

The ethics of sex and power asymmetries

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1. Introduction

The recent #metoo movement has turned public attention to the problem of sex under conditions of power inequality. Is consent impaired, when you have plenty to lose (e.g. a great professional opportunity) from saying “no” to a sexual advance? And even if consent is valid, is this a morally acceptable situation, especially if one party is aware that their position of relative power will influence the other's decision to have sex? Such situations bring to the fore not only the issues of coerced sex and quid pro quo harassment (asking for sex in exchange for benefits), but the much more controversial question of whether sex between unequal but otherwise competent consenting adult partners is in principle OK—and whether institutions such as companies, universities, or the state itself should be in the business of regulating such relations.

In Estonia some alleged cases of sexual harassment in the workplace and in higher education have come to publicity—and since 2004 there exists a law against sex-based (including sexual) discrimination¹—but recent research shows that levels of both public awareness and institutional readiness to respond to such cases are still far below those of other Western countries (Praxis 2014, EÜL 2020). Philosophical debate on these topics has only been sporadic.² In what follows, I will outline the central concept of power asymmetry and its ethical relevance (section 2). I will then distinguish two main views about the ethics of sexual interaction under conditions of power asymmetry: a Kantian view, which categorically condemns such interactions, and a Millian view, which justifies at least some such interactions (section 3). I then briefly consider three contexts, which raise difficult questions about sex between unequals: the workplace, the university (section 4), and voluntary prostitution (section 5). Section 6 provides a short conclusion.

¹ See SoVS, first chapter, paragraph 3.

² But see Karro 2020, Viik 2018, Lamesoo 2017, Larin & Varblane 2017, <https://www.ajakiri.ut.ee/artikkel/2589>, <https://www.err.ee/1025927/>

2. Ethics and power asymmetries

Two people are in an asymmetric power relation not when one person is, in general, more powerful than another, but when one has, overall, more power over the other than the latter has over the former. To have power over a person is, roughly, to be in a position to influence her life, positively or negatively, directly or indirectly, in some significant matter. For example, a sighted person has power over a blind person, not simply because of the latter's blindness, but because and when the blind depends on the sighted for executing a number of actions and satisfying everyday needs, like knowing their surroundings, getting around safely, acquiring relevant written information and so on. A parent, normally, has power over their children, because a parent is in the position to influence their children's life in all sorts of imaginable ways. A teacher or professor has power over a range of school or university students, because the latter's study progress and career depend on the former. These are all cases where the power relation is, in usual circumstances, asymmetrical: the sighted, the parent, the professor have respectively more power over the blind, the child, and the student than the latter have over the former. I stress "usual circumstances", because it may happen that, for example, a blind person knows a life-threatening secret about a given sighted person, without the sighted person being in a position to comparably influence the blind's life. In other words, whether people are in a power-asymmetrical relation may well be a contextual matter. Moreover, given that I might be much richer than you (and thus influence your financial matters much more than you can influence mine), but you might be much better educated than me (and thus you can influence my life in other important matters), it is often not clear where the balance lies, and thus whether the power relation is asymmetrical or not.

The asymmetry of power is usually taken to be a morally salient feature of a relation. All the cases above highlight conditions of *vulnerability* and *dependence*. A certain property of a person makes her vulnerable when that property exposes the person to harm (of any kind). It is trivial—though nonetheless true—that being alive exposes us to the harms of sickness or death. In this sense we are all, quite unavoidably, vulnerable in the same way. But vulnerability becomes a morally interesting notion, when our exposure to certain harms can be minimized or even prevented by other people.³ All or most of us are vulnerable to certain serious diseases, but vaccination can prevent that (not only for me, but for entire populations) at a little cost, hence a general obligation to get inoculated. Those who cannot read or write are vulnerable to all sorts of harms (ignorance, poverty, exploitation, deception etc.), but schooling can significantly reduce (though not prevent) that vulnerability at a relatively little cost, hence a general obligation to teach reading and writing skills.

