Sexual Exploitation and the Social Contract

Ruth Sample

The University of New Hampshire

 Nearly everyone agrees that sexual exploitation occurs and that when it does, it is morally wrong. However, there is substantial disagreement over what constitutes sexual exploitation and why it is wrong. Is sex between freely consenting adults ever exploitative? Is prostitution always exploitative? What features of sexually exploitative interactions lead us to regard them as morally wrong? And if sexual exploitation is morally wrong, what should be done about it?

 These are not new questions for the social philosopher. However, recent criticisms of social contract theory may lead us to wonder whether contractarianism (of any variety) has the resources to criticize important cases of sexual exploitation—particularly prostitution. Some liberals have defended prostitution “in principle,” arguing that when prostitution is truly consensual, there is nothing wrong with it.[[1]](#footnote--1) This is called “sound prostitution.” Indeed, in cases where the parties to a sexual exchange are both competent adults, liberals and libertarians have a difficult time criticizing it, since to do so runs the risk of imposing a local and historically specific sexual ideal on members of society who explicitly reject it, or else suggests that the prostitutes and their clients are not really competent agents. I want to argue here that contractarians can criticize some voluntary and yet exploitative sexual exchanges, and that they ought to.

 In speaking of contractarianism, I am referring to any view in which the correct method for determining the basic structure of a just society is a hypothetical social contract. This can include conservative Hobbesians, such as David Gauthier, but also includes thinkers such as John Rawls, Thomas Scanlon, Jean Hampton, and other liberals, along with libertarians such as Robert Nozick.[[2]](#footnote-0) The reason that (some) conservatives, liberals and libertarians are in the same boat on the issue of sexual exploitation is that all assume that deliberating about the principles that would guide such a society is possible for each of us now, despite our histories of social, racial, or class oppression. They assume that even those who were raised under such conditions are sufficiently autonomous to make such judgments, in the sense that each person is capable of reflecting on her goals and aspirations and deciding whether she wants to have those goals and aspirations—regardless of whether she actually does so. This undeconstructed commitment to autonomy appears to block certain forms of critique available to non-liberal feminists and post-modernists. It has also lead some feminists to argue that old-fashioned autonomy is purely a reflection of masculine ideology, and accounts for why liberals and libertarians find themselves reflexively defending exploitative practices.

 I want to argue that you can get there from here. Liberal contractarians can argue that prostitution—even ‘sound prostitution’—is unjust and even morally bad. That is, it should not be embraced as fully consistent with the basic structure of a just society. Ideal deliberators would not choose to tolerate the complete commodification of sexuality, at least under conditions of patriarchy. Since we continue to live under patriarchy, a just society for us does not include fully commodified sex. However, this is consistent with decriminalization, and it leaves open the possibility that commercial sexual exchange without male domination could exist, and might be just. Furthermore, the case against prostitution does not require that we abandon the ideal of autonomy. This may be welcome news to feminists who are reluctant to become defenders of prostitution and yet share a commitment to the civil libertarian values that virtually all contractarians cherish.

 Finally, many feminist accounts of the moral badness of prostitution cannot say how prostitution is fundamentally exploitative. Their arguments aim to show that prostitution is normatively bad sex, or that it endangers good sex, or that it reinforces patriarchy. Yet they do not offer an account of how prostitutes are specifically exploited. Hope to show that even ‘sound prostitution’ would be exploitative.

**I. Sexual Exploitation and Harm.**

 Here I want to focus on the exploitation of adults by other adults, as such cases present the most difficult challenges for liberal critics of practices such as prostitution and surrogate motherhood. By ‘sexual exploitation’, I am referring to interactions with other adults for one’s own personal gain (e.g., sexual satisfaction or financial enrichment) in a morally objectionable way. Some of the most challenging cases of putative sexual exploitation involve those situations where both or all adults claim to be interacting intentionally and with consent, and where all parties claim to have benefited from the interaction, and where all parties prefer a state of interaction to a state of non-interaction. Adults are, unlike children and non-human animals, presumed to be autonomous and capable of giving consent unless extraordinary conditions obtain. Is it possible for one adult to exploit another if their interaction is voluntary and consensual, when both parties prefer the interaction to no interaction at all?

By focusing on such cases, I do not mean to imply that the sexual exploitation of children and animals is less common or less morally significant, or less theoretically difficult to understand. However, before setting those cases aside, it is worth briefly considering how difficult it is, for example, to say what is wrong with adult-child sexual relations, which are almost always deemed exploitative. If we cannot explain what is wrong with such interactions, then we cannot say that they are exploitative in any morally interesting sense since, I contend, exploitation is always morally bad. In an early article on this topic, sociologist David Finkelhor defends a consent-based prohibition on adult-child sexual interaction, primarily on the grounds that the empirical evidence weighing against it is insufficiently persuasive.[[3]](#footnote-1) He argues that it is very difficult to say how all sexual interactions between children and adults are necessarily harmful when they are non-violent. While it may be clear that there is some negative effect on some children from such interactions, sociological research shows that not all children suffer from them. Finkhelor contends that while some children suffer harm, no one really knows what percentage or what kind of harm. Moreover, Finkelhor points out that many actions that are harmful to some children (e.g., compulsory education, divorce) are permitted by our society. Thus Finkelhor concludes that the compelling reason we have to prohibit adult-child sexual interactions is that they lack the child’s consent, since children cannot give consent. Children do not have the requisite knowledge or the ability to say “no” with authority, and this is what consent requires.

Finkelhor, however, is mistaken. This only *seems* to provide us with a reason to prohibit such interactions. The main difficulty with this argument is that children are not able to consent to lots of things that adults subject them to. We not only do things to children without their consent, but sometimes against their will. Yet we do not always or even ordinarily think this is wrong when, as most commonly happens, that action is in the child’s best interests or simply not harmful.

