed laws to govern prostitution was to control the transmission of sexual diseases. What pushed the UK into passing these laws was the concern for the armed forces and, as stressed by Christabel Pankhurst, the concern for the health of the nation. During the World War I, the British Army prohibited enlisted men from marrying in order to maintain a professional army without family ties.⁸⁹ Therefore, the army demanded the work of prostitutes for sexual satisfaction.⁹⁰ However, as discussed in the previous chapter, prostitutes were often infected with venereal diseases. Therefore, as a result of using prostitution services, venereal diseases spread

⁸⁵ *F. v. Switzerland* (11680/85) (1988)

⁸⁶ *Laskey, Jaggard and Brown v United Kingdom* 24 E.H.R.R. 39 at [36] (1997)

⁸⁷ European Conventions on Human Rights, Article 8(2)

⁸⁸ P Bartley, *Prostitution: Prevention and Reform in England, 1880-1914* (Routledge, 2000)

⁸⁹ Judith R. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (page 74)

⁹⁰ *ibid*

amongst the army.⁹¹ This caused an increase in the annual death rate in the army.⁹² Subsequently, prostitutes were demanded to have health examinations in order to protect the nation and armed forces. “Because prostitutes were regarded as an inferior class, and therefore unlikely to seek medical care, public health officials focused on regulating their behaviour through legal regulations and police force”.⁹³

Thus, the Contagious Diseases Acts (CDA's) were passed.⁹⁴ The CDA's of 1864, 1866, and 1869 gave regulatory powers to the police to arrest and detain any women they suspected to have venereal diseases and insist them to have medical examination.⁹⁵ However, these Acts were highly criticised for exposing women ‘suspected’ to be prostitutes, thus all working or middle-class women, to unnecessary harassment by the police.⁹⁶ Furthermore, the Acts were deemed to be aimed at women only, condemning women as being diseased and immoral.⁹⁷ This aroused a Victorian feminist movement against the CDA's. In 1869, the suffragists Josephine Butler and Elizabeth Wolstenholme campaigned against the CDA's expressing that all citizens have a constitutional right to equality and just treatment under the law.⁹⁸ The CDA's was finally repealed in 1886. Venereal diseases are a current underlying problem of prostitution today. However, as shown here, the government cannot control the spreading of venereal diseases via legislation directed at women to undergo health examinations as this will be discriminating. Other ways this problem can be reduced will be discussed in chapter four.

Preventing public nuisance

As discussed above, prostitution was deemed to be a nuisance to the public as it was “socially unacceptable”,⁹⁹ as is the issue today. Therefore, the UK introduced legislation to prevent publicised sex work.¹⁰⁰

In 1824, the Vagrancy Act was passed, which prohibited 'any common prostitute behaving in a riotous or indecent manner in a public place'.¹⁰¹ However, this Act did not specify what was meant by ‘riotous or indecent manner’. Therefore one critic of this Act is that not everybody considers the same things as being ‘indecent’ (refer to the Hart/Devlin debate above). Hence, conviction of prostitutes on the

⁹¹ *ibid*

⁹² John Costello, *Love, Sex and War* (Chapter 14: The Girls They Met 'Over There', Pan Books 1986)

⁹³ Sevgi O. Aral, John M. Douglas, H. H. Handsfield, *Behavioral Interventions for Prevention and Control of Sexually Transmitted Diseases* (1st edn, Springer Science and Business Media 2007)

⁹⁴ Acton, W. (1870), *Prostitution Considered in its Moral, Social and Sanitary Aspects in London and Other Large Cities and Garrison Towns with Proposals for the Control and Prevention of its Attendant Evils* (2nd edn, London, John Churchill and Sons)

⁹⁵ Contagious Diseases Acts of 1864, 1866, and 1869

⁹⁶ Garrett, E. (1870), *An Enquiry into the Contagious Diseases Acts of 1866-1869*, London: (reprint from the *Pall Mall Gazette*)

⁹⁷ *ibid*

⁹⁸ Helen J. Self (2003), *Prostitution, Women and Misuse of the Law: The Fallen Daughters of Eve*, Frank Cass

⁹⁹ P Bartley, *Prostitution: Prevention and Reform in England, 1880-1914*, Routledge, 2000

¹⁰⁰ Vanessa Munro, Marina Della Giusta (eds.), *Demanding Sex: Critical Reflections on the Regulation of Prostitution*, pp.51-66 (Ashgate, 2008).

¹⁰¹ Vagrancy Act of 1824, section 3

court's interpretation of whether the prostitute's behaving in a 'riotous or indecent manner' can be arguably said to be unjust.

In 1839, a new law was passed to govern prostitution and was only applicable to London's police districts. This law was provided under subsection 54 of the Metropolitan Police Act, which prohibited 'soliciting or loitering for the purposes of prostitution to the annoyance of inhabitants or passers-by'.¹⁰² This Act led to injustice because prosecution relied on what the police subjectively believed to be an 'annoyance'. As discussed above, the law should work in accordance to "uniform moral standards"¹⁰³ and not in accordance to subjective moral standards. Because convictions were based on police statements alone, the prosecution of prostitutes rapidly increased.¹⁰⁴ Furthermore, this Act did not uphold the State's objective to prevent publicised sex-work because the wording implies that if a prostitute was soliciting or loitering without annoying the residents then she cannot be prosecuted even though she was in a public place.¹⁰⁵

In 1847, the Town Clauses Act was put into force and was applicable to the whole country. This Act provided similar regulations to the Metropolitan Police Act 1839 thereby encountered more or less the same problems. It can be concluded here that the current UK Government must ensure not to be subjective in their regulations on prostitution and must be cautious about both the public and the individual in the light of justice.

Protecting individuals in prostitution

The state eventually became concerned with individuals in prostitution particularly children with the help of William. T. Stead, a journalist who wrote a series of newspaper articles in 1885 reporting on the cruelty of child prostitution.¹⁰⁶ These articles raised public awareness and pushed through the Criminal Law Amendment Act 1885. This Act raised the age of consent to sexual intercourse from 13-16.¹⁰⁷ The purpose of this was to prevent child prostitution.¹⁰⁸ The new act also "created protective laws against procurement and forcible detainment of women by third parties for the purposes of prostitution".¹⁰⁹ Thus, subsection 13 of the Act prohibited the keeping of brothels.¹¹⁰ This was to prevent girls and women from being enslaved in the sex trade.¹¹¹ As a result of this law, many women

¹⁰² Metropolitan Police Act 1839, subsection 54

¹⁰³ Lindsay Amantea, 'The Hart-Devlin Debate' <<http://www.politonomist.com/the-hart-devlin-debate-002607/>> Accessed 3rd December 2011

¹⁰⁴ Julia Laite, 'Paying the price again: prostitution policy in historical perspective'

<<http://www.historyandpolicy.org/papers/policy-paper-46.html>> Accessed 3rd December 2011

¹⁰⁵ *ibid*

¹⁰⁶ Deborah Gorham, 'The "Maiden Tribute of Modern Babylon" Re-Examined: Child Prostitution and the Idea of Childhood in Late-Victorian England' *Victorian Studies* Vol. 21, No. 3 (Spring, 1978), pp. 353-379

¹⁰⁷ Criminal Law Amendment Act 1885

¹⁰⁸ Deborah Gorham, 'The "Maiden Tribute of Modern Babylon" Re-Examined: Child Prostitution and the Idea of Childhood in Late-Victorian England' *Victorian Studies* Vol. 21, No. 3 (Spring, 1978), pp. 353-379

¹⁰⁹ Julia Laite, 'Paying the price again: prostitution policy in historical perspective'

<<http://www.historyandpolicy.org/papers/policy-paper-46.html>> Accessed 3rd December 2011

¹¹⁰ Criminal Law Amendment Act 1885, subsection 13

¹¹¹ Melissa Hope Ditmore, *Encyclopedia of Prostitution and Sex Work, Volume 1*

(Westport, Greenwood Press 2006)

were turned out onto the streets where they were vulnerable to exploitation and violence.¹¹² This led to an increase in street-prostitution, particularly on the streets of London.¹¹³ Moreover, the advanced criminalised status of prostitutes, according to Judith Walkowitz, meant that prostitutes had to be more discreet in their work to avoid prosecution therefore had to rely more on pimps to get them clients.¹¹⁴ The reliance on exploiters made them more vulnerable to abuse.¹¹⁵ Analysing the effects of this law, it can be argued that perhaps the current UK government should legalise brothels in order to prevent on-street prostitution, or redefine the term 'brothel' so as to allow more than one woman to use the premises for prostitution. This is further discussed in chapter four.

