

Rethinking force and consent, victimisation and agency: a feminist approach to prostitution policy

Repensando sobre consentimiento y fuerza, victimización y agencia: una aproximación feminista a las políticas de prostitución

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Abstract. Feminist approaches to prostitution tend to be highly polarised in their theoretical premises and policy implications. Radical feminist perspectives represent prostitution as the cornerstone of women's sexual exploitation, implying a strong call to eradicate sexual commerce in any form. On the opposite side are liberal perspectives emphasising women's choice, autonomy, and control over their own body, advocating for the decriminalisation of sex work, and rejecting paternalist claims for State protection. The notion of "women's consent" is crucial in both perspectives, being rejected as impossible or inexistent by those who reduce all sexual commerce to forced prostitution, and emphasized as a key discriminant by those distinguishing voluntary sex work from trafficking and forced prostitution, and sexual agents from sexual victims. In my contribution, I argue that the polarized nature of dominant feminist approaches to prostitution – especially concerned with defending theoretical stances on prostitution – may decrease the impact of feminist-inspired policies and fail to address the needs and risks faced by those working in the sex market. Arguing that there is continuity rather than dichotomy between force and consent, I suggest more nuanced and problematic notions of victimisation and agency. Relying on ideas of human vulnerability, such as those developed by philosophers Judith Butler, Adriana Cavarero, and Martha Fineman, I present a feminist political approach to prostitution that, while rejecting any appeal to criminal laws against non-coerced adult sex work, criticises laissez-faire approaches, and advocates for social policies catering for sex workers' material and symbolic needs.

Keywords: consent, feminism, prostitution, public policy, sex work, women's agency.

Resumen. Las aproximaciones feministas a la prostitución tienden a ser altamente polarizadas con premisas teóricas e implicaciones políticas. Las perspectivas feministas radicales presentan a la prostitución como el paradigma de la explotación sexual de la mujer, donde se defiende la necesidad de erradicar cualquier forma de comercio sexual. En el otro lado, las perspectivas liberales enfatizan el derecho a elegir de las mujeres, su autonomía y el control de su propio cuerpo, abogando por la descriminalización del trabajo sexual y defendiendo demandas paternalistas de protección pública. La noción del consentimiento femenino es crucial en ambas perspectivas, siendo interpretado como imposible o inexistente, por quienes reducen el comercio sexual a la prostitución forzosa, y enfatizado, por quienes distinguen entre

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el trabajo sexual voluntario y la prostitución forzosa, así como entre los agentes sexuales y las víctimas sexuales. En este artículo, se defiende que las aproximaciones a la prostitución de naturaleza más polarizada de las feministas dominantes deberían reducir el impacto de las políticas de inspiración feminista, redirigiéndolas hacia las necesidades y riesgos de las trabajadoras del mercado sexual. Defendiendo que hay más continuidad que dicotomía entre la fuerza y el consentimiento, se sugieren nociones matizadas de victimización y agencia. En relación con las ideas de la vulnerabilidad humana, tal como ha sido desarrollada por filósofos como Judith Butler, Adriana Cavarero, y Martha Fineman, se presenta una aproximación feminista a la prostitución, a la vez que se rechaza cualquier apelación a la ley penal contra el trabajo sexual adulto no coercitivo y se aboga por las políticas sociales que atienden a las necesidades materiales y simbólicas de las trabajadoras sexuales.

Keywords: consentimiento, feminismo, prostitución, políticas públicas, trabajo sexual, agencias de mujeres.

Prostitution has represented a major ideological and political target for feminism since the rise of historical abolitionism, yet it has turned into a bitterly divisive issue within contemporary feminist theory and politics. Over the past four decades, a plurality of women's voices has engaged in debates about the rights and wrongs of commercial sex, building on different analyses of patriarchal power and women's opportunities for liberation. However, two polarized perspectives emerge as the most prominent and popular in public discourses: one in which all forms of exchange of sex for money are described as sexual exploitation, and prostitution is viewed as a pillar of masculine domination, and thus as negatively affecting all women and gendered relations; and another according to which prostitution may be freely chosen and practiced as a form of work, and sex work may even be empowering for women.

These competing views imply different and oppositional visions of the subject of prostitution, and of the meaning of agency and consent, and form the basis of divergent policy options when it comes to regulating prostitution. Recent international debates, such as the controversy about Amnesty International's policy on sex workers' rights¹, and the public discussions accompanying law reforms in many European countries have seen differently articulated feminist concerns expressed by opposite factions and parties: feminists for the abolition of prostitution on one side; feminists for decriminalisation or legalisation, on the other.

This is of particular relevance in those countries, like Italy, where the abolitionist laws that decreed the closure of 19th century state brothels are still in force² and which – driven by public opinion concerned about the massive presence of street prostitution – are now at the crossroads of the two major political options in force in the European Union and the

¹ In Summer 2015, delegates from 80 countries voted in favour of Amnesty International's recommendation to decriminalise consensual sex work. Abolitionist groups and organisations, in particular the Coalition against Trafficking in Women (CATW), harshly contested this initiative, claiming that it would protect the exploiter, not the exploited, and launched a petition to Amnesty International board to reject the proposal, with Hollywood stars such as Meryl Streep, Kate Winslet, Emma Thompson and Lena Dunham among the signatories. Notwithstanding this controversy, the *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (POL 30/4062/2016) was published in 2016.

² Since the nineteenth century, abolitionists have fought for the repeal of vexatious regulations against prostitutes. Abolitionist regimes have liberalized the act of prostitution itself, while seeking to prosecute pimping, trafficking of women, the organization of indoor prostitution and its aiding and abetting. This is still the most widespread legislative model in the EU and EEA countries, and is currently in force in Bulgaria, the Czech Republic, Cyprus, Denmark, Estonia, Finland, Italy, Luxembourg, Poland, Portugal, Slovakia, Slovenia, United Kingdom, and – with variations allowing indoor prostitution – in Belgium and Spain.