In addition, Finkelhor’s argument against the prohibition on harmful actions such as compulsory education and divorce is misguided.[[4]](#footnote-2) Finkelhor’s “permissible harm” reasoning is that if society permits harmful actions such as divorce or compulsory education for all children, then a person could argue that there is no reason why harmful adult-child sexual interactions should not also be permitted. Thus, he argues, a consent-based critique of adult-child sex is necessary to forestall such reasoning. However, there are several main problems with this argument. First, society could be wrong to allow these things; in which case, they might also be wrong to allow adult-child sex. Even if society permits or, in the case of compulsory education, even requires a harmful action, that does not mean that the action is morally acceptable. Society may, in some cases, simply be in error to permit or require those actions. Sometimes such actions are justified because they are part of a larger policy that is beneficial overall, as is the case with compulsory education and vaccination policies. A more fine-tuned policy may be possible although not pragmatically feasible when implemented by a large state bureaucracy. Thus for the sake of fiscal restraint, an overly broad policy is administered. Second, society may have *pragmatic* and in fact sound reasons for not interfering with actions that harm people—even wrongfully harm them. It may, for example, be even worse for children to prohibit the divorce of their parents, when this may lead to domestic violence, substance abuse, or general misery. In the case of compulsory education, it is possible that any system that allowed for exceptions would be far more dangerous, as it makes it to easy to give up on problematic children who would benefit greatly from school. This is probably *not* the case for prohibiting adult-child sexual interaction; we are probably not, by banning adult-child sex, passing up on extremely valuable opportunities for some children who would benefit from sexual activity with adults. It is not plausible, then, to try to extend the argument or compulsory education and permissible divorce to permissible adult-child sexual interaction. Thus a consent-based argument is not as necessary as Finkelhor thinks. Finally, it is also true that some who wish to defend adult-child sexual relations may *try* to extend the argument for the permissibility of putatively harmful actions and policies in order to rationalize their preferences. However, this does not mean that a consent-based argument is really necessary. For one thing, I do not really think that defenders of adult-child sex will ever *admit* that it harms children, and if they did, no one would take them seriously; so I think the threat is strictly theoretical.[[5]](#footnote-3) For another, people who will not attend to arguments and produce only rationalizations do not really need to be argued with. Given the obvious weakness of this argument, anyone who would try to extend it is not interested in reasoning about the ethics of this behavior, although perhaps they can be expected to understand the severe consequences (e.g. prison, being shunned, etc.) of their rationalized actions. So despite Finkelhor’s best efforts, I think it is impossible to dodge the issue of whether sex between adults and children is harmful.

Indeed, harm is the central issue in most discussions of child sexual exploitation.[[6]](#footnote-4) In a recent exchange with Claudia Card, Laurence Thomas rejects the consent-approach, recognizing that we often do things to or for children without their consent, and that this is unproblematic. He argues that what is wrong with child sexual interaction is that it harms the child by violating an obligation that all of us have to act in the interest of children and not against them. Child-adult sexual interaction thus involves a “breach of trust.” All proper sexual activity, Thomas argues, has (at minimum) as its aim the mutual recognition by the partners of their sexual attractiveness to the other. Healthy adults desire to be desired by particular others, and desire to have sexual interactions when this desire is mutual. Were I, for example, to prefer sex with another person who regarded me indifferently as a sexual partner—or if I simply tolerated it—this would be an improper (Thomas employs the term ‘unhealthy’) desire, akin to an unhealthy preference for “dining with strangers.” However, children are too immature to form a desire that they be desired. Hence, in accordance with Thomas’s normative account of sexuality, they are being abused. They are being treated as a mere means, and will later (when they are mature enough to form preferences in accordance with normative sexuality), perceive this and suffer further at the recognition of their abuse. The adult breaches their trust. A breach of trust is a kind of harm.[[7]](#footnote-5)

Thomas’s “Breach of Trust” view relies on a very specific normative view of what kinds of sexual interactions are “healthy,” and interactions in which there is no reciprocal attraction are regarded as unhealthy. We are not told what unhealthful effects of such interactions in adults might be. But claims about the healthiness of sexual desire are often simply masked claims about the *wholesomeness* of sexual desire, and this is really a kind of moralizing about sexual preferences that other people happen to have. Many things once deemed unwholesome in the past—sex without reproductive intention, homosexuality, anal and oral sex—are now widely accepted as, if not wholesome, not morally problematic. In addition, there are actually other traditions that do not make this judgment, and Thomas give us no reason why we should regard “ours” as superior. For example, Martha Nussbaum writes that Ancient Greeks did not share Thomas’ normative sexuality in their conception of *eros*:

A Greek will not expect erotic love, as such, to pursue mutuality. Contemporary American conceptions of erotic love, by contrast, place a heavy stress on reciprocity. This means that we really are dealing with subtly different emotions: Plato and John Updike are not describing the same passion.[[8]](#footnote-6)

In addition to questions about Thomas’s normative theory, there are serious empirical questions about the harmfulness of such interactions to children. Thomas seems to argue that these acts are not in themselves harmful to children, but that children will later come to feel humiliated or abused when they reflect on the encounter. But this would only be so if they felt the enforcement of Thomas’s sexual norm. What seems harmful here is the social stigmatization of the encounter. But homosexuality was once stigmatized (and still is, to a lesser degree). The problem is not the homosexuality, but the stigmatization.

Claudia Card responds with the “Bonding Theory.” She argues that what makes many cases of sexual interaction between adults and children wrong is that sexual interaction tends to create a bond that the child may be able to free herself from. Thus, assuming no physical harm is done, the child may be harmed by the creation of a bond that prevents the child from detaching later on. Detachment is important for becoming an adult, because the child will need to form bonds with others. So adult-child sex is wrong (at least sometimes) because it exposes the child to the danger of a strong attachment, and this may (but does not necessarily) be a kind of harm. Card points out that her view is problematic because breast-feeding an infant tends to create just such a bond and breast-feeding can have a sexual component, and yet most people do not condemn breast-feeding when it is accompanied by sexual arousal.[[9]](#footnote-7) This view has the odd consequence that there might really be nothing wrong with cases of sexual interaction between a curious and cooperative child and an adult, so long as no bond is formed. However, if a curious child meets a stranger at a shopping mall and engages in sexual activity in the parking lot, and then both go their separate ways, the interaction still seems wrong and disturbing—even if we cannot point to lasting harm in most cases. Whatever the plausibility of the Bonding Theory, it is clearly an appeal to harm.

As will become clear, I think that such interactions can be criticized in some cases even if the child is not harmed, but has her interests advanced overall in the course of sexual interaction with an adult. This is because I do not think all exploitation involves harm, but it is nonetheless always wrong.[[10]](#footnote-8)

The case of adult sexual exploitation is important because, I shall argue, that we need an account of what is wrong with it even when it is mutually beneficial and *voluntary.* While it is, hard to say (in some cases) what the harm is in adult-child sexual interactions, this is usually not the case. Most of such interactions are against the child’s will, with the authority of adulthood being used as a lever to extract cooperation; or else they are explicitly violent. Moreover, they are typically harmful. Thus (the arguments of above notwithstanding), allegations of child sexual exploitation are not typically contested, when there is agreement that sexual interaction as occurred. But there seem to be more cases of putative adult-adult sexual exploitation that do not involve such violence or coercion, and are not harmful. In such cases, people can and do challenge the wrongness of those interactions. That is to say, when no one can argue that either party has been coerced or harmed by the interaction, and in fact both parties prefer a state of interaction to one of noninteraction, what is wrong with sexual exploitation?