Back to preventing public nuisance

The downfall of the 1885 Act was eventually battled by the Street Offences Act 1959, which prohibited every common prostitute from loitering and soliciting for the purposes of prostitution. The wording shows that there was no longer a need to prove 'annoyance'. Thus, it meant that publicised prostitution, whether annoying residents or not, led to prosecution. However, as a result of this Act, there was an increase in kerb-crawling.¹¹⁶ This was a reflection of "the difficulty men experienced in finding easily recognisable street women."¹¹⁷ In 1985, England and Wales enforced legislation to address "the increasing problem of kerb-crawling".¹¹⁸ Furthermore, the 1959 Act led to an increase in "off-street prostitution businesses."¹¹⁹ This made prostitutes more vulnerable to "incidences of violent attack, murder, and the involvement of exploitative third parties."¹²⁰ This may be because the advanced criminalised status of prostitutes further distanced prostitutes from the public eye and law protection.

Work other than prostitution

As seen in chapter one, women often had no choice but to engage in prostitution due to a lack of alternative employment, financial crisis, homelessness, etc. In 1919, though not specifically enacted to provide alternatives to prostitution, The Sex Disqualification Removal Act was passed which made it illegal to exclude women from most jobs and allowed women to hold judicial office and enter the professions.¹²¹ Women could now become magistrates, solicitors and barristers. Subsequently, legislations in favour of women and equality flowed rapidly. Nonetheless, prostitution rates were still

¹¹² Judith Walkowitz, *Prostitution and Victorian Society Women, Class and the* (Cambridge University Press 1980)

¹¹³ *ibid*

¹¹⁴ *ibid*

¹¹⁵ *ibid*

¹¹⁶ Helen J. Self, 'History Repeating Itself: The Regulation of Prostitution and Trafficking' (2004) <<http://www.pbs.plymouth.ac.uk/solon/fcrn/documents/paper001.pdf>> Accessed 15th December 2011

¹¹⁷ *ibid*

¹¹⁸ Roger Matthews, *Prostitution, politics & policy* (1st edn, Routledge-Cavendish 2008)

¹¹⁹ Julia Laite, 'Paying the price again: prostitution policy in historical perspective' <<http://www.historyandpolicy.org/papers/policy-paper-46.html>> Accessed 3rd December 2011

¹²⁰ Helen J. Self, 'History Repeating Itself: The Regulation of Prostitution and Trafficking' (2004) <<http://www.pbs.plymouth.ac.uk/solon/fcrn/documents/paper001.pdf>> Accessed 15th December 2011

¹²¹ The Sex Disqualification Removal Act 1919

high, as seen above, and prostitution is still an issue today. Women still engage in the conduct even after the State has offered funding, campaigns, employment, equality, and law protection. Hence, there are clearly contrasting views on prostitution and not all women view it as exploitation. Thus, perhaps the state should encounter that some individuals view prostitution as a form of employment. Therefore, perhaps the State should relax the law on prostitution so that individuals can pursue their economic interests without fearing prosecution. However, there is the counter argument that prostitution cannot be treated as a form of employment. This is discussed further in the next chapter.

Combining the existing legislation

The current law on prostitution is found in the Sexual Offences Act 2003. This Act was introduced following a White Paper 'Protecting the Public' published by the Government in 2002.¹²² In this paper, the Government described the law on sexual offences, discussed above, as “archaic and incoherent – it is also discriminatory”.¹²³ The truth behind this comment has been clearly demonstrated above. In addition, the past laws on prostitution tend to render individuals in prostitution as villains rather than victims.¹²⁴ Individuals in prostitution were being prosecuted more than exploiters of prostitutes such as pimps.¹²⁵ Hence, what the 2003 Act aims to do is to clarify the law, remove discrimination against women, modernise the law to provide better protection to the public and prostitutes, and most importantly to protect children. The law now applies to female and male prostitutes therefore removes discrimination. The Act has criminalised paying for sexual services of a child;¹²⁶ causing or inciting prostitution for gain;¹²⁷ controlling prostitution for gain;¹²⁸ managing or assisting to manage brothels;¹²⁹ and soliciting, loitering and kerb-crawling for the purposes of prostitution.¹³⁰

However, the fundamental problems of prostitution are still in existence in the UK. This may be because the UK regulations increase unsafe on-street prostitution and encourage underground prostitution, which in effect causes these problems. For example, in 2006, prostitutes were murdered in Ipswich over a period of time by the same murderer.¹³¹ It was only after the murderer had killed the fifth victim that he was caught.¹³² This shows that violence still occurs discreetly in prostitution. In

¹²² *Protecting the Public: strengthening protection against sex offenders and reforming the law on sexual offences*

¹²³ *ibid*

¹²⁴ Sexual Offences Act 2003,

¹²⁵ *Protecting the Public: strengthening protection against sex offenders and reforming the law on sexual offences*

¹²⁶ Sexual Offences Act 2003, Section 47

¹²⁷ Sexual Offences Act 2003, Section 52

¹²⁸ Sexual Offences Act 2003, Section 53

¹²⁹ Sexual Offences Act 2003, Section 55

¹³⁰ Sexual Offences Act 2003, Section 51

¹³¹ 'Ipswich prostitute murders: the victims' *The Telegraph* (16th Jan 2008)

<http://www.telegraph.co.uk/news/uknews/1575723/ipswich-prostitute-murders-the-victims.html> Accessed 20th December 2011

¹³² 'Ipswich prostitute murders: the victims' *The Telegraph* (16th Jan 2008)

<http://www.telegraph.co.uk/news/uknews/1575723/ipswich-prostitute-murders-the-victims.html> Accessed 20th December 2011

addition, there is an increasing stigmatisation and social exclusion of those involved in prostitution. Experts claim that the harm to prostitutes does not capture public attention because these women are stigmatised.¹³³ Stigma may be a result of the criminalised status of prostitutes in the UK. Thus, perhaps the State can work towards removing this stigma by relaxing the law. Moreover, the running of illegal brothels continues in the UK¹³⁴ and, as discussed above, prostitutes in illegal brothels may be more vulnerable to exploitation and violence as they too are committing a crime themselves therefore are unlikely to come forward about their exploiters.¹³⁵ Furthermore, trafficking for the purposes of sexual exploitation is still on-going in the UK.¹³⁶ Under sections 57-59 of the 2003 Act, the UK aims to reduce the demand for trafficked women by prosecuting those who attempt to purchase sex from trafficked prostitutes, even if the buyer was unaware that she was a victim of trafficking.¹³⁷ However, the law has led to only 43 convictions in its first year of operation.¹³⁸ Thus, the law is criticised as not being in good practice. “Police say the law is difficult to enforce as it relies on women coming forward to give evidence of coercion”¹³⁹ and as discussed earlier, trafficked women are more vulnerable and less likely to cooperate. Again, there is this problem of exploitation and violence. Therefore, there have been calls for reforming the UK law on prostitution as a means of remedying problems associated with unsafe on-street prostitution and underground prostitution.¹⁴⁰ Reforming the law may put prostitutes at reach of law protection, make it easier to prosecute exploiters and villains and reduce human trafficking along with the discussed social orders. How, if the law is to be reformed, how should it be shaped?