European Economic Area: the Swedish or Nordic "neo-abolitionist" or "neo-prohibitionist" model on the one hand, and the Dutch, German or Swiss legalisation model on the other. The feminist debate in Europe has therefore important repercussions on the reform proposals discussed at the national level.

Many authors have criticized the polarisation of feminist views as overly simplistic given the complexity and diversity of sex work and the sex industry, attempting to fill in the gap between overabundant theorisations and the scarcity of empirical studies (Sanders, O'Neill, Pitcher, 2009; Bernstein, 1999; O'Connell Davidson, 1995, 1998, 2006; Scoular, 2004; Peng, 2005; Weitzer, 2009; Cavalieri, 2011). Feminist scholars have also analysed the main policy options stemming from these alternative perspectives – prohibition, abolition, legalisation – often finding that opposite policy models in different countries may affect the lives of sex workers in a similar way (Hubbard, Matthews, Scoular, 2008; Pitcher, Wijers, 2014), and even radically questioning the role of law in regulating the sex industry (Agustín, 2008; Scoular, 2010).

Nonetheless, few political theorists have attempted to progress beyond deconstructing the prevailing theoretical and political paradigms by developing a feminist theoretical approach with the potential to overcome the current theoretical and political polarisation and its shortcomings, and generate alternative policy responses.

In this paper, I analyse both the limitations and the strengths of these conflicting positions, arguing that the polarized nature of the dominant feminist approaches to prostitution – which are concerned above all with defending their respective theories on the issue – is theoretically unsatisfactory and may even reduce the potential for impactful feminist-inspired policies addressing the needs of those involved in the sex market. Consequently, I propose to move beyond the current alternatives, surpassing both the "prostitution as violence" and the "job like any other" paradigms, with a view to defining possible criteria for the formulation of public interventions in this field.

To this end, I reflect on the kind of subjecthood attributed to people doing sex work, deconstructing both the notion of passive victim that emerges from the analysis of radical feminism, and that of independent agent supported by liberal thinkers. Drawing on ideas of human vulnerability and dependency, such as those developed by Judith Butler, Adriana Cavarero, and Martha Fineman, I show that there is a continuum rather than a dichotomy between force and consent, and describe agency as inevitably deployed in social, economic, cultural and institutional contexts that both enable and constrain it, conditioning individual behaviours and ways of thinking.

I then present a feminist, intersectional, and context-sensitive approach to prostitution and outline a set of key principles that should underpin prostitution policies, from a gendered perspective that also encompasses non-female-to-male prostitution, which is for the most part excluded from feminist theorisation. These principles are designed to acknowledge the impact of gender oppression and yet assert women's ability to make meaningful choices; recognise sex work as economic activity, but reject neoliberal, *laissez-faire* approaches; affirm the need for protection, while shifting the focus from paternalistic legal prohibitions to equal rights, social support, and political recognition.

Focusing particularly on the Italian case, I will argue that a less law-based approach to the regulation of non-coerced adult sex work is to be preferred to either criminalisation or legalisation; and that depenalisation should nonetheless be combined with social interventions addressing sex workers' vulnerabilities.

1. Prostitution as oppression, sex work as choice

A number of umbrella terms have been used to describe and analyse the two most prominent feminist positions in the field of prostitution and sex work: “radical” versus “sex radical” feminism (Chapkis, 1997; Sutherland, 2004), reflecting the two perspectives' different interpretations of the political meaning of sexuality; socialist and liberal feminism (Shrage, 1994), reflecting different political readings of prostitution and sex work in relation to capitalism; “neo-abolitionist” and “non-abolitionist” feminism (Chuang, 2010), reflecting different ideas about the political goal for which women should fight. While these labels reflect a set of key arguments put forward by these two competing voices across different national and international settings, my contribution especially focuses on one crucial distinction between the two feminist discourses: their respective answers to the question “Can prostitution ever be a matter of choice?” I call the position for which the answer is no “dominance feminism”, and that answering yes “choice feminism.”

For dominance feminism, the exchange of sex for money is a form of violence and a crime against women, which is no different to rape except for the fact that it is paid for. For this reason, there can be no true consent to sex work, and it is impossible in practice to separate voluntary prostitution from trafficking and sexual exploitation. Prostitution in its many variants is also seen as a pillar of masculine domination, and therefore as indirectly affecting all women and all gendered relations. Catharine MacKinnon, Kathleen Barry, Sheila Jeffreys, Janice Raymond, and Melissa Farley may be viewed as paradigmatic voices for this discourse. More recently, dominance feminists such as Vednita Carter and Evelina Giobbe (2006) have focused on the role of intersecting axes of oppression in prostitution and trafficking for sexual purposes, thus supplementing radical feminist views with the insights of poststructuralism (Cavaliere, 2011).

The second position, that which I term “choice feminism”, recognises women's autonomous decisions in prostitution, calls for the separation of consensual sex work from trafficking and sexual exploitation, and views sex workers as deserving the same rights and liberties as other workers. This group includes liberal and libertarian theorists, like Wendy Chapkis, Martha Nussbaum, and Wendy McElroy. Poststructuralist thinkers such as Kamala Kempadoo, Jo Doezema, and the contributors to their seminal collection of essays *Global sex workers. Rights, Resistance and Redefinition* (1998), share this paradigm's reliance on ideas of individual self-determination and the rejection of State paternalism, but differ from liberal theorists in that they question the political distinction between forced and voluntary prostitution.