In power-asymmetrical relations a person is made vulnerable, i.e. exposed to some kind of harm, not just by an intrinsic feature or inability of hers, but by her dependence relation to the person who has

³ I'm setting aside the possibility of moral duties to oneself.

power over her. Blindness makes a blind person vulnerable to many evils (injuries, unemployment, ignorance etc.), but having a sighted walker or partner makes her vulnerable to the abuse of the power differential by the sighted. Of course this doesn't mean that a blind person is better off on her own. In fact, the very company of the sighted normally makes her significantly *less* vulnerable to those evils. But it also exposes her to new risks, given the dependence relation: the risk of suffering injuries etc. *as a result* of power abuse by the sighted. Similar considerations apply to the other relations above (parent-child, teacher-student). These are all dependence relations, where the more powerful is under an obligation to not abuse the power difference. What counts as power abuse will depend on the details of the kind of relation as well as on whatever arrangements might have been agreed on by the two parties, but by and large a power abuse is any action that is likely to cause (or allow) the sort of harm that one is in a *special position* to cause (or to prevent), given the difference in power. In some cases (e.g. parent-child) pretty much *any* harm caused or allowed by the more powerful doubles as power abuse or misuse (including of course harm from neglect). In other cases, e.g. the teacher-student relation, this is less clearly so. Suppose a teacher has the unique opportunity to administer a life-saving medicine to a sick student of his, and refuses for no good reason. The teacher no doubt acts immorally, and harms the student, but probably we wouldn't say he has abused his power over the student, because the specific teacher-student dependence or power relation is not at issue here. An example of power abuse by a teacher would instead be this: giving the student a lower grade than deserved because the student failed to pay the teacher a certain sum of money.

One more remark before we move to the topic of sex. The vulnerability in power-asymmetrical relations is a feature that, on the one hand, there is some room to minimize, but on the other hand it is also a constitutive feature of such relations and therefore, to the extent that one agrees that such relations are valuable, one needs to accept vulnerability as well. In other words, unlike with curable or preventable diseases, it doesn't seem like there is an obligation to *eliminate* vulnerability in human relations, because that would destroy types of relations, and individual relations, that we value for intrinsic or instrumental reasons: parent-child, teacher-student, boss-employee, many friendly or intimate relations where the power asymmetry makes one party vulnerable to the other, and so on. There are of course good reasons to somehow *reduce* vulnerability, so that the less powerful is not left at the mercy of the more powerful. In some cases there are social and legal penalties that make it very costly for the more powerful to abuse the power difference: the sighted partner or walker may face a lawsuit; parents face public scorn, children's removal, or jail; teachers may lose their job etc. The more protection is granted to the less powerful, the less effective power is had over them. It must be kept in mind, though, that an unconstrained policy of reducing vulnerability can easily undermine flourishing power-asymmetrical relations (yes, they can flourish too!). Here is an extreme but illustrative example: an effective way to reduce children's and students' vulnerability to parents and

teachers would be to install bugs and surveillance cameras in each home and school space. It is fair to say that such a solution would distort the normal course of these relationships.

3. Sexual ethics and power asymmetries: two views

Let us start with an obvious reminder. The vast majority of sexual relations were, are, and likely will be power-asymmetrical. For the largest part of the history of humanity husbands have systematically had power over their wives, and in general men over women. Due to a purely gender-based distribution of power, men have enjoyed a higher social, economic, political, educational status than women. It follows that whenever a man and a woman got together for sexual (but also other) purposes, the woman would be in a vulnerable and dependent position, at least in usual circumstances. In other words, a gender-based power asymmetry has characterized the near totality of sexual relations ever occurred. Only in the last century have things significantly changed in some parts of the world. This process reduces and will likely continue to reduce the specifically *gender-based* power asymmetry. But power asymmetries are everywhere. Not even a perfectly egalitarian society would be able to eliminate power asymmetries: as long as power-related qualities like intelligence, health, social aptitude etc. are unevenly distributed, it is only to be expected that when two people get together, the balance of power will tip in someone's favour. Symmetry will be rather the exception than the rule in sexual relations as well as in other areas of life.

Like in every other kind of relation, it is evident that also in a sexual relation the more powerful has an obligation to not abuse the power difference, as pointed out before. Given the sad historical record of (unpunished) rape (in and out of marriage), sexual assault, harassment, double standards regarding infidelity, and so on, it is clear that this obligation has historically been violated time and again, especially when social and legal mechanisms of protection for women have been lacking or faulty.