Conclusion

Overall, this evaluation has assembled that the underlying problems of prostitution cannot be tackled all at once through criminalisation. It seems that the motives to pass laws have swung back and forth. Once an Act was in practice to control one problem, another occurred, or even returned, as a result. The UK gradually passed laws to stop the violence, spreading of venereal diseases, public nuisance, trafficking, publicised sex-work, and forced prostitution. These laws encouraged sex-work businesses in parlours, theatres, etc. The government then passed laws to stop the keeping of brothels, which in turn pushed women back onto the street. The advanced criminalised status of prostitutes encouraged

¹³³ Nina Lakhani and Emily Dugan, ‘The prostitute murder mysteries’ *The Independent* (30th May 2010) <<http://www.independent.co.uk/news/uk/crime/the-prostitute-murder-mysteries-1987042.html>> Accessed 20th December 2011

¹³⁴ Julie Bindel and Liz Kelly, ‘A Critical Examination of Responses to Prostitution in Four Countries: Victoria, Australia; Ireland; the Netherlands; and Sweden’ (2003) *Child and Woman Abuse Studies Unit*

¹³⁵ *ibid*

¹³⁶ Joint Committee on Rights, ‘Human Trafficking’ HI (2006) 245-II, HC (2006) 1127-II

¹³⁷ Sexual Offences Act 2003, section 53(a)

¹³⁸ Michael Buchanan, ‘Few convictions under law for using prostitutes’, BBC News <<http://www.bbc.co.uk/news/uk-14333370>> Accessed 17th December 2011

¹³⁹ BBC NEWS, Michael Buchanan, ‘Few convictions under law for using prostitutes’ <<http://www.bbc.co.uk/news/uk-14333370>> Accessed 17th December 2011

¹⁴⁰ Nigel Morris, ‘Calls grow for reform of laws on prostitution’ *The Independent* (14 December 2006) <<http://www.independent.co.uk/news/uk/crime/calls-grow-for-reform-of-laws-on-prostitution-428379.html>> Accessed 17th December 2011

underground prostitution, which made them more vulnerable to exploitation and violence.¹⁴¹ “Some of the most serious exploitation, including children abused through prostitution and trafficked women kept in debt bondage, takes place in off-street premises”.¹⁴² A criminalised status of prostitutes is still the issue today which may be why the UK still encounters underlying problems of prostitution. Thus, what the UK may need to do is move away from taking a public discourse and reform the law so as to effectively tackle the problems occurring from on-street prostitution *and* underground prostitution.

However, before considering reforming the law, what must be addressed is the on-going debate on whether prostitution is sex work or whether prostitution is sexual slavery. This debate must be taken into account as the Government must be sure to encounter ethical issues that may arise from making changes to the law or even from the current law. Ethical issues include rights, autonomy, humanity, equality, and morality. This discussion is essential as it will direct the Government to decide what legal approaches may be the most ethical for the country and how to shape the law. Thus, the next third chapter will raise a discussion on the philosophical views of prostitution.

Chapter 3: Sex-work or Sexual Slavery?

There is the on-going debate on whether prostitution between two consenting adults is sex-work¹⁴³ or whether it is sexual slavery.¹⁴⁴ This debate focuses on the individual and her rights, choices, health, humanity and dignity. This debate is essential to deciding what legal measures should be taken. To accept prostitution as a form of employment would mean to adopt in a decriminalisation or legalisation model whereas to view prostitution as sexual slavery will mean to take an abolitionist approach. The UK currently abolishes prostitution related-activities¹⁴⁵ hence segregates prostitution from other all other lawful trades. This chapter will compare and contrast these theoretical debates on prostitution to conclude what legal measures may be most ethical for the UK. To mediate between these debates, the focus will be on the key factors that distinguish between independency and victimisation in prostitution. Hence, this chapter will break up the discourse and raise discussions under the headings of sexual contract, autonomy, choice and consent, abuse of male power and humanity and slavery.

Prostitution is a sexual contract

Prostitution is a trade between sex and money. Thus, some theorists deem prostitutes as independent business women. An example of a theory that argues in favor of this view is Liberal feminism. Liberal feminism believes in equal rights and argues that individuals should be treated in accordance with their talents and efforts and not gender.¹⁴⁶ Hence, according to this theory, a prostitute should not be

¹⁴¹ Helen J. Self, ‘History Repeating Itself: The Regulation of Prostitution and Trafficking’ (2004) <<http://www.pbs.plymouth.ac.uk/solon/fcrn/documents/paper001.pdf>> Accessed 15th December 2011

¹⁴² Home Office Paying the Price: a consultation paper on prostitution (2004)

¹⁴³ Sarah Bromberg, ‘Feminist Issues In Prostitution’ <<http://www.feministissues.com/issues.pdf>> accessed 7th January 2012

¹⁴⁴ Roger Matthews, *Prostitution, politics & policy* (1st edn, Routledge-Cavendish 2008)

¹⁴⁵ Sexual Offences Act 2003

¹⁴⁶ Feminism <<http://www.sociology.org.uk/rc2000b.pdf>> accessed 6th January 2012

viewed as a female victim of oppression, but rather a determined independent business person.¹⁴⁷ Liberals argue that like any other standard job, the client is not personally interested in the service provider but only in the service.¹⁴⁸ At the same time, the prostitute is not personally interested in the client but only to sell her service.¹⁴⁹ However, in contrast to this theory, Carole Pateman, a radical feminist, argues that prostitution is not a mere trade between a service and money because “the prostitute cannot sell sexual services alone; what she sells is her body”.¹⁵⁰ Hence, radicals take the view that prostitution degrades women. Nonetheless, according to liberal feminism, prostitution is a ‘private transaction’ between the prostitute and the client and if they chose to enter into this transaction then they should be allowed to pursue their legitimate economic interests.¹⁵¹ In support of this view, The English Collective of Prostitutes, a campaign against prostitution laws, says “it sees no reason why consenting sex between adults should be criminalised just because one party pays”.¹⁵² However, contrasting views argue that consent in prostitution is not valid because as shown by historical evidence in chapter one, the reasons why women engage in prostitution include poverty, drug addictions, homelessness and lack of employment. This indicates that the choice to engage in prostitution is due to the absence of alternatives.¹⁵³ Therefore, because a contract of employment requires the parties to freely enter it for it to be lawful,¹⁵⁴ it can be arguably said that prostitution is not a lawful “contract”.