**II. The Case Against “Sound Prostitution.”**

 Those who pay others for sexual encounters are often said to be exploiting their sexual interactors.[[11]](#footnote-9) When we ask the question of whether prostitution is exploitative, we are at the same time asking whether it is morally wrong, since on my ethically thick notion of exploitation, exploitation is always characterized by disvalue and badness. In trying to articulate what it is we mean by ‘exploitation,’ then, I am trying to express our shared moral intuitions about what makes it morally bad. At the same time, I aim to adjudicate between meaningful and plausible charges of exploitation and those that should be discarded. In other words, this is both an interpretive and a reformative approach to understanding exploitation. This requires both an examination of our usage and our moral reasons.

 We can begin with our moral reasons. What, if anything, is wrong with prostitution? I do not wish to survey here the very large litany of arguments on this subject (there are at least three articles that have been recently published entitled “What Is Wrong with Prostitution?”) Nonetheless, I think we can see which features of prostitution make it particularly worrisome. It is important to set aside those cases of prostitution that involve coercion, or the illegitimate threat of force.[[12]](#footnote-10) For example, it is wrong for me to threaten to hit you unless you give me your wallet. This is because I have no right to hit you. However, it is not clearly wrong for me to threaten to exclude you from my camping trip unless you agree to bathe regularly, as I have no obligation to take you camping with me. It may be making you worse off relative to some baseline, but nonetheless I am morally permitted to make you worse off. It is obvious that if it is wrong to threaten to make someone worse off in an illegitimate way, and if prostitution involves this, then prostitution is wrong—but then not in virtue of the prostitution itself. Similarly, to the degree to which social stigmatization harms prostitutes, prostitution might be said to harm them in important ways. As I argued above, in questions of sexual exploitation, harm is indeed relevant, particularly in the case of children. However, we will not consider cases where the harm is extrinsic to the prostitution itself. Social stigmatization is an extrinsic harm. The question here is whether “sound prostitution”—prostitution that has been reformed so that women are protected from coercion, violence, theft, and stigmatization—is possible.

To my mind, the most important class of arguments, which can be termed “anti-commodification arguments,” criticize prostitution on the grounds that it commodifies something that ought not be commodified. Commodification is simply the social construction of an object or activity such that persons regard it as legitimately exchangeable for other goods and services. Margaret Jane Radin, for example, rejects the permissibility of an open market in sexual services on the basis of an anti-commodification argument. According to what she calls a version of the “domino theory” of commodification, allowing sex to be sold in an open market would lead to a distorted and less valuable sexuality for all. Permitting the advertisement of such services, for example, would cause us to think of persons in general as potential purveyors of various sexual services, with persons being graded as higher or lesser quality, more or less desirable. The more commodified some sexual interactions become, the less valuable the remaining interactions are. Prostitution should not be completely unregulated because “we do not wish to unleash market forces onto the shaping of our discourse regarding sexuality and hence onto our very conception of sexuality and our sexual feelings.”[[13]](#footnote-11) Elizabeth Anderson concurs, arguing that

If women’s sexuality is legally valued as a commodity anywhere in society, it would be even more difficult than it already is to establish insulated social spheres where it can be exclusively and fully valued as a genuinely shared and personal good, where women themselves can be sexually valued in ways fully consonant with their own dignity.[[14]](#footnote-12)

Thus Radin, along with Anderson, defends a policy of “incomplete commodification,” in which we discourage the ability of persons to buy and sell sex without completely prohibiting it.

Radin does not argue, however, that there is something sacred about sexuality that makes its sale objectionable in principle. Her view is consistent with the claim that commodified sex has value for those who purchase it. She instead makes a causal claim about the effect of the existence of such sex on other, more valuable forms of sex. Essentially, she backs off from the difficult question of whether there is something *inherently* wrong with selling sex in favor a moderate and prudent policy decision of tolerating prostitution and protecting prostitutes, without making informal contracts for the sale of sexual services enforceable.[[15]](#footnote-13) But nonetheless, she dodges: is prostitution *itself* morally bad?

 Carole Pateman does not shrink from the challenge. She offers a set of arguments, some of which appeal to anti-commodification reasoning, and all of which take a direct aim at liberalism. Liberals have taken to defending prostitution as a way of defending women, who are the vast majority of prostitutes.[[16]](#footnote-14) To be against prostitution is to prevent poor women from making a living, and to prevent women from something that they choose to do. (Liberals are of course against any kind of coerced prostitution, and often argue that dire poverty is a form of coercion.) But outlawing prostitution seems like making outlaws out of women, and liberals are reluctant to do this. Consequently, liberals are reluctant to assert that it is unjust or a moral evil. Pateman argues that this is a confusion, and that prostitution must necessarily be seen as part of a wider and pervasive “sexual contract,” in which men have made it appear a virtual law of nature that their sexual access to women be as unimpeded as possible. She writes,

Once the story of the sexual contract has been told, prostitution can be seen as a problem about men. The story of the sexual contract also supplies the answer; prostitution is part of the exercise of the law of male sex-right, one of the ways in which men are ensured access to women’s bodies.[[17]](#footnote-15)

Pateman’s notion of a sexual contract is not really new. Pateman obviously does not think that there is an actual contract, arrived at in some secret meeting of men, whereby men get together and agree to subordinate women. She is talking about a culturally constructed caste system that depends upon near-universal acknowledgement in order for men to continue to subordinate women. This is exactly what Mill was speaking of when he wrote of an unspoken agreement between men according to which the fact of being male grants one dominance over any female:

Think what it is to a boy, to grow up to manhood in the belief that without any merit or any exertion of his own, though he may be the most frivolous and empty or the most ignorant and stolid of mankind, by the mere fact of being born a male he is by right the superior of all and ever one of an entire half of he human race: including probably some whose real superiority to himself he has daily or hourly occasion to feel...It is an exact parallel to the feeling of a heredity king that he is excellent above others by being born a king, or a noble by being born a noble.[[18]](#footnote-16)

Pateman says that while contractarians defend prostitution as part of a liberal regime in which consenting adults may exchange whatever they rightfully own so long as no coercion is used, prostitution is in fact a practice that benefits men and perpetuates the subordination of women.[[19]](#footnote-17) But besides giving men what they want—in fact, what they feel *entitled* to—what is wrong with prostitution? Pateman does have an answer. First, she appears to condemn it in part because prostitution is an abnormal or morally bad expression of sexuality. She writes,

Prostitution is the use of a woman’s body by a man for his own satisfaction. There is no desire or satisfaction on the part of the prostitute. Prostitution is not mutual, pleasurable exchange of the use of bodies, but the unilateral use of a woman’s body by a man in exchange for money.[[20]](#footnote-18)

Notice that this is very similar to the mutuality requirement of Thomas’ normative account of sexuality. Prostitution is morally bad because, in part, it reflects an improper sexuality. Elizabeth Anderson concurs, arguing that

The specifically human good of sexual acts exchanged as gifts is founded upon a mutual recognition of the partners as sexually attracted to each other and as affirming an intimate relationship in their mutual offering of themselves to each other...The commodification of sexual “services” destroys the kind of reciprocity required to realize human sexuality as a shared good. [[21]](#footnote-19)

 Hence she argues that sex that is paid for is intrinsically inferior: it is, as she puts it, “inferior goods.”