These competing positions imply different views of the subject of prostitution, espousing opposing concepts of sexual subordinate and sex worker (Scoular, 2004). In dominance feminism, “prostituted” women are depicted as sex slaves or sexual victims. They cannot be sex workers because they are reduced to sexual objects to be bought and sold (Jeffreys, 1997). Kathleen Barry describes women in prostitution as “interchangeable with the life-size plastic dolls complete with orifices for penetration and ejaculation sold in pornography shops” (Barry 1995: 35), and Melissa Farley as “objects that men masturbate into” (Farley, 2006: 107).

Counter to the objectification thesis are views depicting prostitutes as sex workers, as economic agents able to make meaningful choices, even under circumstances that influence or constrain their freedom. In this paradigm, sex work is viewed as a job that is not significantly different from other occupations involving interpersonal, emotional, and corporal skills; hence, it is not inconceivable for women to opt for it based on a rational decision-making process (Nussbaum, 1998). This implies opposing any form of moralism, and reclaiming women’s right to use their body in any peaceful manner they choose (McElroy, 2002), because the body is something one *has*, and selling sexual services is not selling the self, no more than in any other form of wage labour, especially when the latter involves the management of emotions (Chapkis, 1997).

The dichotomy of force versus consent is just as essential to the positions that represent all prostitution as violence, as to those that distinguish between voluntary and involuntary sex work practices, that is, between sexual agents and sexual victims. The notion of consent has crucially underpinned feminists’ approach to addressing the problem of sexual violence (Haag, 1999; Bourke, 2007) in the international arena. It has functioned as a liberal tool, feeding into a framework of “choice” and “coercion”, especially in the field of sexuality and reproduction, offering global feminism a language with which to pursue its human rights demands.

The same language was adopted in the earliest documents produced by the international sex workers’ movement to articulate their claims:

Combined with the ‘pro-choice’ abortion rhetoric familiar to a generation of feminists, the voluntary/forced model enabled sex workers and their feminist supporters to carve out a space in which certain sex workers could convincingly argue, using acceptable liberal feminist terms, for recognition of their liberal rights – as well as create a space for the ‘forced’ prostitute, denied her liberal right to ‘free choice’ of sexual contact and labour. (Doezema, 2013: 22).

Based on an analysis of decades of legal judgments where evidence of prostitution was presented, Barbara Sullivan (2007) argued that a key change was produced by feminist activism in the 1980s and 1990s when, for the first time, men began to be prosecuted and convicted for raping sex workers. This entailed the “re-making” of sex workers in law as women vulnerable to rape, as individuals able to give and withhold sexual consent.

For choice feminists, consent is thus the factor that distinguishes sex work from trafficking, sexual exploitation, and sexual and gender-based violence. The discourse of choice

is centred on individual agency and is consistent with the liberal notion of individual self-sovereignty (Schwarzenbach, 1991; Shrage, 1996; Nussbaum, 1999), whereby women are capable of acting rationally and making meaningful choices, provided that they have been informed or are aware of all the salient circumstances, and have not been constrained by anybody. Rational choice, rather than the context in which it is exercised, is what counts from this perspective (Spector, 2006).

“Reality is”, wrote Wendy McElroy, who defines herself an individualist feminist, “that any choice is made in the presence of a limited number of alternatives. This is a good reason to increase the choices available to women and not a ground to subtract them the ability to choose. You cannot make a woman more free by shrinking choices” (McElroy, 2002: 36). In this author’s view, the first principle to be asserted is self-ownership, and this may be expressed in the conclusion of valid contracts, including in the case of prostitution.

In contrast, dominance feminists claim that prostitutes’ consenting to paid sex is nothing but a fiction or a myth, because what they do (at best) is “choose” a series of sexual acts that have been defined by patriarchal power dynamics and market forces, and entirely shaped by their clients’ power and desires (Pateman, 1988). And “consenting to sexual acts defined by patriarchy and by the market is more of a survival strategy than any real sexual agency in which women can choose the terms of their sexual encounters” (Jean, 2015: 54).

Many analyses reject the very possibility of distinguishing between voluntary and forced prostitution: “When the human being is reduced to a body, objectified to sexually service another, whether or not there is consent, violation of the human being has taken place” (Barry, 1995: 23). However, rather than logically impossible, consent is more often represented as empirically non-existent or negligible: “Only a tiny percentage of all women in prostitution are there because they freely choose it”, writes Melissa Farley:

For most, prostitution is not a real choice because physical safety, equal power with buyers, and real alternatives don’t exist. These are the conditions that would permit genuine consent. Most of the 1% who choose prostitution are privileged because of their ethnicity and class and they have escape options. Poor women and women of color don’t have these options. (Farley, 2013).

Although statements of this kind are common currency in the abolitionist literature, they are seldom corroborated by reliable statistics (Weitzer, 2010).

It follows that abolitionist organizations’ main criticisms of sex workers’ movements is that they only represent a privileged minority of self-determined women, men, and transgender individuals, leaving out the vast majority of sex workers who are actually victims³. The counteraccusation made by sex worker organizations and choice feminists

³ See also Vendita Carter and Evelina Giobbe who criticize the international sex workers’ rights movement for “the way in which a hierarchy built on race and class privilege informs its ideology. The overwhelmingly white leadership of this well-funded movement is comprised of academics and attorneys who don’t have to do sex work, and middle-aged former sex workers who no longer do sex work” (2006: 31).

is that the abolitionist front tends to generalize to the whole sex market the experience of the most exploited segment.

2. Fallacious polarisations

I view the current polarization of feminist perspectives and political approaches, based on rigid dichotomies of force and consent, victim and agent, as unsatisfactory in theory and dangerous in practice. From a theoretical perspective, dominance feminism tends to overemphasise the pervasiveness of male power, turning consent into a pure farce that is perpetrated by and for the benefit of men and part of the rationalisation and normalisation of sexually abusing women. Hence, this paradigm wholly misrecognizes the agency of women in prostitution.