Autonomy, choice and consent

A free choice cannot be made in the absence of other options, as has been recognised in the interpretation of s74 of the Sexual Offences Act 2003 in the case of *R v Terence Kirk* 2008.¹⁵⁵ In this case a homeless 14 year-old girl had sex with a man for money so she could buy herself some food.¹⁵⁶ In such circumstances, that is in the absence of alternatives, it is that the individual “submitted to sexual intercourse rather than consented to it”.¹⁵⁷ thus, it can be arguably said that individuals do not autonomously chose to engage in prostitution but are hypothetically coerced into prostitution by the unfortunate situation they are in such as homelessness, drug addiction, debt, etc. Therefore, they

¹⁴⁷ D. Kelly Weisberg , ‘Applications of feminist legal theory to women's lives: Sex, Violence, Work and Reproduction’ (United States of America, Temple University Press 1996) page 194

¹⁴⁸ *ibid*

¹⁴⁹ Monica O’Connor and Grainne Healy. *The Links between Prostitution and Sex Trafficking: A Briefing Handbook*. (Coalition Against Trafficking in Women 2006)

¹⁵⁰ Carole Pateman, ‘Defending Prostitution: Charges Against Ericsson, Ethics’ [1983] Vol. 93, No. 3, pp. 561-565

¹⁵¹ Sarah Bromberg, ‘Feminist Issues In Prostitution’ < <http://www.feministissues.com/issues.pdf>> accessed 7th January 2012

¹⁵² Dominic Casciani, Q&A: UK Prostitution Law, BBC News home affairs reporter < <http://news.bbc.co.uk/1/hi/uk/7736436.stm>> accessed 20th January 2012

¹⁵³ Melissa Farley, Prostitution is Sexual Violence, *Psychiatric Times*, 1st October 2004 <<http://www.psychiatrictimes.com/sexual-offenses/content/article/10168/48311>> accessed 20th January 2012

¹⁵⁴ Smith and Wood, *Employment Law*, 10th edn (Oxford, Oxford University Press 2009)

¹⁵⁵ *R v Terence Kirk* [2008] EWCA Crim 434

¹⁵⁶ *Ibid*

¹⁵⁷ Herring: *Criminal Law: Text, Cases and Materials* 3e Updates – October 2008 OXFORD chapter 7 Sexual Offences

submit themselves to sex in return for money to remedy their crisis. Furthermore, as will be discussed, prostitution is argued to be a form of violence and oppression and it is well established in English law that consent to violence can never be valid.¹⁵⁸ “Thus, even if women express their ‘consent’ to prostitution sex this will not be real consent”.¹⁵⁹ It can be concluded here that it would be inappropriate and unethical for the UK to allow prostitution to operate as a business. Perhaps the UK should continue the current regulations and rather help women to remedy their difficulties instead to them from feeling the need to turn to prostitution.

Abuse of male power and deprivation of humanity

An evaluation of historical evidence in chapter one shows that women were economically, socially, and politically inferior to men.¹⁶⁰ In today’s era, male power still, to some extent, runs society and family homes.¹⁶¹ It is still ordinary for the man to be the breadwinner and society embraces this tradition even today.¹⁶² However, it is argued that men abuse their male power and seem to undermine women as something they have a right to, particularly for sexual pleasure.¹⁶³ Carole Pateman stresses that prostitution is “one of the most graphic examples of men’s domination over women”.¹⁶⁴ Hence, this supposed patriarchal right deprives women of their humanity and renders them as sex objects.¹⁶⁵ This is oppressive towards women. Radical feminism, a theory concerned with female oppression and liberalism,¹⁶⁶ expresses that that female subordination in society originates from sexual practices.¹⁶⁷ Radical feminists say that prostitution is a powerful means of “perpetuating the objectification of women through sexuality”.¹⁶⁸ Women should be treated as humans, not objects.

One fundamental theory that argues against prostitution in line with this idea of deprivation of humanity is Deontology. Deontology is associated with religion and was set forth by the German philosopher Immanuel Kant.¹⁶⁹ This theory has three important features. Initially, deontologists say

¹⁵⁸ R v Brown [1993] 2 All ER 75.

¹⁵⁹ B Sullivan, *Rethinking Prostitution and ‘Consent’* <apsa2000.anu.edu.au/confpapers/sullivan.rtf> accessed 1st January 2012

¹⁶⁰ Hilary Evans, *The Oldest Profession* (David and Charles (Publishers) Limited, London 1979)

¹⁶¹ Nancy Holmstrom, ‘A Marxist Theory of Women’s Nature’ (1984) *Ethics* Vol. 94, No. 3, pp. 456-473

¹⁶² Ibid

¹⁶³ Carole Pateman, *Teaching About Violence Against Women* (1999) *WSQ* Vol. 27, No. 1/2, pp. 53-64

¹⁶⁴ Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, *Ethics* [1983] Vol. 93, No. 3, pp. 561-565

¹⁶⁵ Bindman, Jo. ‘Redefining Prostitution As Sex Work on the International Agenda’ (1997) London: Anti-Slavery International <<http://www.walnet.org/csis/papers/redefining.html#1>> accessed 30th January 2012

¹⁶⁶ Danny Frederick, ‘Radical Feminsm: An Expose’ [1992] No. 18

<<http://www.libertarian.co.uk/lapubs/philm/philm018.pdf>> Accessed 30th January 2012

¹⁶⁷ D. Kelly Weisberg, *Applications of feminist legal theory to women’s lives: Sex, Violence, Work and Reproduction* (United States of America, Temple University Press 1996) page 194

¹⁶⁸ Jody Freeman in *Applications of Feminist Legal Theory to Women’s Lives: Sex, Violence and Reproduction*, D. Kelly Weisberg editor, (Philadelphia: Temple University Press, 1996)

¹⁶⁹ *Deontological Ethics: Immanuel Kant, Robert Nozick, John Rawls, Original Position, Christine Korsgaard, Categorical Imperative, on the Basis of Morality* (Hephaestus Books 2011)

that humans have a moral duty not to do things that are intrinsically wrong.¹⁷⁰ Selling sex is arguably said to be intrinsically wrong because it is an absolute denial of the natural purpose of sexual intercourse.¹⁷¹ Secondly, Kant argues that humans are to be treated as an ends in themselves and should not be used merely as an ends in others.¹⁷² are not an object or a thing, they have a special value.¹⁷³ Thirdly, the moral principle must be universally accepted by everyone in the same moral situation. Selling one's body simply for the purpose of earning money is universally viewed as being morally wrong.¹⁷⁴ Kant said, "If a man for gain or profit submits to all indignities and makes himself the plaything of another, he casts away the worth of his manhood".¹⁷⁵ Subordinating one's self by submitting to being a sex object in order to gain money is, according to deontology, wrong in that it deprives one of what they are worth.¹⁷⁶

The underpinning philosophy is that prostitution is not employment but sexual slavery and oppressive towards women. Hence, women in prostitution should be protected from such degrading treatment.¹⁷⁷

Preventing the perpetuation of enslavement

Moreover, Karl Marx, a German philosopher, developed the idea of communism and was concerned with the middle and working class.¹⁷⁸ Marx believed it to be wrong that those who did most work are the ones that gain the least from the wealth created.¹⁷⁹ He endorsed this as being slavery; people should not be enslaved to earn a wage.¹⁸⁰ Marxists, followers of Karl Marx's theory, state that being forced to work in order to survive is slavery. Following this doctrine, prostitution is precisely slavery since an individual turns to prostitution as a last resort to survival, as discussed in chapter one and two.¹⁸¹ Marx himself said that "prostitution is only a specific expression of the general prostitution of the laborer."¹⁸² According to Marxism, prostitutes should be given the "ground work of all personal freedom, activity, and independence".¹⁸² This means that individuals should not have to turn to prostitution due to a lack of alternatives as this is, according to Marx, forced labor. They should be freed from such slavery and given the freedom to earn their wage from work other than slavery.