Second, Pateman argues that the need for sexual relations is not a genuine need: “to my knowledge no one has ever died for want of an outlet for their sexual appetites...There is no natural necessity to engage in sexual relations to assuage sexual pangs.”[[22]](#footnote-20) The force of this point, I take it, is that *given* the moral badness of prostitution, it cannot be said to be tolerable because it satisfies an otherwise unsatisfiable human need. What prostitution really satisfies is the need to live out a sexuality that requires the subordination of women. This is not so much a separate argument for the badness of prostitution as an argument against viewing it as a necessary evil: prostitution is not necessary.

Pateman’s third argument is perhaps most central and certainly the most complex. She argues that prostitution is not really the sale of sexual services, but the delivery of subordinate bodies for money. If the purpose of prostitution is simply sexual release for the buyer and income for the seller, then the buyer clearly has other (completely cost-free) methods of relieving himself. But those who traffic in women will even pay them to do something they could do themselves—“manual release.” So what men are really purchasing is literally the woman’s body, and that body is integral to the sexual act.[[23]](#footnote-21) Unlike workers, whose employers would be just as happy to have a machine perform the job if the machine could do so expertly, those who solicit sexual services require that another person—a woman—be present. The purchase of the woman’s body, even if only for a time, is in this case just like slavery, and slavery is clearly wrong.[[24]](#footnote-22) Furthermore, the self is directly connected to the body—despite what liberals argue. The liberal self, or “individual as owner” has a kind of core that “owns” its abilities and characteristics, including its sexual abilities and characteristics, and has the rightful use of these abilities at her disposal. This self is presumed to be separate from these characteristics and abilities. However, Pateman argues that

There is an integral relationship between body and self. The body and self are not identical, but selves are inseparable from bodies...In modern patriarchy, sale of women’s bodies in the capitalist market involves sale of a self in a different manner, and in a more profound sense, than sale of the body of a male baseball player or sale of command over the use of the labor (body) of a wage slave. *The story of the sexual contract reveals that the patriarchal construction of the difference between masculinity and femininity is the political difference between freedom and subjection, and that sexual mastery is the major means through which men affirm their manhood.* [The john] contracts to buy sexual use of the woman for a given period.[[25]](#footnote-23) (my italics)

This latter consideration involves a claim that is at the heart of radical feminism, and is a view shared by other feminists such as Catherine MacKinnon. On this view, sexuality cannot be taken uncritically as a given, but must be seen in the context of patriarchy. The preferences that people have are not to be regarded as fully theirs when they are in fact a product of patriarchy. This objection, taken as a whole, amounts to the claim that both because of the nature of the self and the nature of our currently constructed sexuality, “sound prostitution” is not possible. Prostitution subordinates the prostitute and simultaneously reinforces masculinity as dominance, femininity as submission.

These are serious considerations, and deserve to be taken seriously. If Pateman is right, then prostitution as an institution is inherently bad—even if prostitutes were better paid, had more secure working conditions, and no social stigmatization. It might seem possible that, in a non-patriarchal system, prostitution would be less bad, because then purchasers of sexual services would not be purchasing the subordination of women. However, prostitution would still lack the mutuality that Pateman (along with Anderson) thinks is requisite for normatively acceptable sexual relations. Furthermore, on her view, even barring this consideration, prostitution would be unacceptable.[[26]](#footnote-24) While she does not explicitly say so, Pateman appears to believe that if sexuality were not constructed so that being masculine requires the subordination of women—perhaps if there were no ‘masculine’ and ‘feminine’ conceptions of sexuality whatsoever—then men would not consider purchasing sexual services any more than they would consider purchasing a slave, and both would be regarded with the same moral contempt. In other words, insofar as prostitution exists, it is a sign that patriarchy exists.

**III. Is Prostitution Really Inherently Wrong?**

A number of criticisms can be raised here.[[27]](#footnote-25) First, Pateman’s defense of a normative sexuality is just as suspicious as is Thomas’s. Nonetheless, we might grant that if all of a person’s sexual life were characterized by a lack of mutuality, then it would be an impoverished sexual life. Even if our concern with mutuality in sex is, as Nussbaum has argued, historically specific, a person whose sexual life involved no mutual attraction and pleasure would be bad for a person living in our particular historical time. However, it seems possible that if some of one’s sexual life were given over to a one-sidedness for only some of the time, then it would not necessarily be a bad sexual life. Some people, for example, have jobs that are repetitive and boring, although lucrative. My job is to some degree repetitive and boring (e.g., grading papers, repeating lectures, proofreading manuscripts), and hardly lucrative, although I have a large amount of autonomy in the ordinary sense (control over how I specifically use my time and direct my projects) and much of it is intellectually stimulating. I do not think that it is, despite the bad parts, on the whole bad. More importantly, there is no moral problem with it in virtue of these imperfections. It could be argued that the sexual interactions during prostitution irredeemably contaminate one’s private sexual life. This is surely true in the extreme. But consider the therapist who listens to the problems of her clients all day long. It may be difficult for her to have genuine conversations with other people when she leaves the office. But she *may* also be able to interact with others in a fairly normal fashion, exchanging her own concerns and worries with others as a friend, and not as a patient or therapist. So certain forms of prostitution are surely soul-destroying, but not all. In any case, the question is whether the existence of sound prostitution is unjust—not whether it is a desirable way of life. Thus Pateman’s first criticism of prostitution does not seem decisive, first, because no careers or family structures or lifestyles in general measure up to our ideals completely; and second, because the fact that a way of life is not ideal does not demonstrate the injustice of persons engaging in it. Moreover, as I argued above, we should be suspicious of sexual ideals.

Second, Pateman trivializes the need for sexual interaction with other people. To go (as Pateman does) from the desire of a man to have a woman touch his genitalia to the conclusion that such a man is really desiring the subordination of another, since he could simply touch himself and achieve a release is to have a tremendously flat-footed understanding of sexuality. People have a genuine need for sexual contact with other persons. Perhaps not all people have this need, as there are lifelong celibates. Laurie Shrage points out, for example, that among the Grand Valley Dani (a relatively isolated Indonesian tribe of West New Guinea) “healthy married adults go for many years without sex and do not seem particularly concerned about it.”[[28]](#footnote-26) Perhaps so. And perhaps people will not literally die without sexual interaction with others. Nonetheless, masturbation is not ‘just as good’ as human sexual contact with another for most people in *our* culture, and there is no reason to think that because in *some* culture there is a period of happy sexual dormancy that this should (or could) be the norm for us or for the majority of cultures. In any case, it certainly does not follow that there is not a genuine human need for sexual contact with others, and that this need is not persistent, widespread, or important. The fact that sexual interaction is variable from culture to culture and that we could conceive of it differently within our own culture does not mean that it is in any way an extraneous need that we could or should do without.