But the basic question here is whether the very existence of a power asymmetry (with the consequent characteristics of vulnerability and dependence of one partner on the other) is *as such* morally problematic in a sexual relationship. It is useful to distinguish two kinds of answers to this question. The first answer I will call "Kantian". Kant famously regards as immoral any type of sexual relation that occurs outside a certain kind of marriage. The kind of marriage he has in mind has two features: first, it provides partners with a special kind of immunity to instrumental treatment by the other (and by oneself too), at least as far as sexual acts are concerned; second, it is a contract in which the two parties are acknowledged and established as equals (Kant 1996: 426-428). What is interesting for our purposes is the second feature. If Kantian marriage makes sex morally permissible, in part, by establishing a certain equality between partners, it follows that *inequality*, such as would arise from power asymmetry, necessarily makes sex immoral for Kant. This is confirmed at least in two places.

First, Kant rejects concubinage (an officially sanctioned cohabitation, with the woman serving as the man's sexual partner—consistent with the man having a wife) and morganatic marriage (a marriage where the wife cannot inherit from the husband) as morally viable arrangements, partly because “the rights of the two parts are not the same” (Kant 2001: 158, see also Kant 1996: 428)—there is an asymmetry of power in the man's favour. Second, sex between parent and child is ruled out by Kant, partly, because “between parents and children the subordination is all on one side” (Kant 2001: 159). In other words, the power between parent has over the child is part of what makes this sexual relation wrong. The Kantian answer to whether power asymmetry as such is problematic in a sexual relationship thus is: “yes, in fact power asymmetry makes sexual relations *conclusively* wrong”. There is just no way for power-asymmetrical sexual relationships to be permissible.⁴

Kant does not elaborate much on just why inequality makes sexual relations immoral. Presumably, since for Kant sexual contexts are already characterized by instrumental treatment and dehumanisation, inequality just adds fuel to fire. But one need not share Kant's pessimistic philosophy of sexuality to hold a Kantian approach to sex and power asymmetry. A certain strand of radical feminist thinking has long defended the stark view that, *under patriarchy*, all heterosexual sex literally counts as the rape of women (Dworkin 1987, MacKinnon 1989). If rape is defined as sexual activity without a participant's valid consent, the idea must be that under patriarchy, even when a woman does consent to sex with a man, her consent cannot be valid, and therefore she is raped. Why? Patriarchy is defined by a systematic, purely gender-based power asymmetry between men and women. This asymmetry permeates individual relationships to the point that a woman's consent to sex—just like a woman's refusal to have sex—means nothing, in the sense of having no real authority over the man (compare a slave agreeing—or refusing—to do work in a slavery-based society). If sex under those conditions amounts to rape, and rape cannot ever be justified, a qualified Kantian view emerges: “(gender-based) power-asymmetry makes (heterosexual) sexual relations conclusively wrong”.⁵

Given the historical reminder above, one can see that each of the two Kantian answers casts a shadow of moral censure on the near totality of sexual relations up to the very recent past, and probably on the majority of future relations as well. Kant's own answer condemns without remainder all unequal sex, that is, all sex outside Kantian marriage. The radical feminist answer condemns without remainder all heterosexual sex under patriarchy. What is noteworthy is that both conclusively condemn power-asymmetrical sexual relations on purely structural grounds, that is, *regardless of how the more*

⁴ Kant, however, also seems to justify the legal dominance of husband over wife (Kant 1996: 428).

⁵ A more qualified Kantian view emerges from Silvia Federici's article (2012, written in 1975), where she argues that under patriarchy and capitalism heterosexual activities are a kind of work imposed on women (but not on men), not unlike the work obligations imposed on people who were born as serfs. It seems that under such conditions a woman's consent to heterosexual relations cannot count as any more valid than a serf's consent to labour relations (with his lord), regardless of what women (or serfs) actually think or want, and how men (or lords) actually behave.

powerful partner actually behaves. The mere position of power over another is sufficient to conclusively judge that what has taken place is immoral.

The second kind of answer I call “Millian”. The ideal couple for John Stuart Mill should be composed of

two persons of cultivated faculties, identical in opinions and purposes, between whom there exists that best kind of equality, similarity of powers and capacities with reciprocal superiority in them—so that each can enjoy the luxury of looking up to the other, and can have alternately the pleasure of leading and of being led in the path of development. (Mill 1869: 4.18)

Such a *symmetry* in powers is, for Mill, a desirable component of marriage, and any power asymmetry would be a step away from the ideal. Now, even supposing Mill is right about the ideal marriage, it is not clear what should follow regarding the morality of sexual relations. There might be important differences between marriage or long-term relations and strictly sexual ones, such that the symmetry recommended by Mill for marriage need not be crucial for the latter. However, let us here simplify and agree that power symmetry is a desirable element in sexual relations as well. The Millian view differs from the Kantian in that a sexual relation characterized by power-asymmetries, though to some extent undesirable and problematic, *can* be morally acceptable. I call this answer “Millian”, because Mill would be strongly against condemning any power-asymmetrical relation as simply immoral.