¹⁷⁰ Ronald F. White, 'Moral Inquiry', Chapter Two < <http://www.scribd.com/doc/60251640/Moral-Inquiry-White> > Accessed 30th January 2012

¹⁷¹ Jeremy Bentham, *Deontology: or, The Science of Morality* (Adamant Media Corporation 2000)

¹⁷² *Deontological Ethics: Immanuel Kant, Robert Nozick, John Rawls, Original Position, Christine Korsgaard, Categorical Imperative, on the Basis of Morality* (Hephaestus Books 2011)

¹⁷³ Immanuel Kant, 'Fundamental Principles of the Metaphysics of Morals', (Second Edition, 1724-1804)

¹⁷⁴ Sheila McLean, 'Autonomy, consent and the law' (Routledge-Cavendish 2010)

¹⁷⁵ Immanuel Kant, Louis Infield, *Lectures on ethics*, (Taylor and Francis, 1930)

¹⁷⁶ Alix Kates Shulman, 'Sex and Power: Sexual Bases of Radical Feminism' (1980) *Women: Sex and Sexuality* Vol. 5, No. 4

¹⁷⁷ Roger Matthews, *Prostitution, politics & policy* (1st edn, Routledge-Cavendish 2008)

¹⁷⁸ Karl Marx, *Communist Manifesto Summary and Analysis*, Chapter 2 Summary: Proletarians and Communists (1998)

¹⁷⁹ *ibid*

¹⁸⁰ Simone Weil, *Oppression and Liberty* (Amherst, University of Massachusetts Press 1955), pp. 61-62.

¹⁸¹ *ibid*

¹⁸² Karl Marx, *Communist Manifesto Summary and Analysis*, Chapter 2 Summary: Proletarians and Communists (1998)

Therefore, in the light of Marxism, it would be wrong for the UK allow prostitution to operate as a form of employment because it would be permitting slavery.

Conclusion

Overall, it appears that there is a tension between individual rights and the need for protection. It can be concluded that there are ethical barriers on how to shape the law on prostitution. Evaluating this debate, it can be arguably said that there are no civil or economic rights in prostitution because unlike any other occupation and its employees, prostitution degrades women as it reduces them from humans to sex tools.¹⁸³ Therefore, prostitution can arguably said to be sexual slavery. However, contrasting views argue that if women freely choose to pursue their economic interests in this way therefore then they should be allowed to so.¹⁸⁴ Hence, law against prostitution is argued to be discriminating against sex-workers. However, even in the absence of a third party, it can be hypothetically argued that individuals are coerced into prostitution as they turn to prostitution due to lack of alternatives to remedy the unfortunate situation they are in for example, poverty, homelessness, debt and drug addiction. Thereby, engaging in prostitution cannot be classed as an autonomous choice.¹⁸⁵ Thus, as Karl Marx called it, prostitution is forced labour.¹⁸⁶ Consequently, it may be unethical to label such conduct as being a form of employment.

Nonetheless, the dilemma between the notion of prostitution as sex-work and prostitution as sexual slavery is perpetual. Now that the ethical consequences of adhering to either theory have been established, what must now be considered are the practical consequences i.e. whether adhering to either theory will tackle the underlying problems of prostitution? To formulate prostitution as a business, it will mean to take either a decriminalisation model or, a legalisation model whereas to view prostitution as oppression and slavery it will mean to adopt in an abolitionist model. Thus, the final chapter will explore countries where these legal models on prostitution are currently operating. The chapter will put this theoretical debate into perspective along with the evaluation of the aims and effects of prostitution laws in history.

Chapter 4: Exploring the Different Approaches to Prostitution

As has been seen throughout the previous chapters, the problems in the UK resulting from prostitution lie in exploitation and violence towards women, association with drug use, and association with organised crime, exploitation of the vulnerable, human trafficking, sexual diseases and nuisance to public. This is what the UK must remedy. This chapter will explore the different approaches to prostitution taken in other countries to determine what measures will best tackle these problems. As seen in the previous chapters, on-street and underground prostitution is what leads and/or increases these problems. Thus, what is the best way to deal with on-street and underground prostitution? Would it be by embracing prostitution as a form of employment therefore bringing prostitution out

¹⁸³ *ibid*

¹⁸⁴ Sarah Bromberg, 'Feminist Issues In Prostitution' < <http://www.feministissues.com/issues.pdf> > Accessed 7th January 2012

¹⁸⁵ R v Terence Kirk [2008] EWCA Crim 434

¹⁸⁶ Karl Marx, *Communist Manifesto Summary and Analysis*, Chapter 2 Summary: Proletarians and Communists (1998)

from underground into the light of law protection or would it be to treat prostitution as sexual slavery therefore prohibiting the conduct?

There are three main legal approaches that will be addressed. These are abolitionist, decriminalisation and legalisation. An abolitionist approach would mean to prohibit prostitution and regulating those who buy and/or sell sex. A decriminalisation model removes the offences and penalties relating to sex workers, and relies “predominantly on the use of existing statutes and regulations to manage the operation of the sex industry”.¹⁸⁷ Thus, a decriminalisation model in the UK would allow prostitution to be run like any other business, subject to the existing statutes governing all other industries, such as criminal, employment and contract laws.¹⁸⁸ In contrast, although quite similar, legalisation focuses on the unique nature of prostitution. A legalisation model allows prostitution and its related activities, subject to governmental regulation specifically enacted for prostitution wherein prostitutes are required to work in accordance to those regulations.¹⁸⁹ The outcome in countries where these models have been adopted will be addressed in order to present a practical scenario as to whether it would be pragmatic for England to take one of these approaches to remedy the underlying harms of prostitution within the UK.

Abolishment approach

It can be said that England currently takes an abolitionist approach because although it permits the sale of sex, all prostitution-related activities are abolished.¹⁹⁰ This makes it almost impossible to carry out prostitution without breaking any laws thus leads to the prosecution of the prostitute one way or another. It can be said that the UK recognises prostitution to be a wrongful conduct towards women as it refrains from professionalising the conduct. However, Janice G. Raymond argues that “No woman should be punished for her own exploitation”.¹⁹¹ What should be done is preventing men from victimising women in prostitution as discussed in the previous chapter. Therefore, perhaps the UK should shift the criminalised status of the prostitute onto the buyers of sex. Sweden is the first country that has taken this approach. Thus, the abolitionist approach in Sweden will be explored to assess whether a different abolitionist approach in the UK will tackle the underlying problems of prostitution.

In 1999, Sweden took the approach to criminalise the buying of sexual services, but not those who sell, because prostitution was gradually seen “as a serious form of male sexual violence against women”.¹⁹² Thus, *the underpinning philosophy of the Swedish abolitionist approach is to challenge*

¹⁸⁷ <http://www.justice.govt.nz/publications/global-publications/t/the-sex-industry-in-new-zealand-a-literature-review/part-ii-overseas-models-of-prostitution-law-reform-evaluations>

¹⁸⁸ Ministry of Justice, New Zealand, Prostitution < <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/international-approaches/summary>> accessed 3rd March 2012

¹⁸⁹ Kimberly Klinger, writer, in the Jan.-Feb. 2003 *The Humanist* article "Prostitution, Humanism, and a Woman's Choice,"

¹⁹⁰ Sexual Offences Act 1959

¹⁹¹ Janice G. Raymond, 'Ten Reasons for *Not* Legalizing Prostitution And a Legal Response to the Demand for Prostitution' *Journal of Trauma Practice*, 2, 2003: pp. 315-332;

¹⁹² Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, p. 4.

patriarchy.¹⁹³ The rationale is that a reduction in the demand for prostitutes will also reduce the number of prostitutes thereby will eliminate exploitation and sexual violence towards women.¹⁹⁴ However, Belinda Brooks-Gordon, a lobbyist for a repeal of prostitution laws, has stressed that as a result of abolishment, prostitution in Sweden has rather become more “retrogressive, dangerous, unworkable and expensive ...”¹⁹⁵ Hence, as observers such as Patterson and Sjogren (2002) have encountered, the abolishment model has led to an increase underground prostitution.¹⁹⁶ Therefore, individuals in prostitution are at an even greater risk of violence. As Gould cited in the *Journal of Social Policy* (2001), “prostitutes in Sweden are now at a greater risk of violence, pressure to engage in unsafe sex, and are under greater financial pressure resulting from reductions in income”.¹⁹⁷ Furthermore, police reported that prostitution has not decreased since this approach.¹⁹⁸ Moreover, David Howarth, a spokesman for the Liberal Democrats, said, “Evidence from Sweden in making prostitution illegal has shown that it doesn't help in reducing human trafficking - it, in fact, increases violence against women”.¹⁹⁹ In addition, an increase in trafficked prostitutes may cause the spreading of sexual diseases as immigrants are not entitled to health examinations and are unlikely to pay for the service.²⁰⁰ Thus, it can be concluded that it is not worth investing in a Swedish abolitionists approach as it increases violence, exploitation, unsafe sex, and trafficking, which are problems that the UK is trying to remedy. It seems that taking an approach to prostitution wholly on the basis that it is violence rather increases violence as it pushes prostitutes underground. This exposes prostitutes to a greater risk of mistreatment as it “makes them less likely to seek police help when they need it”.²⁰¹ Hence, what if the UK takes a decriminalisation approach on grounds that prostitution is like any other business?