In this regard, the dominance view is challenged by sex workers' narratives and empirical accounts describing sex work as a "a constellation of occupational arrangements, power relations, and worker experiences" (Weitzer, 2010: 26). Hence, sociologist Ronald Weitzer has proposed moving beyond the polarisation of structural oppression vs. individual empowerment, and embracing an alternative perspective that he terms the "polymorphous paradigm", which is sensitive to complexity and to the structural conditions shaping the uneven distribution of agency, subordination, and job satisfaction. A paradigm that is also sensitive to the plurality of subjectivities involved, and thus cannot be reduced to the sole situations of women selling sex to men, given that both "supply" and "demand" sides of the sex market are populated by women, men and transgender individuals.

The subject-as-victim has been deconstructed by empirical studies showing that sex workers contest some feminist assumptions about their sexual subalternity, and challenge – especially in the Global South – the neo-colonialist discourses informing country-level and international anti-trafficking strategies (Kempadoo, Doezema, 1998; Kapur, 2001; Agustín, 2007).

The dominance paradigm may also be criticized from a strictly theoretical perspective, with some scholars claiming for example that "by over-determining gendered power-dynamics [...] domination theory simply essentializes and fails to move outside the phallocentric imaginary" (Scoular, 2004: 345). The condition of women in prostitution is fixed in the position of sexual subordination, and this reinforces rather than counters myths and norms of the sex industry that frame women as powerless and at the mercy of men (Shrage, 1994). Indeed, accounts of the objectification of women that reduce prostitutes to an image of mere orifices or holes effectively deprive the prostitute of any residual humanity, to the point that she "not only lacks – consent, will, desire – she *is* lack" (Doezema, 2013: 137).

A further possible criticism is that dominance feminism, by focusing exclusively on gender and sexuality, tend to neglect the important roles of class, ethnicity, geography, and culture (Zatz, 1997; O'Connell Davidson, 2002; Scoular, 2004).

Standing in opposition to the dominance view, we find liberal conceptions of autonomous choice and consent, which concentrate on the individual, and warn against possible

constraints to individual freedom such as paternalism, authoritarian coercion, manipulation or force. However, such approaches tend to disregard or underrate the influence of context in constructing both the life experience of individuals, and their rationality. In a world where many women and girls “elect” to prostitute themselves rather than join the female workforce earning poverty-level wages, we may say that, quoting Julia O’Connell Davidson,

to describe such individuals as exercising rights of self-sovereignty seems as spurious as stating that their prostitution represents a violation of their right to dignity. There is no dignity in poverty, which denies the person full powers of agency. Yet the right to sell one’s labor (sexual or otherwise) does not guarantee the restitution of dignity or moral agency. (O’Connell Davidson, 2002: 94).

In keeping with O’Connell Davidson (1995; 1998; 2002), other authors have pointed out the impact of material structures and resources on the subject’s capacity for self-determinacy, offering accounts of sex workers’ agency that avoid romanticised or purely ideological representations of sex work as self-expression or sexual liberation. Good examples include Maggie O’Neill’s *Prostitution and Feminism* (2001), Jo Phoenix’s *Making Sense of Prostitution* (1999), and *Prostitution: Sex Work, Policy and Politics* by Teela Sanders, Maggie O’Neill, and Jane Pitcher (2009).

In sum, while dominance feminism, “through its monolithic conflation of voluntary and involuntary sex work and its refusal to consider the dissenting views of individual women, [...] obliterates the possibility of sexual labor serving any kind of liberatory purpose in the lives of women”, liberal feminists “cannot offer a rich account of the societal structures and pressures that shape women’s experience in the public labor market” (Cavalieri, 2011: 1445). In other words, the former fails the individual woman, the second hides the systematized nature of women’s oppression along axes of gender, nationality, ethnicity, and class.

From a political point of view, each of these two competing feminist perspectives on prostitution and sex work implies a risk of its own. On the one hand, if we reject any scope for agency, the subjects of prostitution are made to disappear, subsumed by an indistinct condition of victimhood, thereby opening the door to paternalistic policies. On the other hand, if we abstract sex work from specific contexts, and specific conditions of gender, class, and race inequality, we end up burdening the individual with sole responsibility for the situation in which she/he lives, following a neoliberal ideology that lays down the norm of self-sufficiency and dismisses the need for social protection (Brown, 2015; Butler, 2015).

3. From polarised theory to polarised policy

The fracture produced by this harsh debate within feminist thinking and politics is reflected in the strong polarization of policy approaches inspired by one or the other position, especially in a European scenario where, since the turn of the century, the traditional

alternation between tolerance and abolition has given way to more complex legislative options.⁴ “There are clear differences among countries in terms of the relative weights of these two positions in the prostitution discourse. In Europe, feminists in Germany and the Netherlands clearly favour the sex-work view, whereas Swedish feminists are generally found at the other end of the spectrum” (Jakobsson, Kotsadam, 2013: 6).

Dominance feminism inspires the work of organisations and parties who believe that prostitution should be treated as a form of violence against women, protecting prostitutes as victims – no matter how self-determined they say they are – and punishing those held responsible for their victimisation – clients and third parties. Gradually emancipated from its radical origins, since the 1990s the condemning of prostitution as male violence “began to have great international resonance and was embraced as a stand-alone analysis by a number of women who were part of governmental and international institutions where gender equality is a priority” (Garofalo Geymonat, 2014: 48). Sweden in 1999, followed by Norway, Iceland, and more recently by France and Ireland, adopted a law aimed at eradicating sexual commerce through the criminalisation of demand. This policy model is often termed “neo-abolitionist”, because it is a new version of the traditional abolitionist fight against brothels and forms of regulation, or “neo-prohibitionist”, because in practice it turns the exchange of money for sex into a crime.