Pateman appears to assume that the asymmetry in prostitution—with nearly all buyers being men, even when the sellers are both men and women—is strictly a function of the patriarchal construction of male sexuality, whereby prostitution satisfies the need to subordinate women. However, there may in fact be an asymmetry in libido between men and women, and this asymmetry may not be caused by patriarchy. If so, prostitution is not necessarily an expression of patriarchy but to a large degree of asymmetrical sexual desire (although certainly much of the time it is). Women’s libido may be suppressed to a degree because of social stigma, but it is undeniably easier for women to find sexual partners without paying them, and this accounts (in part) for the asymmetry of sexual exchange.[[29]](#footnote-27) It seems highly doubtful that without patriarchy, the traffic in women would cease entirely, although women would certainly have more power in transactions of prostitution, and there would be an increase in the traffic in men by women. The idea that in a culture without male domination, sexual desire would be *exactly equal* as well as *fully abundant* between the sexes is simply not plausible, and although she appears to assume it, Pateman does not try to defend it.

Nevertheless, we do not need to argue that there is a genuine and persistent asymmetry in sexual desire to see that even without a system of patriarchy, persons of both sexes might very well want to purchase sexual interaction. The nature of sexual exchange would surely be very different. But Pateman provides no evidence that without patriarchy, there would be no exchange of sexual services between and among women and men. Some of that exchange would involve men purchasing the services of women.

This failure to take seriously sexual desire is a consequence, in part, of Pateman’s insistence that nearly all features of sexuality are a construction of patriarchy. But clearly she cannot really believe this: she admits that there is an underlying, prescriptive sexuality that involves mutuality and is at odds with patriarchy. If Pateman can see that not everything is a capitalist transaction despite the hegemony of market ideals, then surely she can credit us with the capacity for the same insight.[[30]](#footnote-28) In sum, Pateman may be wrong in her claim that prostitution, as an expression of our sexuality, is *purely* a construction of patriarchy and capitalism.

What about Pateman’s third criticism? The two parts of this criticism need to be addressed separately: first, that prostitution is essentially slavery in a way that wage labor is not; and second, that prostitution facilitates the expression of the sexual contract. This argument denies what liberals often assert, viz., that prostitution should be seen as (in principle) any other voluntary, non-coerced exchange of services for money, and hence not subject to moral and especially legal sanctions.

With regard to the first part, Pateman’s argument is not successful. (I will simply set aside the possibility that selling oneself into slavery is sometimes morally acceptable.) It is certainly true that much prostitution resembles slavery. That is in part because much of it *is* slavery. Many if not most prostitutes around the world have been sold into prostitution or abducted. But Pateman means to argue against “sound prostitution”—i.e., prostitution under enlightened conditions (e.g., where the prostitute is fully in control of what she will and won’t do, and has a wider degree of autonomy with respect to her working conditions) and without social stigma. In this case it is hard to see how prostitution is inherently different from massage therapy or, to use Martha Nussbaum’s example, “the colonoscopy artist.” The colonoscopy artist makes herself available for the testing of colonoscopy equipment for a price. Clearly her body is integral to her service. But it is hard to see how she is a slave, simply because her body is integral to testing the equipment.[[31]](#footnote-29) We can compare this with other real-world professions that require intimate physical contact, such as massage. Getting a massage from a person is actually is a different experience than lying on a mechanized shiatsu table. It is different in part because an actual human being is caring for you. The preference for an actual masseuse or masseur is not necessarily a reflection of the need to dominate. It is true that there is no invasion of her or his intimate bodily space (as with the colonoscopy artist), but nonetheless, physical contact is essential. And there are many other cases where physical contact is not essential, but physical presence is. If I go to a concert, I will be disappointed if there is only a lifelike simulacrum of a singer. No matter how good the sound quality, the audience wants to experience the persona of the singer. When I go to enjoy a meal at a fine restaurant, I enjoy being attended to by an actual person. If they were to replace my friend George at with a robot, it would not be the same. If George were to call in from home and make recommendations, suggesting a particular appetizer or dessert wine, it would not be the same. Even if the robot were better than George at knowing what I would appreciate in a wine, and would kiss me on both cheeks with very realistic fake lips, it would not be the same. I am paying, in part, for an interaction with George the person. I do not think that this means that George is a slave.

The truly serious objection to prostitution itself, I think, is the second half of Pateman’s final argument. She is surely right to insist, along with MacKinnon and many others, that masculinity is defined in part by the ability to sexually dominate—whether by physical force, economic power, or simply being male. I think it is also true that, thankfully, many women and men resist this construction of sexuality as does Pateman. Even under enlightened conditions mentioned above, prostitution still makes women sexually available to men—many of them who have come to see themselves as entitled to sexual access. While any given woman’s male sexual partner may not find his masculine identity in domination, women in general cannot escape how men in general see them. Seeing women as primarily “for” sex makes it difficult for men to take women seriously as intellectual and moral equals.

Unfortunately, there are probably worse things than prostitution when it comes to promulgating and reinforcing ideals of male domination. The traditional marriage and family with the traditional division of labor, for example, is probably worse. Unlike enlightened prostitution, women in such marriages are made vulnerable by becoming economically dependent upon their breadwinner husbands.[[32]](#footnote-30) Popular culture that represents women as primarily sexual playthings is similarly destructive. Nonetheless, I think it is correct to say that even the most reformed prostitution under patriarchy will tend to reinforce the idea of that men are entitled to sexual access to women, one way or another.

**IV. The Moral Badness of Sexual Exploitation.**

If we grant that enlightened prostitution is far from morally benign, we are still not finished. None of this explains how prostitution is exploitative. Elsewhere I defend my own account of exploitation.[[33]](#footnote-31) Exploitation, in general, is the making use of the vulnerability of another for the sake of advantage in a way that fails to properly value them. I call this “exploitation as degradation,” because failing to respect the value intrinsic to a person or thing is to degrade it. This does not require that either party be harmed. If both parties prefer the interaction to a state of non-interaction, one of the parties (or even both) may nonetheless be exploited. This is because our obligations to others extend beyond failing to harm them during the course of our interactions.

Why is harm not a necessary component of exploitation? If harming is making someone worse off with respect to their current situation, many exploitative interactions do not harm. The case of the Indonesian employees of Nike is an example of this.[[34]](#footnote-32) These workers would be worse off if there were no interaction, and while they prefer interaction on more favorable terms, they prefer the terms they have to no interaction at all. Yet many if not most of us think they are exploited, because their basic needs as persons are being consciously overlooked for the sake of the advantage of the corporate shareholders. So exploitation does not necessarily involve harm in this sense: it does not necessarily, although it may, worsen the situation of any of the interactors.