Decriminalisation model

¹⁹³ Council of Europe. Parliamentary Assembly, Council of Europe. Consultative Assembly, Documents Working papers. 2007 Ordinary Session (Fourth part) 1-5 October 2007 Volume VII

¹⁹⁴ *ibid*

¹⁹⁵ Julie Bindel, ‘Legalising prostitution is not the answer’ *The Guardian* (Friday 2 July 2010)

<<http://www.guardian.co.uk/commentisfree/2010/jul/02/prostitution-legalise-criminalise-swedish-law?>
accessed 15th March 2012

¹⁹⁶ Jan Jordan, ‘The Sex Industry in New Zealand: A Literature Review
commissioned by the Ministry of Justice.

March 2005

¹⁹⁷ Gould, ‘The Criminalisation of Buying Sex: the Politics of Prostitution in Sweden’, *Journal of Social Policy* (2001), 30 : pp 437-456

¹⁹⁸ Rachel Williams, How making the customers the criminals cut street prostitution *The Guardian*, Saturday 5 January 2008 <<http://www.guardian.co.uk/politics/2008/jan/05/uk.world?INTCMP=ILCNETTXT3487>>

¹⁹⁹ BBC News, Critics hit out on sex law plan < http://news.bbc.co.uk/1/hi/uk_politics/7154980.stm> accessed
15th March 2012

²⁰⁰ Julia Laite, ‘Paying the price again: prostitution policy in historical perspective’ <
<http://www.historyandpolicy.org/papers/policy-paper-46.html>> Accessed 3rd December 2011

²⁰¹ Press Association, ‘Police backs reform of prostitution laws’ *The Guardian* (29 December 2010)
<<http://www.guardian.co.uk/uk/2010/dec/28/police-chiefs-prostitution-reform-law>> Accessed 6th February
2012

As seen in chapter one, once a woman is known as a 'prostitute', she seems to be "excluded from the community".²⁰² This indicates that prostitution is a stigmatised activity. A decriminalisation model is underpinned to remove the stigma around prostitution as it removes all laws on prostitution and treats prostitution like any other form of business.²⁰³ This is said to allow men and women working in the industry to access the healthcare and protection they need.²⁰⁴ Thus, a decriminalisation model may reduce exploitation and mistreatment as it brings prostitutes out from underground and situates them at reach of law protection.²⁰⁵ To determine whether a decriminalisation model in the UK will be appropriate, the consequences of this model must be explored. This chapter will investigate New Zealand seeing as it is one of the first countries to take a decriminalisation approach with the aim to make these specified improvements, as emphasised in the Hansard on the Prostitution Reform Bill 2003.²⁰⁶ This assessment will conclude whether removing all the laws on prostitution in the UK will tackle the underlying problems of prostitution. If an approach can tackle these problems and, respect the civil and economic rights of prostitutes, then it may be valuable for the UK to take such an approach.

New Zealand decriminalised prostitution in 2003.²⁰⁷ The new law aimed to operate prostitution as a commercial business "by allowing membership of trade unions, the holding of an employment contract and legal contracts to be formed (and ended) with clients".²⁰⁸ Thus, the Prostitution Reform Act 2003 created a framework that is intended to safeguard "the human rights of sex workers and protect them from exploitation".²⁰⁹ This reform has removed discrimination against sex workers. Tim Barnett, the British-born former New Zealand MP, said that a review of the decriminalisation model in New Zealand carried out five years after it came into force showed that "sex workers were using their rights under the legislation to deal with poor-quality brothel owners or clients who had been

²⁰² Ruth Mazo Karras, *Common Women. Common women, prostitutes, and whores* (page 35, Oxford University Press 1996)

²⁰³ Home Office Paying the Price: a consultation paper on prostitution (2004)

²⁰⁴ Caroline Ryan, BBC News health reporter in Harrogate, Nurses say reform prostitute law
<<http://news.bbc.co.uk/1/hi/health/4487237.stm>> Accessed 6th February 2012

²⁰⁵ Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003
<<http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/acknowledgements>> Accessed 6th February 2012

²⁰⁶ Hansard and Journals, Prostitution Reform Bill < http://www.parliament.nz/en-NZ/PB/Debates/Debates/1/8/0/47HansD_20030326_00001231-Prostitution-Reform-Bill-Instruction-to.htm> accessed 15th March 2012

²⁰⁷ Ministry of Justice, New Zealand. Employment Conditions for Prostitution
<<http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/10-employment-conditions#103>> accessed 4th March 2012

²⁰⁸ Tim Barnett MP, 'DECRIMINALISING PROSTITUTION IN NEW ZEALAND - the campaign and the outcome' (2007)
<<http://myweb.dal.ca/mgoodyea/Documents/New%20Zealand/Decriminalising%20Prostitution%20in%20NZ.pdf>> accessed 4th March 2012

²⁰⁹ The PRA and Human Rights <http://www.justice.govt.nz/policy/commercial-property-and-regulatory/prostitution/prostitution-law-review-committee/publications/plrc-report/3-the-pra-and-human-rights>> accessed 15th March 2012

behaving abusively".²¹⁰ Thus, a decriminalisation model appears to provide prostitutes security as they have the right to sue in courts for violations of their employment or service. However, as discussed in chapter three, prostitution cannot really be a lawful contract of employment because hypothetically, consent in prostitution cannot be valid.²¹¹ Also, it is doubtful whether prostitution can ever be an autonomous choice since it is usually "the result of poverty, drug addiction, homelessness, and lack of alternative employment".²¹² This recalls the notion of prostitution being a form of forced labour. Therefore, it may be irrational for the UK to invest in a decriminalisation model.

Moreover, a decriminalisation model has been found to increase trafficking for the purposes of sexual exploitation.²¹³ Trafficking is one of the problems that must be tackled within the UK thus investing in a decriminalisation is not pragmatic. Also, the decriminalisation approach in New Zealand ceases arrests for soliciting. As seen in chapter two, soliciting for the purposes of prostitution is a nuisance to the public. Thus, soliciting is one prostitution-related activity that the UK has sought to regulate throughout history as the State has a duty to keep peace and protect the nation from nuisance. Therefore, decriminalising prostitution can be arguably said to be a violation of the State's role to protect the public, as discussed in chapter one. Furthermore, "Street-based prostitution is more problematic than off street prostitution in terms of drug use..."²¹⁴ The UK increasingly aims to eliminate illegal drug use anyway,²¹⁵ whether associated with prostitution or not, hence to take an approach that will increase this problem is not appropriate.