In 2014, the European Parliament voted in favour of resolution 2013/2103(INI), proposed by the Committee on Women's Rights and Gender Equality (FEMM), which defines prostitution as “a form of slavery incompatible with human dignity and fundamental human rights” and supports adoption of the “Swedish model” throughout the European Union. This initiative was overtly supported by the European Women’s Lobby, whose campaign “Together for a Europe Free from Prostitution” is based on the assumption that the: “prostitution of women and girls constitutes a fundamental violation of women’s human rights, a serious form of male violence against women, and a key obstacle to equality between women and men in our societies.” Hence, it is reasonable to state that overall “there has been somewhat of an ‘Europeanization’ of the criminalization of prostitution” (Sanders, Campbell, 2014: 538).

The neo-prohibitionist feminists’ fight against prostitution is often criticised for ignoring the voices of sex workers and the negative effects that criminalisation produces on their lives. However, the main actors in this effort include the so-called “survivors”, who have directly witnessed the violence and abuse that occurs during prostitution, and join organisations such as *SPACE International*, founded in 2012 by former “prostituted women” Rachel Moran and Justine Reilly as a vehicle for speaking out against prostitution in the public arena.

⁴ Public interest in prostitution has historically focused on the supply side of the sex market, so that classical models of prostitution policy – prohibitionism, regulamentarism, abolitionism – differ with respect to two main dimensions: the legal possibility to exercise prostitution, and moral condemnation of the prostitute. In recent years, political thinking and public debate have been leading national policy-making and country-level debates in the direction of a transformation of policies into open repression (including the “neoprohibitionist” criminalisation of the client), or towards legislating for the exchange of sex for money, via regulations that, unlike those of the 19th century, try not to be punitive towards prostitutes but to protect them by giving their profession the status of a real job (“neoregulationist models”). For an exhaustive picture see Danna (2014).

Nonetheless, studies carried out in Sweden and other neo-prohibitionist countries over the past decade have brought to light the controversial effects of the client-only criminalisation model (Hubbard, Matthew, Scoular, 2008; Danna, 2012; Levy, Jacobsson, 2014; Pitcher, Wijers, 2014; Garofalo Geymonat, 2014; Mai, 2016; Amnesty International, 2016). According to this research, targeting the demand for sexual services has produced, rather than the decline or disappearance of prostitution, the shift of the sex trade to less visible (indoor) places, along with diminished access to health, social and legal services for prostitutes, spatial isolation, and greater exposure to violence.

Besides its negative spill-over effects in practice, one of the most critical aspects of the neo-prohibitionist perspective lies in its increasing embrace of police repression and criminal justice as appropriate and effective tools for promoting women's liberation. Such recourse to the State for the enactment of criminal measures has been interpreted by Elizabeth Bernstein (2012) as part of a "carceral turn" in feminist movements, where protection and repression go hand in hand, with the risk of exacerbating paternalistic responses and endangering women's self-determination. It follows that such movements may easily find allies among right-wing and religious conservative subjects, mostly unsupportive of progress towards women's control over their bodies (O'Connell Davidson, 2003; Bernstein, 2007; Campbell, Zimmerman 2014; Ellison, 2015).

Alliances with subjects that would usually be viewed as "enemies" of feminism and other progressive social movements cannot be reduced to irrelevant side-effects of neo-prohibitionist discourses, but rather should be viewed as a logical consequence of framing the problem in terms of deviance and crime (Serughetti, 2016a).

In the European debate on prostitution policy, neo-prohibitionism is commonly seen as alternative to the neo-regulationist model in force in the Netherlands, Germany, and Switzerland, in which the prefix "neo" signifies the reform of classical regulation (brothel systems that were punitive towards prostitutes) and the recognition of sex workers' civil and social rights. In this case, laws decriminalising and regulating the sex market are usually underpinned by a morally neutral or even negative view of prostitution as a social phenomenon, yet rather than trying to suppress it, they aim to regulate the business, prevent and contrast trafficking for sexual exploitation, and pursue related aims such as the reduction of illegality, and the promotion of public health and public order. Here the State is not called on to save prostitutes as victims, but only to ensure that no one is in the sex market against his or her will, and that those who voluntarily work in this sector enjoy health coverage and social security, and pay taxes on their earnings. This approach is therefore based on both recognition of the distinction between forced prostitution and voluntary sex work, and a liberal view defending the validity of contracts regulating the exchange of sex for money and connected forms of employment and service provision.

This kind of prostitution reform in the Netherlands (2000) and in Germany (2002) received key support from feminists emphasizing women's sexual self-determination over sexual abuse, favouring individual choice and claiming that sex work should be treated as a normal job (Dodillet, 2004; Outshoorn, 2012; Jakobsson, Kotsadam, 2013). Choice feminism may thus be seen as not only inspiring advocates for sex workers' rights,

who criticize neo-prohibitionist interventions as paternalistic and disempowering, and call for the total decriminalisation of sex work between consenting adults⁵, but also as informing state policies of regulating this sector by means of special provisions. As stated by Jo Doezema,

sex worker rights movements and supporters – including myself – can perhaps be accused of the same wilful blindness [*as neo-prohibitionist feminists*, editor's note] when it comes to the policy implications of our position. When policies are adopted – by states, NGOs or international bodies – that recognize the difference between forced and voluntary prostitution, their implementation, if not their intent, has been to lend support to regulationist effects. (Doezema, 2013: 23).