In my discussion of anti-commodification arguments, I think it is clear that all versions of the argument as presented are based on a claim of harm. Radin’s version of the argument makes the claim that a completely free market in commercial sexual exchange would lead to a loss of “good sex,” making it less widely available than it otherwise would be. Pateman’s argument is also based, at least in part, on the wrongness of harm. Prostitution harms the prostitutes because it is a form of slavery, and slavery is harmful. Prostitution harms women as a class because it is part of the lived experience of patriarchy, and helps to reinforce the idea and fact of the sexual availability of women. This is harmful because it subordinates women to men, and this is a harm to women’s interests. Pateman’s case is not entirely based upon harm. Her claim that sex without mutual attraction and pleasure is inferior sex does not appear to be a claim that such sex harms people, but that it is not as good as mutual sex. Nonetheless, Pateman clearly thinks that prostitution is harmful to prostitutes and harmful to women in general.

Radin’s argument—i.e., the “domino theory”—is an empirical claim, and its proponents (oddly) do not offer any evidence that it is true.[[35]](#footnote-33) But it is unclear how it is the relevant kind of harm. For we would need an argument that persons have a *right* to have their sexual ideals lived out in society in order that they personally might experience them more richly. Compare this with the rise of fast food. Fewer people want to sit down for a leisurely meal without a television on. This is because so many people are used to eating their food on the run or in front of the television. Should society prohibit fast food because of this? More importantly, does this make fast food morally bad? Many people rely on fast food because of increasingly hectic schedules, or simply because they do not enjoy cooking. I agree that it has a corrosive effect on certain ways of life—on my way of life—because it reduces the number of people I enjoy dining with. But it does not make it impossible for me to enjoy such meals; it does not even make it less likely that I will enjoy them. Cooking a meal and eating without the television on is still a genuine option for me.[[36]](#footnote-34) Just as importantly, people who hate cooking (and possibly eating) have more options with the availability of fast food. So again, this kind of anti-commodification cannot point to the kind of morally serious harm we are after. Moreover, it is difficult to see how, even if this claim were true, that prostitution amounts to exploitation. On this account, who is taking advantage of whom?

 Of course slavery is harmful to persons, but as I argued again, it is far from clear the prostitution should be seen as slavery. Pateman’s most serious argument was that prostitution reinforces and lives out the sexual contract. This is a kind of harm to all women (and even men, if one thinks as I do that patriarchy is bad for everybody)—not just for the prostitute. But it is a difficult kind of harm for the liberal to accommodate, because it does not undermine *specific* opportunities and rights for women. Prostitution reinforces patriarchal attitudes; but so do traditional marriages and romantic novels. Prostitution is supposed to be worse than these. In order to have the kind of moral significance we want, we need to show that prostitution differs from, say, a group of people living up to their cultural stereotype, making it difficult for other members of their group who wish to avoid prejudice. We need to show the prostitution necessarily undermines the equal citizenship of women—not just that it undermines a certain kind of social respect that women ought to have. In any case, in order to make good on the claim that this moral badness is exploitative, we need an account of who is exploited and what that means.

 Thus appealing to harm does not really help us to understand sexual exploitation. However, we can understand prostitution as exploitative without appealing to harm, particularly in the case where men purchase sex from women. The most plausible understanding of the charge of exploitation is that it is the prostitutes that are exploited, and that it is the ‘john’ or client who is doing the exploiting. Both the prostitute and the john prefer the interaction to a state of non-interaction, or the transaction would not take place. And yet, I argue, the female prostitute may still be exploited, even under enlightened conditions, so long as women are made vulnerable by patriarchy. To the extent to which patriarchy motivates her to sell her services, her client is taking advantage of injustice. Male domination alters the background conditions under which the prostitute chooses to trade in sex. Career choices are still limited for women than they are for men, and even within a given career, women earn less than men. The current conditions of divorce lead to the impoverishment of women. These, combined with constructions of masculinity that are based on the ability to have sexual access to women, make prostitution a more attractive option for women than it otherwise would be. In addition, being sexually available is a source of self-esteem for women in a way that it is not for men, making women susceptible to various forms of flattery. Under patriarchy, the ability to provide or withhold sex can provide some women with a feeling of power, given that other forms of power and authority are not available to them.

 Of course, it is easier to see the exploitation under non-ideal conditions.[[37]](#footnote-35) When the prostitute is addicted to drugs, the john is clearly taking advantage of a vulnerability in a morally bad way, and in any case the prostitute’s choice here is hardly free. In poor countries, women are often prohibited from earning a living by religious and civil law (consider the Taliban), making prostitution the only means of subsistence. Where women and men are exposed to infectious diseases, there is also a clear harm being done to them. Where persons have a Good Samaritan duty to provide emergency assistance, and refuse to do so except for a sexual transaction, they are taking advantage of the needy person in a way that fails to show adequate respect. The exploiter fails to honor basic human obligations toward his interactor.

 Notice that there is no inherent appeal to false consciousness here. Women need not be considered ‘confused’ about their true interests. Prostitutes may be completely right to regard prostitution as their best option. They may genuinely prefer sexual trade to no trade at all, and if no other interaction is negotiable, they would be rational to choose sexual trade. But when it is their best option under patriarchy, it is exploitative.

 What about prostitution under non-patriarchal conditions? Imagine, for example, that patriarchy has been ended. Would prostitution under such conditions be exploitative? I cannot see how it is necessarily so. Presumably, there would be less asymmetry in the genders of prostitutes and clients, as the social stigma of female sexual desire is eroded. Nonetheless, an asymmetry in sexual desire between men and women may persist; and if so, prostitution would be disproportionately women’s work. If this work is not stigmatized, and if the working conditions of prostitutes are guaranteed, it need not be exploitative.

 There is a way in which prostitution might be regarded as inherently exploitative, regardless of patriarchy. One might argue that sexuality is such an intimate part of each person’s being that *whenever* a person is tempted to sell it, the person is degraded. Thus prostitution is inherently degrading, because to treat that person’s sexuality as salable

is to degrade it: to treat it as having less value than it actually does for the person whose sexuality it is, even when that person does not acknowledge or respect that value. I think that this is part of what is meant by those who say that prostitution is inherently exploitative, although many people reject this because they do not think of sex *per se* as sacred. Thus this is part of the common understanding of sexual exploitation and what is wrong with it, but it is a contested part of it. It is unclear that it is available to liberals, who wish our institutions to remain broadly neutral on which forms of life—including which forms of sexual life—are good. Even if liberals are, to use Steven Seidman’s term, “sexual romantics” in their own lives, they must remain “sexual libertarians” in matters of institutional justice and hence policy.[[38]](#footnote-36) On my view, if there is no vulnerability (such as dire poverty, drug addiction, or mental illness, or unjust background conditions), then prostitution is not exploitative.

