

6.2: Rethinking sex work: reimagining trafficking

Welcome to week six of our course on forced and precarious labour in the global economy. The subject for this week is commercial sex and the global economy.

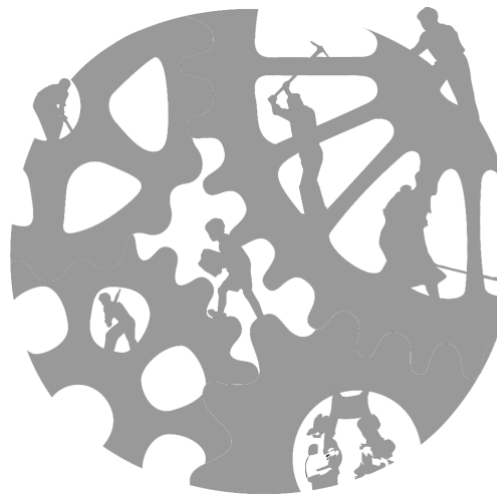
In previous weeks, my colleagues Joel and Sam have discussed how globalisation has enabled the flow of trade and capital across the world, but that the migration of human beings across borders has been far more restricted. Giving into nationalist sentiments on immigration, governments propose walls and strong borders. At the same time, governments support the labour needs of global corporations by entering into bilateral agreements with developing countries on the movement of labour. Migrants work under tied visas, have little or no labour law protections, and enjoy few pathways to citizenship.

Women experience the impact of such restrictive migration in unique ways. Historically speaking, women have migrated across borders for many forms of work, including domestic work, factory work and sex work. But soon after the processes of globalisation were set into motion, women moved in greater numbers. This threatened to produce dramatic shifts in power relations between the sexes. The response took the form of a sex panic.

Governments and civil society actors alike raised alarm over what they viewed as the trafficking of women and children across international borders for prostitution. Reviving sensational stories of horror associated with what was called the 'white slave trade' at the turn of the 20th century, governments set to work on drafting a new UN Protocol which was to supplement the UN Convention Against Transnational Organized Crime. Called the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, the text of the protocol and its implementation over the past 18 years have been fundamentally driven by the long-raging debate over how we should we think about the normative status of sex work.

As you may be familiar, there are two main feminist positions in the sex work debates: one articulated by the radical feminists or neo-abolitionists and the other by sex work feminists. I deal with each in turn.

For radical feminists, prostitution is not merely a discrete social phenomenon where women sell sex for money, but is instead paradigmatic of violence against women; one which conditions all violence against women. According to American radical feminist Andrea Dworkin, prostitution is at the bottom of the hierarchy of male supremacy. Rape, domestic battery, and sexual harassment all share with prostitution some statement or manifestation of sexual ownership – but they are not prostitution. In other words prostitution is the worst form of violence.



VIDEO TRANSCRIPT

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For radical feminists, any form of sex work, whether it involves violence or not, is harm. The greatest harm is commodification. Commodification itself is harmful, irrespective of the conditions under which sex workers commodify sex. According to them there are two types of violence in sex work. One is the paid-for violence, which is the unwanted and painful penetration, and then there is the unpaid-for violence, including rape, verbal abuse, beatings, sexual harassment, cervical cancer, sexually transmitted diseases, and psychological harms such as post-traumatic stress disorder.

These harms, according to radical feminists, are irreparable. For them the consent or agency of sex workers does not matter. And the distancing and dissociation in sex workers' lives may appear to be survival strategies, but for them they are in fact reflections of sex workers' false consciousness. So quite predictably, for radical feminists, sex work cannot be work under any circumstances.

Sex work feminists see this all very differently. They believe that the boundary between commercial and non-commercial sexual relationships is neither sharp nor impermeable. In other words, prostitution cannot be ring-fenced when heterosexual relationships are often also economic relationships. Think about marriage for instance. As for commodification, all of us, except the independently wealthy and unemployed, take money for the use of our body. For sex work advocates, the commodification of emotion is not inherently destructive, and workers can delineate their core selves from the labour they perform. For them sex work is on par with emotional labour such as airline service work, acting, psychotherapy, massage work, or childcare, as well as with labour involving (especially intimate) bodily services, including wage work, domestic work, entertainment, university teaching and being a 'colonoscopy artist' in the famous words of Martha Nussbaum.