There are at least two Millian points to be made here. First, the freedom of individuals to choose their course of life, also in sexual matters, needs to be defended here as elsewhere. In *On Liberty* (1859, chapter 3) Mill does not just defend freedom from legal or state sanctions; importantly, he argues that a certain sphere of private activity, as long as we do not harm others or infringe their rights, must also be kept from public or social stigma. A blanket prohibition of power-asymmetrical sexual relations would mean that both partners are suitable targets of public censure, and that would be a serious limitation on our freedom.

It might be said, perhaps, that the more powerful in a relation still deserves censure (from a Millian point of view), as their position makes the other partner vulnerable to them, and that means that it exposes the latter to *harm*. But this idea is a non-starter. As argued above, there are all sorts of valuable relations that we enter in, knowing fully well that by doing so we are making another person vulnerable to us. This makes our position of course morally burdensome—we ought to avoid abusing our power. But the alternative cannot be a world where such relations are never even formed. So here is the second Millian point: To the extent that such a world is imaginable, it would be extremely bleak, as it would be deprived of all sorts of valuable relations. In other words, there is a broad consequentialist reason for preferring that people continue forming certain unequal relationships (including sexual ones), even if that exposes them and others to some harms: this is the better option,

in terms of promoting total well-being (as the utilitarian Mill would ultimately have said) or also in terms of promoting other values worth caring about. Of course, one condition is that the kind of relation be valuable—the slave-owner relation presumably does not qualify. But sexual relations by and large seem to qualify, given the important values they normally promote (pleasure, human company, often friendship and love, not to mention the continuation of the human species!).

Summing up, the Millian view is that, while in principle there is something undesirable about power asymmetries, the existence of power-asymmetrical sexual relations *can* be morally justified, in terms of personal freedom as well as for consequentialist reasons. I stress “can”, because the Millian view is compatible with rejecting as unjustified at least some types of power-asymmetrical sexual relations. Which ones? Discussing Kant I mentioned parent-child sexual relationships: when the child is young and dependent on the parent, the power imbalance is so great—and so is the child’s vulnerability—that it makes sense to morally ban such a relation. Similar thoughts apply in general to adult-child sexual relations, and to sexual relations, for example, between doctors and mentally ill patients. In the next two sections we tackle more problematic cases.

4. Power asymmetry in sexual relations: workplace and higher education

The recent past has witnessed a significant movement, in many Western countries, towards the idea that power asymmetries are a sufficient reason to prohibit or at least discourage certain sexual relations even between (at least possibly) consenting and sane adults. In this section we briefly discuss relations between employers and employees, and between professors and university students (who are normally aged 18 and older).⁶ Note that these prohibitions are not simply pieces of professional codes of conduct or formal regulations intended to shield institutions from legal or financial troubles. The codes of conduct have at least in part been modified in response to shared *moral sentiments*. In some cases there are obvious issues of fairness to third persons: the employer (professor) might easily unfairly favour the person they sleep with over a better deserving employee (student). But a different moral sentiment is relevant here. I will try to articulate it.

Power asymmetries are built into the very nature of any hierarchically organized structure, such as a company or a school. As noted at the beginning of the chapter, the boss-employee or professor-student relation normally includes a power asymmetry, with the potential for power abuse. There is thus a

⁶ Some institutions (e.g. Cambridge University) have imposed an obligation to disclose such sexual relations, instead of banning them altogether. Such a policy may be more effective in reducing harm for the less powerful, without entirely sacrificing the sexual freedom of the organization’s members. There could also be mixed policies: “no-sex” for directly related people (employee-immediate boss; student-course teacher or supervisor) and “mandatory disclosure” for indirectly related ones (employee-someone higher up, but in a different section; student-professor in a different department, and so on). See the comparison between the universities of Cambridge and Cornell in EÜL 2020: 64-5.