**V. The Social Contract and Sexual Exploitation.**

 How can contractarians incorporate a concern for sexual exploitation into an account of what justice requires? Social contract theory tries to determine what justice requires (or, for some, what morality requires) by appealing to an idealized contract. Would citizens ideally choose a society based on a caste system along the lines of gender? Susan Okin has argued that familiar neo-Rawlsian considerations would lead us to reject a society that promotes a gender-structured family. Elsewhere I have argued that such families can be understood as exploitative.[[39]](#footnote-37) This is because in such families men gain advantage in the relationship by making use of patriarchy. They benefit from the preference structures that women have in many cases rationally formed in response to the options available to them under patriarchy. In neglecting the interests of their spouses to their own advantage, men take advantage of a vulnerability in a way that fails to fully respect their wives. There is an exploiter and an exploited, even though their interaction may be non-coerced, voluntary, and preferred to non-interaction (non-marriage). The problem is not simply the unequal benefit in these arrangements, since unequal benefit is not necessarily a problem in mutually beneficial transactions. The problem is that men are able to make use of an injustice—patriarchy—to advance their own interests when those interests compete with those of their wives. Accepting a greater share of the social surplus of a transaction than one would otherwise get by trading on an injustice is exploitative.

 A similar case can be made for exploitation in sound prostitution. Insofar as prostitution operates in the context of patriarchy, those who buy sex from women necessarily take advantage of a system of male domination. This means that the exchange can occur on terms that would otherwise not be forthcoming. Without a caste system along the lines of gender, women might not be willing—or at least *as willing*—to sell sexual services at all. (Remember that we are excluding women who make ‘desperate exchanges’ because of drugs or abject poverty.) In a culture without gender as we know it, being sexually available to men would not be a female virtue at all, and there would certainly be fewer prostitutes. It would probably become more professionalized. At the very least, buying sex from would be a lot more expensive. So patriarchy creates distorted conditions of interaction for men and women, and men who buy sex are taking advantage of this injustice. The case is even clearer for prostitution as it exists today. Men who hire prostitutes nearly always take advantage not only of patriarchy, but of the prostitute’s drug addiction, poverty, and other vulnerabilities for the sake of private gain.

 This is important because on this understanding of exploitation, the problem with prostitution is not necessarily a lack of autonomy on the part of the prostitute. Even a reflective prostitute, who prefers prostitution to lower paying professions, and who is aware of the risks of her trade, is being exploited. She is being exploited because her preferences are part of a (sometimes rational) response to conditions of injustice, and the client exploits those conditions for personal gain. There is an important qualification here. The ‘liberated husband’ refuses to allow his wife to do a disproportionate share of the domestic work even though she would do it voluntarily and even reflexively. He refuses to allow her to disproportionately sacrifice her interests for the sake of the family. He refuses to take advantage of injustice. It is possible that a ‘liberated client’ would similarly refuse to take advantage of patriarchy in his transactions with a prostitute. Whether this is a genuine possibility depends upon whether selling one’s sexual services is inherently degrading. As I have rejected Pateman’s slavery argument, I do think the liberated client is a possibility. In fact, anti-commodification theorists such as Radin and Anderson agree, arguing that under the right conditions, “sexual therapy” would not be degrading to the therapist; it would not be inherently disrespectful to her. While it may be unlikely that the typical purchaser of sex would be liberated, it remains a theoretical possibility. The liberated client, like the liberated husband, is not engaging in exploitation.

 What about prostitution without patriarchy? Pateman has implausibly suggested the prostitution is a function of patriarchy, and that it is necessary only as a kind of functional organ of the system. As I argued above, I am not convinced that this is true. There might still be prostitution, predominately purchased by men, without a system of male domination. In such a case, the charge of exploitation arises insofar as the purchaser of sex takes advantage of some other form of injustice or individual vulnerability that the prostitute suffers. Desperate exchanges, even without patriarchy, are still exploitative because a person’s vulnerability is being leveraged for the sake of private gain in a way that demonstrates disrespect for that person.

 What are the practical implications of the exploitative nature of prostitution? Whether or not we choose to criminalization an activity depends upon more than whether it is unjust. Here we may employ a distinction made by Alan Wertheimer between moral weight and moral force.[[40]](#footnote-38) Prostitution under patriarchy is typically exploitative, even when it is voluntary, non-coerced, and autonomously chosen. This, I have argued, is unjust, and it may be deeply unjust and thus have serious moral weight. However, it may be for many women their genuinely best option. To make it illegal, forcing the trade underground, adds insult to injury. It puts prostitutes in danger and leaves them at the mercy of pimps. It leaves them vulnerable to theft and disease. Thus the moral force of the badness of sexual exploitation may not be criminalization, even if the moral weight is serious. But I hope to have shown that under conditions of patriarchy, even freely chosen, “sound” prostitution is can be meaningfully understood as exploitation.