This model too has received much criticism, and not solely from activists and scholars arguing that legalising prostitution leads to normalising violence against women and sexual exploitation (Raymond, 2004, Jeffreys, 2003) or to increasing sex trafficking (Cho, 2013; Jakobsson, Kotsadam, 2013; Cho, Dreher, Neumayer, 2013)⁶. Indeed, the implementation of neo-regulationist frameworks has not led, as expected, to the formation of a population of professional sex workers, duly registered and legally employed, paying taxes and enjoying social security, alongside the detection of clear-cut situations of forced prostitution. Rather, a growing corpus of empirical research and official reports shows that in the Netherlands, sex workers are mostly self-employed, and yet in practice are “not really free to decide about their working hours, clothing, payment method and charges” (Pitcher, Wijers, 2014: 555); while in Switzerland, “cases of fictitious independence cannot be excluded” (Swiss Federal Council, 2015: 21); in Germany, the unclear status of sex work within the legal framework for self-employment deprives prostitutes of effective social protection (German Federal Ministry for Family Affairs, 2014). In the Netherlands, legally operating as a sex worker outside the brothel system – from home or through escort agencies – has become increasingly difficult (Outshoorn, 2012; Pitcher, Wijers, 2014), and will become even more so in Germany, where the prostitutes protection law (Prost-SchG) passed by the federal parliament in 2016 has further tightened the regulation of sex work, imposing mandatory licensing for all brothels, and registration/ID and compulsory psychological counselling for all sex workers⁷.

Moreover, under regulationist laws, sex workers who are not EU citizens are in practice forced to work on the illegal sex market, because none of the countries where prostitution is legal grant residence permits for sex work, and those who already hold a residence permit for other reasons (study, work, or family reunification) are likely to lose it if found to work in the sex industry (Garofalo Geymonat, 2014).

⁵ See for instance the *World Charter for Prostitutes' Rights* (1985), and the *Manifesto on the Rights of Sex Workers in Europe* (2005).

⁶ However, the persistent ambiguity surrounding trafficking data and the politicization of statistics suggest the need for particular caution and scrutiny in this field (Weitzer, 2010; O'Brien 2011).

⁷ Bills providing for stricter regulation of prostitution have also been debated in the Netherlands in recent years (Outshoorn, 2012).

Individual country contexts require a more detailed discussion than I can offer in this article, but in general terms I am inclined to argue that the two main competing policy models in Europe both fail to satisfactorily regulate this sector because they are fallacious in terms of the conceptualisation and representation of the subject they are intended to benefit. And yet, they act as key points of reference, informing the ongoing debate in all European countries where reform of the regulatory framework surrounding prostitution is on the political agenda.

In Italy, the abolitionist law in force since 1958⁸, under which individual acts of prostitution are lawful but brothel keeping, pimping, and aiding and abetting are forbidden, has been under debate since the 1980s, both within feminism and in the broader public arena. With the increase in migration inflows and rise in street prostitution, many political observers have begun to highlight the inadequacy of the regulatory framework, especially its inability to address the perceived insecurity of citizens and the problems of trafficking and sexual exploitation of women and children (Danna, 2001; Crowhurst, 2012). On the one hand, traditional abolitionism is accused of causing the spread of sexual trade in public spaces, to the detriment of public order, health and safety; on the other, by tolerating the selling and buying of commercial sex, it is viewed as insufficient to cope with what is described as a new form of slavery.

The result is that dozens of bills have been proposed over the past four decades, twenty by the last parliament alone (2013-2018), most of which have been inspired by the two main models currently in force in Europe: legalisation and neo-prohibitionism. In this context, feminist discourse has played a growing role in the Italian public debate, especially in advocating for the so-called Swedish model.

However, it is precisely the situation of countries at the crossroads between the most prevalent legislative options that may stimulate the search for alternative feminist policy approaches that are not as flawed, either theoretically or politically, as those currently dominating the European debate. Provided, of course, that it is possible to give an affirmative answer to the question: should the reform of prostitution law and policy be of interest to feminist politics and thinking?

4. What's law got to do with it?

It has been observed that apparently diametrically opposed legal regimes in fact share many similarities, especially in terms of the impact they produce (Hubbard, Matthews, Scoular, 2008; Scoular, Wijers, 2014). Neo-liberal roots may, for example, also be traced in neo-abolitionist or neo-prohibitionist attempts to eradicate prostitution by setting out programmes that bind support and social benefits to conditions such as the person accepting the status of victim and adhering to exit programs, so that those who do not meet expectations are held responsible for the consequences of exercising their activity

⁸ Law No 75, 20 February 1958, known as the "Merlin Law".

(Scoular, O'Neill, 2007; Bernstein, 2012). This is especially obvious in policies designed to fight street sex work.

The neo-liberal agenda bifurcates control by offering social inclusion to those who responsibly exit and 'resume' normal lifestyles and continued exclusion to those who remain involved in street sex work, and who are constructed and reproduced in law as anti-social. [...] The outcome for those who do not responsibly exit involves further criminalization and marginalization. (Scoular, O'Neill, 2007: 765).

Ultimately, legal approaches as various as neo-prohibitionism in Sweden, neo-regulationism in the Netherlands, or abolitionism in the United Kingdom or Italy, concentrate most of their efforts on eradicating or relocating street prostitution, banishing it beyond the boundaries of "respectable" or "decorous" spaces, and thus removing it from the protection of the state and the law (Scoular, O'Neill, 2007; Hubbard, Matthews, Scoular, 2008; Crowhurst, 2012; Pitch, 2013).

The fact that different legislative models produce similar effects in terms of the social exclusion of sex workers has led anthropologist Laura Agustín to criticize the illusion – typical of Enlightenment culture – that pursuing the most "rational" or "just" reform is possible. Legal frameworks, she has suggested, have virtually no influence at all on the development and organization of commercial sex, which takes place predominantly "outside and against the law" (Agustín, 2008: 75). Law and debates on the best form of regulation for prostitution, from this perspective, bear merely symbolic value.

Jane Scoular counters that such a position is fundamentally flawed because it is underpinned by a sovereign/juridical and liberal view of the power of law, and ignores the ways in which legal power operates in the neo-liberal governance of lives. Following Foucault, the author upholds the productivity of the norm: "power acts through normative discourses (including law) to produce subjects as effects of power and to 'structure the[ir] possible field of action' in ways that so often align with wider social structures." (Scoular, 2010: 28).