moral imperative for any hierarchical organization to minimize occasions for power abuse, as well as to reduce harm to its members that may derive from their (inevitably) unequal relations. Now, a sexual relation between a more and a less powerful member of a hierarchical organization might turn out to be perfectly harmless (*modulo* the question of fairness to third persons). But, given the existing hierarchical relation, a sexual relation exposes the less powerful to a new set of harms, besides those they are already exposed to because of the hierarchical relation itself. First, the less powerful's consent to sex with the more powerful can be undermined by a *perceived threat* of suffering work- or school-related consequences unless they consent to sex: if the threat is merely perceived, this should not count as rape, but it can hardly be fully consensual sex if one feels coerced.⁷ Second, even when one doesn't feel coerced, still the less powerful can easily be motivated to consent to or continue a sexual relationship from all sorts of extraneous reasons having nothing to do with their own sexual desire or pleasure, thus suffering the specific *harms of consensual sex* (see West 2017a and 2017b). Third, it can be argued that, in an institution that does not have a ban on some sexual relations, the less powerful will be more exposed to behaviours that are *already* banned (rape, assault, offering good grades/promotion for sex, harassment),⁸ because these might easily be masked as part of an innocent sexual relation, and the less powerful—given their position—may lack the courage to complain about them. Now, the prospect of all such bad consequences for the less powerful is regarded to be much more serious than the limitation of sexual freedom (both for the more and the less powerful), and as a result of this weighing—as a result of a moral decision—it is thought right for many kinds of institution to adopt a code that prohibits (or at least discourages) rather than permits hierarchical sexual relations.⁹

We might ask whether such regulations are paternalistic. After all, it may seem that the point of these policies is simply to ensure that the less powerful—competent adult people—are protected from potential harm, to which they might well themselves voluntarily expose by entering sexual relations with partners higher up in the hierarchy. Shouldn't it be their own business whether to go in for such “risky” situations? I believe the answer is, first, that paternalistic policies are not inappropriate *within an institution*. Given the obvious relation of dependence of a worker or student on the institution, the latter has a duty to be concerned with its members' well-being, to the extent that this well-being is

⁷ As a 1980 report on the sexual harassment of students phrases it: “the possibility of sanctions for noncooperation is implicit in all sexual advances across authority lines” (quoted in Mappes 2017: 284).

⁸ A terminological remark. There is a tendency nowadays to include under “sexual harassment” the very actions that initiate or perpetuate a power-asymmetrical sexual relation—the idea being that the more powerful sexually harasses the less powerful just in virtue of the existing power asymmetry. I would rather reserve “sexual harassment” for actions (of a sexual nature) that are actually hostile or unpleasant, or include quid pro quo proposals (see Hajdin 2002 on how to demarcate harassment from non-harassment). Breaking a (justified) no-sex policy should rather be called a case of “sexual misconduct”, because—like said above—there need be no actual harm caused.

⁹ The same considerations do not justify a ban on close friendships or purely Platonic relationships, because they have specifically to do with sex. We leave it to the reader to consider whether in these cases the employee or student would be exposed to comparable harms.

affected by the nature and structure of the institution itself. Above we pointed out the harms the less powerful are exposed to in a sexual relation *with a superior*: less than fully consensual sex; the harms of consensual sex; increased risk of becoming the victim of rape, assault etc. Reducing such harms is a legitimate institutional concern, as opposed to reducing the same harms when they derive from sexual relations outside the institution. Second, there is more to sex-limiting policies than just legitimate paternalism. Given the power asymmetry, sexual relations expose some members, *but not others*, to those harms. It is not impossible, but relatively unlikely, that in a sexual relation the more powerful will suffer from less than fully consensual sex, from the harms of consensual sex, or from increased risk of rape, assault etc. The situation is not dissimilar from factories where manual labourers, *but not white collars*, are exposed to certain health risks. Any institution has a duty of non-discrimination towards its members. If certain risks are unequally distributed among its members, the organization clearly needs to do *something* about it. In the factory case, when health risks for the manual labourers cannot be entirely removed, they must be compensated by appropriately high pay, special insurance conditions etc. In the case of the unequal risks arising from hierarchical sexual relations, the risk can be removed (to some extent) by banning such sexual relations (or by imposing mandatory disclosure).