1. Lars Ericsson, “Charges Against Prostitution: An attempt at a Philosophical Assessment,” *Ethics* 90, no. 3 (1980): 335-66. [↑](#footnote-ref--1)
2. In my view, Nozick is not a genuine contractarian, as he posits a set of rights that exist before any social contract, hypothetical or actual. I shall not defend this claim here. [↑](#footnote-ref-0)
3. David Finkelhor, “What’s Wrong with Sex Between Adults and Children?” *American Journal of Orthopsychiatry* 49, no. 4, (1979): 692-697. [↑](#footnote-ref-1)
4. I am setting aside the factual issues involved here. Let us grant the assumption, controversially, that divorce is overall harmful to children, even if they recover from the harm. It is possible that acrimonious marriages are at least as bad for children as acrimonious divorces, and that such marriages are common. It may be possible to argue in favor of the badness of marriage with children on such grounds, although I will not attempt to do so here. [↑](#footnote-ref-2)
5. NAMBLA (North American Man Boy Love Association), for example, insists that such interactions are beneficial. There are clearly pedophiles who do not care about the morality of their actions, but if persons do not care about the morality of their actions, they cannot with consistency complain they are being treated *unfairly* when those actions are prohibited and punished. [↑](#footnote-ref-3)
6. Claudia Card, “What’s Wrong With Adult Child Sex?” *The Journal of Social Philosophy* 33, no. 2 (2002): 170-77, and Laurence Thomas “Sexual Desire and Human Ends,” same volume, 178-92. [↑](#footnote-ref-4)
7. Thomas, 185. [↑](#footnote-ref-5)
8. Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999), 263. [↑](#footnote-ref-6)
9. We might consider how we would feel about breastfeeding if it should turn out that, for one reason or another, breastfeeding is nutritionally inferior to formula. (Breast milk typically contains, e.g., residues of DDT and other chemicals. Perhaps a ‘super-formula’ with all of the benefits of breast milk but none of the pollution could be created.) How would we then feel about a woman who continues to breastfeed simply for the erotic pleasure it gives her? [↑](#footnote-ref-7)
10. The same problems exist with respect to adult-animal sexual interactions. Such interactions are not as often discussed, but there is not reason to think they are for that reason uncommon. The lack of visible prosecution of such actions is really only evidence of the even greater lack of power on the part of animals. [↑](#footnote-ref-8)
11. In particular, men who pay women for sex are said to be exploiting them. Cf. Catherine MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, Mass.: Harvard University Press, 1989) 248, and Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988) 189-219. Both regard both prostitution and sexual surrogacy of women as exploitative. [↑](#footnote-ref-9)
12. Here I rely on Alan Wertheimer’s understanding of coercion, as defended in *Coercion* (Princeton: Princeton University Press, 1987). [↑](#footnote-ref-10)
13. Margaret Jane Radin, *Contested Commodities: The Trouble with Trade in Sex, Children, Body Parts, and Other Things* (Stanford: Stanford University Press, 1996), 133. [↑](#footnote-ref-11)
14. Elizabeth Anderson, *Values in Ethics and Economics*, (Cambridge, Mass.: Harvard University Press, 1993), 155. [↑](#footnote-ref-12)
15. Indeed, most feminists agree that as a practical policy matter, feminism should be in some way decriminalized, since the criminalization harms women. See Laurie Shrage, *Moral Dilemmas of Feminism: Prostitution, Adultery, and Abortion* (New York: Routledge, 1994), 82. Shrage herself favors a “socialist and feminist regulation” of prostitution (161), which aims not only at protecting the rights of prostitutes but at reducing its “commercialization.” [↑](#footnote-ref-13)
16. For example, Ericsson, “Charles Against Prostitution,” and Nussbaum, *Sex and Social Justice*. [↑](#footnote-ref-14)
17. Pateman, *The Sexual Contract,* 193-194 [↑](#footnote-ref-15)
18. John Stuart Mill, *The Subjection of Women*, ed. Susan Moller Okin, (Indianapolis, IN: Hackett, 1988), 33. What is new, however, is Pateman’s insistence that such a contract is a “prerequisite” of the social contract. I shall not evaluate this ambiguous claim here. [↑](#footnote-ref-16)
19. It appears that Pateman intends by this term ‘classical Liberal’ or ‘libertarian.’ [↑](#footnote-ref-17)
20. Pateman, *The Sexual Contract,* 198. [↑](#footnote-ref-18)
21. Anderson, 154. [↑](#footnote-ref-19)
22. Pateman, *The Sexual Contract,* 198. See also Pateman, “Defending Prostitution: Charges Against Ericsson,” *Ethics* 93, no. 3 (1983): 561-65, 563. [↑](#footnote-ref-20)
23. Pateman, “Defending Prostitution,” 563. [↑](#footnote-ref-21)
24. Pateman does not seriously consider the possibility that selling oneself into slavery would ever be morally permissible. It is worth noting that libertarians are not so sure. See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1976), 331. [↑](#footnote-ref-22)
25. Pateman, *The Sexual Contract*, 206-7. [↑](#footnote-ref-23)
26. Pateman, “Defending Prostitution,” 561. [↑](#footnote-ref-24)
27. A very serious one may be lodged against the premise of this discussion: namely, that we are mistaken in thinking that prostitution is everywhere and at all times the same phenomenon. Laurie Shrage persuasively argues that it would be a mistake to think that prostitution in early 20th century post-colonial Kenya is the same as what happens on the streets of American urban centers, or is the same as what happened in the public brothels of medieval France. I agree, and wish only to engage the issue of whether a version of prostitution as it is now practiced in the West could ever be defended if we extricated it from patriarchy. But Shrage makes it clear in her survey of recent histories of prostitution that there have been places and times in which prostitutes suffered no loss in status by virtue of their profession. She does not argue that in those cultures there is no patriarchy. However, she does argue that in those cultures prostitution is not experienced as degrading—which at least gestures toward the possibility of “sound prostitution.” So while there is danger here of falsely universalizing the Western experience, we can avoid this danger by restricting the scope of our analysis. Schrage, *Moral Dilemmas of Feminism*, Chapter 5: “Comparing Prostitutions.” [↑](#footnote-ref-25)
28. Shrage, 98. [↑](#footnote-ref-26)
29. I think it is also due to the fact that women are expected to be the repositories of traditional values. Just as men from developing nations often sport oxford-cloth shirts and Dockers while their wives are encouraged (or forced) to wear ‘traditional’ (non-Western) garb, women are expected to display sexual virtues to a degree that men are not. [↑](#footnote-ref-27)
30. This is not to say that sexuality is at some level unconstructed. Nussbaum’s characterization of Greek *eros* shows that whatever biological groundings there are for sexual desire, one’s culture plays a key role in forming the categories for conceptualization sexuality and having emotions through those conceptions. [↑](#footnote-ref-28)
31. Nussbaum, *Sex and Social Justice*, 285. [↑](#footnote-ref-29)
32. Okin, *Justice Gender and the Family* (New York: Basic Books, 1989). [↑](#footnote-ref-30)
33. Ruth Sample, *Exploitation: What it is and Why it is Wrong,* (Lanham, Maryland: Rowman and Littlefield, 2003). [↑](#footnote-ref-31)
34. Nike pays its workers as little as fifteen cents an hour to produce its running shoes in Indonesia. These shoes, which retail for between $73 and $135 in Europe and the United States, cost a total of about $5.60 to produce. See David C. Korten, *When Corporations Rule the World*, 2nd ed. (Bloomfield, Connecticut and San Francisco, California: Kumarian Press and Berrett Koehler Publishers: 2001), 115. [↑](#footnote-ref-32)
35. Elizabeth Anderson, for example, simply asserts that in order to ensure “the full realization of significant opportunities to value heterosexual relationships as shared and personal goods” requires the we reject any commodification of sex. She is not, however, in favor of criminalization prostitution, for pragmatic reasons. See Anderson, *Values in Ethics and Economics*, 155. [↑](#footnote-ref-33)
36. Granted, sexual relations are by definition not a solitary activity, and if everyone converted to a commodified sexuality, then there would be no recourse for a handful of holdouts. [↑](#footnote-ref-34)
37. This applies to the case of male prostitutes as well as female prostitutes. While men do not suffer from patriarchy as women do, many male prostitutes are no less vulnerable, but for other reasons. [↑](#footnote-ref-35)
38. Steven Seidman, *Embattled Eros: Sexual Politics and Ethics in Contemporary America* (New York: Routledge, 1992) 187-189. [↑](#footnote-ref-36)
39. Ruth Sample, “Why Feminist Contractarianism?” *Journal of Social Philosophy* 33, no. 2 (2002), 257-281. [↑](#footnote-ref-37)
40. Alan Wertheimer, *Exploitation,* 278-80. [↑](#footnote-ref-38)