What therefore makes sex work harmful are the particular conditions under which it is performed, such as debt bondage, indentureship and hyper-exploitative contractual arrangements. Exploitation within the sex industry thus finds parallels in other informal and unregulated sectors. For sex work advocates, the goal would therefore be to recognise sex work as work and seek its radical transformation, not its abolition. They ask us to respectfully recognise the subjectivity and personal agency of sex workers and dismiss the stigma and prejudice that fuels the popular imagination of sex work. Of course you may say, this is all and well. One can appreciate the arguments of the two sides, but can one really assert sex worker agency in contexts of high poverty or in the developing world?

In the documentary *The Tale of the Night Fairies*, on the other hand, we find sex workers offering what I understand as a third position in the sex work debates – namely the materialist feminist theory of sex work. To begin with, third world sex workers reject problematic colonial-era constructs of themselves 'as thoroughly disempowered, brutalised and victimised' or as infantilised or passive. Instead, and you will see this in the supplementary readings, where I include the *Sex Worker's Manifesto*, Indian sex workers understand their sex work to be a form of reproductive labour, performed under the severe constraints imposed by a capitalist patriarchal system.

Sex work is one of the few options for a livelihood that they have. They often come to sex work from other low-paid jobs in the informal economy where sexual harassment is routine. They then begin to ask why not do sex work and at least get paid for the sexual favours that they had to give for free. Sex workers also have a strong critique of marriage: how are sex workers different from women compelled into marriage for economic reasons, they ask? Thus they assert their agency, knowing fully well that their consent is constrained and keen to be treated as dignified workers rather than as victims who need to be rescued and rehabilitated by elite feminists.

Central to these feminist positions is the role they visualise for the law. There are, generally speaking, four major policy options for regulating sex work. These are:

1. Prohibition or complete criminalisation where all aspects of sex work are criminalised – since the sale of sex is criminalised, sex workers can be prosecuted.
2. Abolition or partial decriminalisation where all aspects of sex work are criminalised, but not the sale of sex – so sex workers cannot be prosecuted but customers can be.
3. Complete decriminalisation where any special anti-sex work criminal law is repealed, leaving sex work to be regulated by laws applicable to all citizens, including the general criminal law, so buyers and sellers of sex work can continue to be prosecuted for obscenity, public nuisance and so on.
4. Legalisation, where in addition to the repeal of the anti-sex work criminal law, special rules regulating sex work are put into place.

These options can take different forms in practice. In the Netherlands municipalities issue licenses for sex work under local laws. New Zealand allows sex workers to work in small groups, but also aims to protect public health. And in Germany contracts for the sale of sex are legal and backed up by access to employment benefits.

So which of these options do radical feminists and sex work advocates pursue?

Radical feminists have faith in the criminal law. They believe that criminal law can work, but only if it is enforced by the state. Criminal law should, however, target the 'true' offenders' – customers, pimps, and traffickers but not sex workers. The Swedish model of criminalising customers of sex workers in particular has gained popularity across the world, and as such we can say that radical feminists advocate for partial decriminalisation or abolition.

Sex workers oppose prohibition and partial decriminalisation because they believe that any kind of criminalisation translates into increased costs for sex workers, irrespective of who is actually punished. Essentially even partial criminalisation means that sex workers have to do more sex work or work under pretty difficult conditions. If sex work were instead decriminalised, they argue, sex workers would be better off.

This is especially true for third world sex workers, because for them 'the state' usually means the brutal, corrupt police officer down the road who routinely extracts bribes and sexual favours from them in exchange for not enforcing the anti-sex work criminal law against them. Moreover, sex workers all over the world are generally wary of state interference over sex work, so they tend to prefer decriminalisation over legalisation.

So what does all this have to do with our fight against trafficking and modern slavery? Well, in the early years of the adaptation of the trafficking protocol, governments routinely conflated trafficking with trafficking for sex work and with sex work itself. So governments could claim to fight trafficking simply by proposing a stringent, Swedish-style anti-sex criminal law. Eventually, countries began to define trafficking in terms of Article 3 of the Palermo Protocol, which does not deal solely with sex work or trafficking for sex work. However, even though many countries now formally define trafficking to cover sectors beyond sex work, in reality, anti-trafficking law is used disproportionately against sex

workers – rendering them as 'collateral damage' in more ways than one. So how can sex workers resist this use of anti-trafficking law while continuing to work against exploitative work practices within sex work?

This is the subject of the session in week seven convened by my colleague Elena Shih.

This transcript was prepared for the online course [Forced and Precarious Labour in the Global Economy](#) by [Beyond Trafficking and Slavery](#) (openDemocracy). It has been lightly edited for clarity. This course was originally released on the edX.org platform in 2018, where it has now been archived. As of 2021 it is available on [opendemocracy.net](#).

