

Deregulating the oldest profession

By Su Cunnington

One person's passion can be another's revulsion. Controversies over standards of sexual behaviour have occurred throughout history, with states defining as criminal whatever outrages the most influential moral arbiters

Sex crimes like other offences are dichotomised as

- a) predations - deliberate injuries to others, for example, rape, or other physical molestation.
- b) non-predatory acts in which all participants collaborate willingly, for example, prostitution and homosexuality.

The sale and purchase of sexual intercourse - prostitution - is proscribed but is not itself an offence in law, although most of the activities flowing from it are: that is, soliciting for custom, living on the proceeds, etc.

The term prostitute has never been legally defined, although the higher courts in Britain twice considered the position. *Regina v Munck, 1918* offered a working definition: "We are of the opinion that prostitution is proved, if it be shown that a woman offers her body commonly for lewdness for payment".

In 1964 the question was again considered (*Regina v Webb, 1964*) and it was held that "when a woman offers herself as a participant in physical acts of indecency for the sexual gratification of men, for payment, she may be considered to have indulged in an act of prostitution."

Clearly both statements are highly value-laden, betraying the moral stance of those constructing them. They are important, however, because they are the working

definitions adopted by the state and the judiciary when considering the notion of prostitution.



Such definitions are noted in a patriarchal Legal/religious/economic framework which says only a woman may be described as engaging in prostitution. Why? According to the law, a man cannot be a 'common prostitute' and so cannot be charged with loitering or soliciting in a

public place for the purpose of Prostitution. This view underlies the Sexual Offences Act of 1956, and the Street Offences Act of 1959. Only since the 1967 Act which removed homosexual acts between consenting adults in private (in most cases) from the reach of criminal law, has any attention been paid in English legislation to male prostitution.

So the first point to be made about prostitution is, notwithstanding the sexist nature of the law, both sexes can fulfil the definition if for the word 'woman' is substituted the word 'person', since there is nothing logically intrinsic which determines that only women shall prostitute themselves.

Before looking any further at the double standards which prevail, I should like to lay bare my own assumptions concerning the nature of the act of prostitution.

It is my belief that individuals own their bodies absolutely, and are free to dispose of them as they think fit, including, of course, making contracts with others for financial gain. It follows from this that abortion, drug taking, and suicide, etc., are all decisions of an individual nature.

Those who would attack prostitution as being evil, because people make their living out of sex, must answer the question, why make prostitution a special case? There are a number of ways in which people can make a living out of sex, and many of these would be regarded by these people as being not only quite legal, but also quite acceptable;

for example, sex therapy as practised by state registered therapists within the National Health system.

A prostitute is said to sell herself or her body; this is inaccurate. She (I shall continue to use the feminine form, but of course it applies equally to both sexes) makes with her client a contract for services as that between a dentist, plumber or cinema owner and his customers. But whereas the contracts of the dentist and the others are generally valid and can be enforced, the prostitute's contract is illegal (not criminal) and unenforceable. She cannot sue her client for the money, and if he pays he cannot claim its return even if she fails to provide the sexual service she promised. What justification is there for this other than the opinion of some people that there are some contracts which are morally acceptable and others which are not? What criteria do they use for the acceptability of some contracts as opposed to others?

The answers, of course, lie in the illogicalities of the double standard which takes a number of forms. This double standard says it is all right for the male to be promiscuous, but not the female. This has its roots in the mistaken belief that women are biologically monogamous and males polygamous. There is no evidence for this. On the contrary, recent studies show that women seek and actively initiate sex as much as men (Masters and Johnson). Another form is where male opinion makers have tended to smile benignly on women who give sex away, but rise up indignantly against women who sell it. The fact is we all perform services for others in return for cash, and in that sense any honest occupation has an element of prostitution. Payment for sex is not quite so frowned upon if it does not take the form of cash, but of things in kind, presents. I well remember an elderly prostitute advising me to "always ask for 'presents' never money". Her favours merited 'gifts': it made things less mercenary!

Of course the anti-prostitution laws are riddled with these 'double standards'. They violate the right to privacy and discriminate against women. But another 'doublestandard' from a surprising source has looked like joining the ranks of the others. This one, put forward by some feminists, suggests

prosecuting clients. This is certainly not the answer, as J. Huston McCulloch in *The Ban on Prostitution. A Case of Economic Exploitation of Women by Men* (Discussion Paper 18, May 78, Dept of Economics, Boston Univ.) argues.. "rather than demand equal deprivation of liberty for men, the answer would be to demand equal freedom for themselves".

Quite simply, then, we need to clear our minds, and avoid making errors which simply serve to inhibit other persons' freedoms, whilst doing nothing to enhance our own. A contract for sex is simply that, and as long as it is freely undertaken between consenting adults of either sex in an open market there should be no objection. It should also be given the legal status of an enforceable contract with both parties obtaining redress in the form of compensation for failure to fulfil the bargain. I leave the final word to John Stuart Mill who puts the case far better than I ever could, in an extract from his classic work *On the Subjection of Women* (but remember this applies to men too):

"The modern conviction, the fruit of a thousand years of experience is that things in which the individual is the person, directly interested, never go right, but as they are left to his own discretion, and that any regulation of them by authority, except to protect the right of others, is sure to be mischievous".

J S Mill