The decriminalisation model in New Zealand offers exit strategies to prostitution if they feel the need to exit the industry by allowing immediate access to Government unemployment benefits. However, these strategies appear to be ineffective; the Prostitution Law Review Committee reported, 93 per cent of New Zealand sex workers said that they remained in the sex industry, regardless of exploitation, due to financial reasons.²¹⁶ Therefore, a decriminalisation approach in the UK may not be pragmatic in the sense that it does not offer an effective exit strategy to prostitutes. The availability of Government unemployed benefits, which in the UK is likely to be Job Seekers Allowance, may not be enough to remedy the individual's poverty or financial crisis, or even the individual's homeless state or drug addiction, which are usually the reasons as to why individuals engage in prostitution.²¹⁷

210 Owen Bowcott, 'Call for change in law to protect prostitutes from violent crime' *The Guardian* (Monday 16 January 2012) <<http://www.guardian.co.uk/society/2012/jan/16/change-law-prostitutes-crime-violent>> accessed 15th March 2012

211 Smith and Wood, *Employment Law*, 10th edn (Oxford, Oxford University Press 2009)

212 Paying the Price: Consultation on Prostitution

Response from the British Humanist Association http://www.humanism.org.uk/_uploads/documents/BHA-Response-to-consultation-on-prostitution.pdf

213 Joyce Outshoorn, *The Politics of Prostitution: Women's Movements, Democratic States and the Globalisation of Sex Commerce*. (Cambridge: Cambridge University Press)

214 Liberty's response to the Home Office Consultation Paper: Paying the Price: a consultation on prostitution (2004)

215 Rory Allott, Roger Paxton and Rob Leonard, 'Drug education: a review of British Government policy and evidence on effectiveness' (1999) *Health Educ. Res.* 14 (4): 491-505.

216 Report of the Law Review Committee on the operation of the prostitution reform (2003)

217 Roger Matthews, *Prostitution, politics & policy* (1st edn, Routledge-Cavendish 2008)

It appears that to remove all laws against prostitution is irrational, absurd, and unethical. A decriminalisation model does not even tackle the underlying problems of prostitution therefore; it is not worth investing in this model. It appears that to regulate prostitution to some extent is significant. It can be concluded that abolishing prostitution and forgoing all specific control over prostitution appears to cause more harm to the public and individual than not. Thus, perhaps it would be better to mediate between tolerance and regulation. One way this can be done is by taking a legalisation approach. This would mean to allow prostitution to operate as a business, subject to specific prostitution law. Would this be pragmatic?

Legalisation approach

This model allows prostitution to operate without ceasing all control over it.²¹⁸ A legalisation model provides specific managed areas where prostitutes can legally be carried with the rationale that it will prevent underground prostitution and unsafe on-street prostitution.²¹⁹ The Netherlands took this approach with the aim to attain these outcomes.

In the year 2000, the Netherlands legalised prostitution. As a result of legalisation, prostitution in the Netherlands is subject to municipal regulations about the location, organisation and the practice of business. The Netherlands allows the running of brothels for the purpose of voluntary adult prostitutes.²²⁰ The Dutch claim that the removal of the ban on brothels makes the sex-work safer for those engaged in prostitution.²²¹ Also, trafficking rates for the purposes of prostitution in the Netherlands were as high as 80% prior to legalisation.²²² Hence, the Netherlands created a framework in order to battle the relative crimes and reduce trafficking by preventing on-street prostitution and providing a safeguarded managed area for prostitutes to carry out their work.²²³

However, the researchers of the Dutch Verwey Jonker Institute found that even after legalisation, there was still the existence of illegal prostitutes working on the streets and, in licenced brothels.²²⁴ This research indicates that legalising prostitution does not stop wipe out foreign prostitutes and that legalising brothels does not guarantee that legal and safe sex-work will take place in those brothels.²²⁵ John Salt writes that legalising prostitution leads to an *increase* in human trafficking for the purposes of prostitution.²²⁶ This may be because the legal protection and rights available to legal prostitutes are

²¹⁸ Leitzel, James A., *Regulating Commercial Sex* (2006) <<http://ssrn.com/abstract=918402>> accessed 4th March 2012

²¹⁹ Home Office *Paying the Price: a consultation paper on prostitution* (2004)

²²⁰ *Trafficking in Human Beings: Third Report of the Dutch National Rapporteur*

²²¹ Linda Butt, Jesse Salazar, 'Lifting the Ban: The "Oldest Profession" Becomes the Newest Market Sector' (2004) <304-lifting-the-ban-the-oldest-profession-becomes-the-newest-market-sector> accessed 15th March

²²² Gert Vermeulen, Arne Dormaels, *European data collection on sexual offences against minors* (Maklu 2001)

²²³ Home Office *Paying the Price: a consultation paper on prostitution* (2004)

²²⁴ Siegel, D. (2005) *Recent Trends in Women Trafficking and Voluntary Prostitution:*

Russian-speaking Sex-Workers in the Netherlands, *Transnational Crime*, 4 (1)

²²⁵ Sally Colton, 'Legal Prostitution Encourages Human Trafficking' (2011) *Law Journal for Social Justice* at Arizona State University <<http://ljsj.wordpress.com/2011/09/08/legal-prostitution-encourages-human-trafficking>> accessed 20th January 2012

²²⁶ John Salt, *Trafficking and Human Smuggling: A European Perspective*, *International Migration* Volume 38, Issue 3, pages 31–56

not available to migrant prostitutes due to their illegal status.²²⁷ Therefore, a migrant prostitute is likely to accept any amount paid to her, however low the price may be, and they are more vulnerable to exploitation as they are likely to “lack the wherewithal to oppose it”.²²⁸ Thus, pimps and criminals may prefer trafficking women for the purpose of prostitution rather than using legal prostitutes because migrant prostitutes.²²⁹ In addition, with foreign prostitutes working in legal brothels and on the streets, there is no elimination of nuisance and health risks to the public. Women in prostitution suffer exploitation as a result of abuse of male power in prostitution; women in prostitution are raped, assaulted, neglected and deprived of freedom and food.²³⁰ Ninety two percent of those who are prostituted, say they want to escape from it due to the violence they are exposed to (Farley, et al., 1998). Such exploitation in prostitution is one of the main problems that need to be tackled in the UK. Thus, the UK cannot invest in a legalisation approach for that matter.

Conclusion

In conclusion, an abolitionist, decriminalisation, and legalisation approach will not tackle the underlying problems of prostitution occurring in the UK. To take either approach is unethical and/or irrational. However, the UK may not formulate prostitution as an employment because prostitution is not like other industries as it naturally concurs with other social disorders such as drug use and organised crime.²³¹ It is clear that prostitution needs to be regulated. Thus, to invest in a decriminalisation approach is inappropriate. The legislator Larry Badlock stressed that a decriminalisation model “simply changes the status of prostitution”²³² and equalises it to all other industries when really, as he believed, prostitution should be treated differently since it attracts with it many severe harms including social disorders.²³³

Overall, it can be concluded that it is significant that the UK continues to regulate prostitution but to what extent? The UK has throughout history aimed to tackle problems associated with prostitution such as drug use, organised crime, exploitation, violence, sexual diseases, coercion, trafficking, and nuisance. It has been demonstrated that to prohibit the sale of sex causes more harm and danger to the nation and to individuals, therefore, such an abolitionist approach is irrational and not pragmatic. It has also been demonstrated that to allow prostitution to operate as a business subject to regulations, thus taking a legalisation approach, is unethical because prostitution oppresses women, degrades women, and attracts many other vile problems. Also, to take a legalisation approach may be irrational as it causes more harm than tackling it. One worthy point to take note of here is that to institutionalise

²²⁷ Andrew Tettenborn, Professor Malcolm Clarke, Neil Andrews, *Contractual Duties* (Sweet & Maxwell Ltd 2012)

²²⁸ Jessica Spector, *Prostitution and pornography: philosophical debate about the sex industry* (Stanford, Stanford University Press 2006)

²²⁹ D. Brock., G. Kara., Oliver. C. Mook, ‘Migrant Sex Work’ *CANADIAN WOMAN STUDIES* Volume 20, No. 2

²³⁰ Roger Matthews, *Prostitution, politics & policy* (1st edn, Routledge-Cavendish 2008)

²³¹ Ruth Mazo Karras, *Common Women. Common women, prostitutes, and whores* (Chapter 5, Marriage, Sexuality, and Marginality, Oxford University Press 1996)

²³² Hansard and Journals, Prostitution Reform Bill < http://www.parliament.nz/en-NZ/PB/Debates/Debates/1/8/0/47HansD_20030326_00001231-Prostitution-Reform-Bill-Instruction-to.htm> accessed 15th March 2012

²³³ *ibid*

prostitution would mean to tax the earnings of women in prostitution,²³⁴ which would not be rational because prostitution is used as a last resort in desperation for money for whatever reason. Thus, to tax the earnings of such women, who are selling their own bodies, is unfair. This reflects the Marxism argument that it is wrong that those who did most work are the ones that gain the least from the wealth created.²³⁵ The England approach allows the prostitute to sell her own body without taxing her earnings, therefore allows her to make her own money through her own body. What the UK does regulate is the way she practices this.