The real question then is not whether sex-limiting policies are paternalistic, but rather whether legitimate paternalism, and a duty of non-discrimination, jointly justify sacrificing part of the sexual freedom of an institution's members. This is not an easy question to answer, partly because limiting sexual freedom may diminish the members' well-being, which (as seen above) an institution should be concerned with. Moreover, a no-sex or mandatory disclosure policy partly sends out the message that the more powerful in the organization cannot be fully trusted not to use their power to threaten or otherwise coerce the less powerful into sex. This might also have a negative effect on its members' well-being. On the other hand, the dangers to the less powerful are real enough, and after all sexual partners can be found outside one's workplace or university (or among one's equals within the institution, of course).¹⁰ It is possible that "better safe than sorry" should here be the guiding principle, but further research, as well as the expressed stances of interested parties and their representatives, will bring clearer light to this question.

5. Power asymmetry in sexual relations: prostitution and the Nordic model

¹⁰ However this case raises delicate questions. What if two partners start a sexual relation as equals, but one then becomes the other's superior? It seems unacceptable to require them to terminate the relationship or else resign. Mandatory disclosure seems a better option, especially given the need to protect third parties. I should also add that a student-professor sexual or romantic relation could be seen as more problematic than worker-boss, because a certain level of intimacy might frustrate the specific aims of education. This would be an extra reason (not directly based on power asymmetry) for educational institutions to ban such relations.

In this section we briefly discuss a different context where, due to power asymmetries, it is thought (by many at least) morally important to limit, and in fact ban, sexual relations between possibly consenting adults. The so-called Nordic model of legislation of prostitution makes it legally permissible for a prostitute to offer sex for money, but illegal—in fact, a criminal offence—for pimps to procure, as well as for customers to buy sexual services.¹¹ No exception is made for the clients of prostitutes who may offer sexual services entirely voluntarily and without the supervision of pimps. Again, it would be mistaken to see this as a mere piece of legislation with no anchoring in shared moral sentiments (at least shared by those who back the model). The Nordic model limits the sexual freedom of some people, as well as the freedom to earn one's living in an (otherwise) acceptable manner, for the sake of minimizing a greater evil. For example, it can be argued that a blanket ban on buying sex is the best way to reduce sex trafficking and the whole host of harms suffered by *involuntary* prostitutes. But in the present context this argument is not our concern. The question for us is whether considerations of power relations can be at least part of what justifies the Nordic model—including justifying penalties on the clients of voluntary, self-employed prostitutes. As seen above, in the case of employer-employee or professor-student relations, what speaks in favour of a sexual ban is the harm to which the less powerful party in the relation is exposed, in virtue of the power asymmetry. Can something analogous be claimed in the case of the voluntary prostitute-client relation?

Some authors argue that female prostitution, as practiced in a patriarchal society, “testifies to and perpetuates socially hegemonic beliefs which oppress all women in many domains of their lives” (Shrage 2002: 440). Let us grant that female prostitution, even when operated by voluntary and self-employed prostitutes (and when used by respectful clients), does perpetuate an oppressive patriarchal system (though presumably legal norms could not ban specifically *female* prostitution). This is still a far cry from showing that voluntary prostitute-client relations are power-asymmetrical, and thus potentially harmful *for the prostitute herself*.

One argument could be that, under patriarchy, *any woman*, including voluntary prostitutes themselves, has in fact more to gain from a model like the Nordic one than from alternatives like legalization or laissez-faire. However, this is not convincing. While any woman, as a woman, has *something* to gain from any policy that fights patriarchy, it seems quite incredible that no woman may *overall* have a better life by being able to practice (and earn from) voluntary prostitution rather than by not being able to do so. In other words, outlawing the purchase of sex as set out in the Nordic model may impose a net burden on some women for the sake of reducing the evils of patriarchy. Imposing this burden might be acceptable, but this is not the kind of argument we were seeking, because the prostitution ban would not be really justified by the reduction of harm *to each prostitute*.

¹¹ The model has been adopted in several countries, with some differences among them (https://en.wikipedia.org/wiki/Nordic_model_approach_to_prostitution). For the debate in Estonia, see for example Karro 2017 and Põldsam 2018.

Two, more plausible, arguments could start from the truth that most commonly even voluntary, self-employed prostitutes enter the profession due to poverty, lack of sufficient education or other hardships, which seriously limit their work options. The first argument is that, due to having insufficient options, a woman who chooses to become a prostitute is *never* sufficiently free in her choice. This lack of sufficient freedom is a basic social disability which puts her at a relative disadvantage with almost anyone else, and certainly with her clients—who after all at least have the leisure to spend money in this way. The client then would be guilty of exploiting the power asymmetry—exploiting her lack of freedom—and that’s what justifies the Nordic model even in the case of voluntary prostitutes. However, the premise that a woman’s choice to be a prostitute is *never* sufficiently free is an overgeneralization. Moreover, it is a fact that the income earned from prostitution can precisely provide a woman with the sufficient freedom to move on and choose better options, and thus with the necessary power. Therefore, outlawing such transactions, as the Nordic model does, would do nothing to improve the woman’s position precisely in the respect that mattered for this argument (the freedom given by having better options).