According to Scoular, the role of law in controlling and structuring the sex market may be observed in both licensing (regulationist) and exiting (abolitionist) systems, through: the *normalization* of particular forms of citizenship and sexual activity that enhance a broader structure of consumption, constructing those who cannot meet these restricted norms as "deviant"; the *authorisation* of a number of quasi-legal forums (John schools⁹, exiting programmes, rehabilitation schemes, and licensing boards) and techniques (anti-social behaviour orders, fines, rehabilitation orders, licenses) extending the number of regulatory agents that can exercise normalizing power; the forms of *subjectification* ("both licensing and exiting operate to encourage subjects to perform as 'self-governing, rational actors' required by the wider context of neo-liberalism and to identify those who cannot self-manage or who resist normalization in order that they be excluded"); functional *spatialization* marking "certain conduct as desirable/undesirable, legitimate/illegitimate, according to its place" (Scoular, 2010: 30-36).

⁹ John schools are forms of educational intervention aimed at clients of prostitution. Their attendance can be part of rehabilitation programs for people arrested for soliciting prostitutes, and in some jurisdictions, may be prescribed as an alternative to criminal prosecution.

The law therefore matters, although not in the sense imagined by a certain "enlightened" view of relationships between the legal and social domains. This perspective, which I share, opens up the possibility of acting through the law to create change. However, it should not give rise to "unrealistic expectations about the elimination of trafficking and other abuses by a sole change of law" (Scoular, Wijers, 2014: 559), but should also look to the broader system of social and economic policies, whose purpose goes beyond controlling or regulating prostitution, but which a crucial role in its organisation.

Indeed, it is crucial to note that no legislative framework on prostitution can alone ensure a shift towards full recognition of the human rights of those involved. This is not because, as Laura Agustín claims, law is irrelevant, but because sex work is linked to several other social and political dimensions, such as migration, management of the economy, and welfare, such that "national governments are heavily implicated in the construction of the prostitution labour market through their (often gender discriminatory) policies on immigration and asylum, employment, economic development, welfare, education and so on" (O'Connell Davidson, 2003: 60).

Many problems commonly associated with prostitution, such as exploitation, or sexism, may require other broader structural interventions aimed at reducing inequalities based on gender, class, race, nationality, and focused on the intersection of all these dimensions.

Thus, in order to proceed towards a more satisfactory approach to prostitution policy, we need to reconceptualise the subject of prostitution (Scoular, 2004) as inevitably acting within a context of structural inequality based on gender, class, race, nationality, and ability that impinges on the options concretely available to individuals, and consequently to rethink the related ideas of consent and agency.

5. Rethinking consent

The notion of consent, which underpins the distinction between voluntary and forced prostitution, has been identified as problematic since the 1990s, both in the feminist discourse on prostitution, and in debates surrounding the drafting of international legislation against trafficking in persons for the purpose of sexual exploitation.

Jo Doezema (2013) spoke of "consent wars" in relation to UN negotiations on the Protocol on Trafficking in Persons¹⁰, during which abolitionist organizations (particularly the Coalition Against Trafficking in Women, CATW) pushed to link trafficking with prostitution, while the Human Rights Law Group (IHLRG), the Global Alliance Against Trafficking in Women (GAATW) and the Asian Women's Human Rights Council (AWHRC) worked to keep the two problems separate, claiming that the fight against trafficking and forced prostitution should go hand in hand with respect for the self-determination of adult subjects who voluntarily exercise prostitution. Sex workers (under the umbrella of the Net-

¹⁰ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Adopted by General Assembly resolution 55/25 of 15 November 2000.

work of Sex Worker Projects, NSW) also highlighted the risk that the fight against trafficking could have a negative impact on the lives of those engaging in sex work, but their voice was not heard in the negotiations.

In the end, the two leading contenders were both able to boast victory. In the text of the Trafficking Protocol, approved in Palermo in 2000, the only reference to prostitution is contained in the formula "exploitation of prostitution of others", while the definition of trafficking specifies that "the consent of a victim of trafficking in persons to the intended exploitation" is to be considered "irrelevant" if any form of coercion is used against her (or him). The Human Rights Caucus therefore emerged from the negotiations with the outcome of having had "the difference between forced (or involuntary) and voluntary adult participation in sex work" recognized (Ann Jordan in Doezema, 2013: 154-155). The abolitionist front expressed satisfaction for "a definition [of trafficking] that protected all victims of trafficking and that was not limited to force or coercion" (Janice Raymond in Ibid., 155). Indeed, the compromise reached in the final text treats all people who are subject to exploitation as victims, whether or not they were "consensual", while preserving the distinction between trafficking and voluntary prostitution. However, as Jo Doezema writes,

the definition of trafficking thus leaves 'room' for sex workers to exist only outside of the protected space carved out for trafficking victims. [...] The sex worker is banished to the margins of the text, left to a precarious existence without the cover of international law. In distinguishing between 'trafficking' and 'voluntary prostitution' through the qualifier of 'consent', the Trafficking Protocol offers nothing to sex workers whose human rights are abused, but who fall outside the narrowly constructed category of 'trafficking victim'. (Doezema, 2013: 167).

According to sex workers' movements and many critical studies on prostitution, the dichotomy of free and forced prostitution is pernicious to the extent that it "has the effect of legitimizing state intervention only in cases of 'violated innocence', putting under the carpet the question of defending prostitutes' rights" (Danna, 2004: 64). In addition, it "fails to capture the complicated dynamics and power relationships that pervade the working life of a prostitute" (Peng, 2005: 43).

Lacking here is not only the understanding that a subject's actions are always conditioned to varying degrees, but also the recognition that sex work in particular, due to the special precariousness of the lives involved – especially when it comes to migrant women or members of ethnic minorities, poor people, drug addicts, disabled people, and the gender non-conforming –, may be chosen initially, and yet become a practice one can hardly get out of, or not be chosen initially, and yet become a rational choice as compared with other less desirable options (Agustín, 2007; Cavalieri, 2011; Mai, 2016).