Thus, it can be concluded that instead of investing in new laws and policies, the UK should rather aim to combat the underlying problems of prostitution by working to prevent people from engaging in prostitution and by working to reduce the demand for prostitution. To do this, the state will have to examine ways in how to deal with the routes to prostitution. The routes to prostitution has been mentioned throughout each chapter and include poverty, homelessness, drug addiction, coercion, vulnerability i.e. foreigners and children, lack of employment and financial crisis. The Home Office has recently outlined a Code of Practice for ways in which the Government can deal with these routes.²³⁶

Overall conclusion

Overall, the prostitution-associated problems that need to be remedied in the UK includes exploitation and violence against women.²³⁷ This includes rape, sexual assault, murder and neglect. “Perpetrators of such offences include violent clients or pimps”.²³⁸ Thus, it is evident that clients and pimps need to be kept under control by the state to protect the health and safety of prostitutes. Moreover, prostitution causes a nuisance to residents and leads to the spreading of venereal diseases amongst the nation. Thus, even prostitutes need to be kept control in order to tackle these problems.²³⁹ Moreover, prostitution is strongly linked with human trafficking therefore it is essential not to institutionalise the conduct because as has been seen in chapter four, allowing prostitution to operate as a business dramatically increases the numbers of foreign prostitutes in the country. This causes demographical problems in the country as it increases the population. More importantly, foreign prostitutes may be a greater risk to the public health as they are not entitled to health examinations and are unlikely to see private doctors to check for sexual diseases due to costs. Thus, foreign prostitutes may increase the spreading of venereal diseases amongst the nation. In addition, foreign prostitutes may be more vulnerable to exploitation since they have fewer protections at law due to their illegal status hence are

²³⁴ Kenneth W. Clarkson, Roger LeRoy Miller, Gaylord A. Jentz, *West's Business Law* 6th edn (Thomas West 2006)

²³⁵ *ibid*

²³⁶ Home Office *Paying the Price: a consultation paper on prostitution* (2004)

²³⁷ Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, *Ethics* [1983] Vol. 93, No. 3, pp. 561-565

²³⁸ *Prostitution and Exploitation of Prostitution*

<http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution/> accessed 25th February 2012

²³⁹ Helen J. Self, *Prostitution, women, and misuse of the law: the fallen daughters of Eve* (Great Britain, FrankClass Publishers 2003)

more likely to victimised as sexual slaves.²⁴⁰ This in effect degrades women as a whole. Furthermore, there are strong links between “street prostitution and the drug markets particularly crack cocaine which appears to be increasing”.²⁴¹ Hence, prostitution increases drug-related crime rates.

Throughout history, the UK has aimed to combat these problems by keeping prostituting under State regulation and controlling prostitution related activities. However, these problems remain in the country. Nonetheless, analysing the presented evidence in each chapter, it can be concluded that to take a new approach to prostitution is not pragmatic for the UK. To formulate prostitution as a business, therefore investing in a decriminalisation or a legalisation model, will be irrational as it further increases these problems. Nevertheless, to prohibit the sale of sex as a whole, therefore investing in a Swedish abolitionist model, is also problematic.

However, what can be drawn from the decriminalisation and legalisation model is that the UK should continue to permit the sale and buying of sex and perhaps raise public awareness on the harms and dangers that may arise and what can be drawn from the Swedish abolitionist model is that the UK should aim to reduce the demand for sex. Thus, it can wisely be concluded that to retain prostitution under State control is vital. The UK should continue to tackle the underlying problems of prostitution as it currently is but at the same time aim to reduce the number of prostitutes by directly helping the individual to remedy her route to prostitution and work to reduce the demand for prostitution. The routes to prostituting have been identified throughout each chapter and include homelessness, debt, lack of skills, etc. Prostitution is chosen as the last resort to a source of financial income.²⁴² Thus, perhaps the UK can work towards refraining individuals from needing to engage in prostitution by providing sufficient Governmental funds, providing training to develop employability skills, providing hostages or council houses immediately for those who are homeless, helping overcome drug addictions, etc. The state should also work towards reducing demand for prostitution. To do this, the State should raise public awareness of the effects and dangers of prostitution.

However, there remains the tension between the need for protection and individual rights and choices. However, the UK can mediate between these debates by emphasising in the role of a State, discussed in chapter. Thus, the debate on whether prostitution is sex work or sexual slavery recalls Hobbe’s “social contract theory” discussed in chapter two. In the light this theory, it can be argued that prostitutes should give up the supposed entitlement to civil and economic rights in order for the State to protect individuals and its nation from the harm and danger discussed above. Prostitution may be a form of labour, as it is a source of income, but what must be encountered is that to socially and politically embrace the conduct as a form of employment perpetuates the enslavement and oppression of women. Additionally, Locke believed that every man is capable of governing himself therefore the preservation of autonomy of civil society is of paramount importance.²⁴³ The UK allows one to make a sale of their own body and does not deprive one of doing so. Hence, it can be said that the UK

²⁴⁰ Prostitution and Exploitation of Prostitution

<http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution/>accessed 25th February 2012

²⁴¹ Prostitution and Exploitation of Prostitution

<http://www.cps.gov.uk/legal/p_to_r/prostitution_and_exploitation_of_prostitution/>accessed 25th February 2012

²⁴² P Bartley, *Prostitution: Prevention and Reform in England, 1880-1914* (Routledge, 2000)

²⁴³ Alex Neil, ‘Locke on Habituation, Autonomy, and Education’ (1989) *Journal of the History of Philosophy, Vol. 27, no. 2 pp 225-245*

permits one to govern themselves in this sense but what the UK does govern is the way this sale is practiced and that is to protect its nation and citizens from the underlying problems of prostitution. Moreover, slavery as a whole is deemed to be immoral. This recalls the theory on law on morality discussed in chapter one. Devlin may argue that the law should allow one the freedom to what they wish but not so much so as to distort moral values. Thus, the UK does permit one to sell sex but refrains from professionalising the activity as to do can be arguably said to be permitting slavery.

Overall, the UK is to combat the underlying problems of prostitution as it currently is i.e. abolishing all prostitution related activities such as brothel keeping, trafficking for the purposes of sexual exploitation, controlling prostitution for personal gain, soliciting, loitering and kerb-crawling and causing the coercion of prostitution. The current UK regulations are balanced between the public and the individual as the regulations do not prohibit the selling and buying of sex between 'consenting adults' but yet control the exercise of the conduct in terms of how, where, and why prostitution may be carried out. However, to reduce the fragmenting underlying problems of prostitution, the UK should also aim to prevent individuals from feeling the need to turn to prostitution.

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