The second argument does not insist that a woman’s choice to become a prostitute cannot be free enough, but it claims that her insufficient list of better options still indicates that she has very little social power in absolute terms, to the point of being *ipso facto* unequal to any potential client—hence the power asymmetry in the relation with the client. But this argument does not work either. First, people with insufficient social power (due to limited options) choose all sorts of jobs—heavy factory work, cleaning jobs etc.—but no one would think of applying a “Nordic model” there, by punishing the ones who use their services (Nussbaum 2006). And, like before, outlawing the business does nothing to improve a woman’s prospects of gaining sufficient social power.¹² Second, what matters for the concept of a power asymmetry is not a person’s power in absolute terms, but the balance of power vis-à-vis their sexual partner (here, the customer). One cannot assume that diminished social power or low social status in absolute terms makes *any* prostitute less powerful than *any* potential client. The power asymmetry in the prostitute-client relation thus cannot be taken for granted (unless one thinks, as in the previous argument, that a prostitute as such lacks a *basic* social capability such as freedom).

Therefore, a specific argument from power asymmetry in favour of the Nordic model of legislation seems hard to find, when we take into account the case of voluntary, self-employed prostitutes—that is, when we think of sexual (and here, also commercial) relations between fully consenting adults, which is the focus of our article. Like I said above, the Nordic model might be justified by a host of other considerations—reducing trafficking, reducing violence to prostitutes etc.—but not because it

¹² A similar argument would show that marriage under (particularly severe) patriarchy should be abolished, because for women marriage is after all just one bad option among other few equally bad or worse options. Some feminists do embrace that conclusion. But, like for prostitution, it is not clear how that would empower women (Nussbaum 2006: 203).

would do something to ameliorate a necessarily existing power asymmetry between prostitute and client.

6. Conclusion – Back to Estonia

In the recent Estonian report about sexual harassment in higher education, a majority of student participants found sexual or romantic occasions initiated by professors uncomfortable. They also seemed to be aware of the potential for power abuse in such circumstances. At the same time, they expressed the opinion that “the university should not robustly regulate or prohibit professor-student intimate relationships, though it was also found that universities should be concerned by such relations, when something goes wrong in the relationship” (“ülikool ei peaks jõuliselt reguleerima või keelama õppejõu-tudengi intiimsuhteid, kuid leiti ka, et ülikoolile võib õppejõu-tudengi intiimsuhte muret tekitavaks saada siis, kui selles suhtes midagi valesti läheb”) (EÜL 2020: 28). If students thus were inclined towards a “wait-and-see” sort of approach—professors and students should be in principle free to pursue sexual relationships, but the university may have to intervene “when things go wrong”—then, unsurprisingly, professors who participated in the survey were on the contrary asking for unambiguous guidelines, and also seemed to be somewhat more open to the possibility of banning sexual relationships between professors (but especially direct supervisors) and students (ibid: 29, 57). As things stand (January 2020), instead, for example the University of Tartu guidelines only “disapprove” (“ei soosi”) intimate relations between supervisors and students—without thereby banning them or indicating any consequences for the participants in such relations—and are otherwise silent on other levels of the professor-student hierarchy.¹³

As we saw in this article, there are important reasons in favour and against institutions banning certain sexual relations between otherwise consenting adults, and it may not always be clear where the balance lies. Our focus here has been on whether the existence of a power asymmetry between the sexual partners carries enough weight to justify such bans. In the educational or workplace setting, where power asymmetries are inevitable, there seems to be a special institutional responsibility to take care of such situations one way or another—even if one adopts a more Millian approach, which would allow power-asymmetrical relationships to occur. In the rather different case of voluntary prostitution, it seemed harder to find arguments for a state ban based on power asymmetry in the prostitute-client relation, in part because the power asymmetry is not necessarily built into this relation, although also here independent considerations may after all justify such a ban.

¹³ See <https://www.ut.ee/et/vordse-kohtlemise-juhend>.

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