Amnesty International also manifests its awareness of the risks of the force-consent dichotomy when, in its *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (2016), while focusing on consent as the factor that allows sex work to be distinguished from trafficking, sexual exploitation and violence, declares

that consent is itself difficult to define. In the absence of a "clear definition of consent in international law", the document speaks of "voluntary and ongoing agreement to engage in a particular sexual activity", which is certainly conditioned, but not cancelled, by situations of poverty and marginalization. If this agreement is not or no longer there, we are no longer in the field of sex work but in that of rape and sexual violence. However, Amnesty International acknowledges that "consent analysis is necessarily fact- and context-specific and the views, perspectives and experiences of individuals selling sex should be prioritized in any consideration of issues related to consent." What happens all too often is that, on the contrary, law enforcement agencies, institutions, and clients claim the right to presume consent or its absence on the basis of stereotypes such as "sex workers always consent to sex" or, conversely, that "sex workers can never consent to sex." This, says the NGO, inevitably leads to violations of human rights, in particular sex workers' rights to security, access to justice and protection by law.

Hence, Amnesty International points to a possible way out of the impasses generated by the conflict between neo-prohibitionist positions denying any possible consent in prostitution and the pro-sex work who insist on the value of "free choice." Consent may indeed be taken as a marker discriminating between work and exploitation, provided that its interpretation is context-sensitive, based on the subject's own perspective, and valid in respect of all specific acts or sexual performances.

As Pamela Haag (1999) explains, the abstract concept of consent becomes intelligible only in a specific situated context, in that the power relations influencing the agency of a subject also produce the meaning that in all contexts is attributed to ideas of "choice" or "constraint." Understanding the way in which structures of "symbolic domination" (whether ethnic, gender, cultural or linguistic, etc.) operate "below the level of the decisions of consciousness and the controls of the will" is essential, argues Bourdieu, if we are to "move beyond the forced choice between constraint (by forces) and consent (to reasons), between mechanical coercion and voluntary, free, deliberate, even calculated submission" to the domain itself (Bourdieu, 2001: 37). However, I am personally inclined to view as equally essential the possibility of slippages, erosion, transformation, and resistance to power structures, even on the part of subaltern subjects (Ortner, 1996) and subjects in conditions of vulnerability, precariousness, and exposure to violence (Butler, Gambetti, Sabsay, 2016).

From this perspective, force and consent may be seen, rather than as clearly distinct polarities, as closely co-implicated conditions of agency. As a result, "voluntary prostitution" and "forced prostitution" may be treated, not as elements of a dichotomy, but as "a continuum that involves different and fluid extensions of force and consent" (Peng, 2005: 32).

The main issue with both the dominance and the liberal approaches, is that they measure the "voluntariness" of choice in prostitution according to an abstract ideal of freedom, so as to deny the existence of choice, or to affirm it. Measuring "voluntariness" on the basis of an abstract ideal of freedom, however, poses a twofold risk. On the one hand, when every possibility of agency for women in the sex industry is disregarded, individual situations are made to disappear into an indistinct state of victimhood, favouring pater-

nalistic approaches to gender justice (Serughetti, 2016a). On the other hand, abstracting from the actual conditions (structural gender, class, and race inequality) in which the choices mature, ends up making individuals the sole parties responsible for their situation, and even for the violence and oppression they suffer. This danger is especially salient in an era dominated by neoliberal ideology, which establishes the norm of self-sufficiency as an ideal that everyone is expected to accomplish for and by themselves, while erasing all supports, protections, and means that would actually allow this to happen.

6. Beyond the victimhood/agency dichotomy

To move beyond the fallacious dichotomies of forced vs. voluntary and victimhood vs. agency, we need to challenge the persistent influence of the idea of the individual subject – as rational, autonomous, and self-sovereign, in all theoretical, practical, and political domains – inherited from modern Western philosophy. This cultural legacy has been radically questioned by prominent voices in feminism, who reject both the nature of the self and the value of autonomy implicit in it as fashioned upon men and abstracted from the social relations in which actual agents are embedded.

It is worth recalling the work of Italian philosopher Adriana Cavarero, who proposed an alternative vision of the subject, shifting from the autonomous self-sufficient subject modelled on the Cartesian cogito and Kantian reason towards "a subjectivity structurally characterized by exposure and dependence", and from the assertion of a separate subjectivity to an "open and relational subjectivity", whereby "the postulated integrity of the free and rational subject, free of all constraints, gives way to an original and structural vulnerability" (Cavarero, 2014: 170). The experience of dependence, exposure, and vulnerability is core to the human condition.

From a different theoretical perspective, equally critical of the autonomous and self-centred subject, Judith Butler suggests that the very possibility of being human is based on the subject's constitutive relationality and vulnerability (Butler, 2004: 20). She also points to the social and political, and not only ontological, dimension of vulnerability: "As much as 'vulnerability' can be affirmed as an existential condition, since we are all subject to accidents, illness, and attacks that can expunge our lives quite quickly, it is also a socially induced condition, which accounts for the disproportionate exposure to suffering, especially among those broadly called the precariat for whom shelter, food, and medical care is often quite drastically limited" (Butler, 2016: 25).

This, however, in Butler's view, should not lead to forms of paternalism that lock groups identified as "vulnerable" into a political position of impotence and lack of agency; for the two constructs are not mutually exclusive, but rather interdependent: vulnerability and agency are to be understood as elements that coexist in the human condition (Butler, 2015, 2016).

Similarly, Martha Fineman (2008, 2010) emphasizes both the universal and particular nature of vulnerability because this condition is not only intrinsic to every human be-

ing, but also produced by the unequal distribution of privilege among different groups of individuals, and within individual groups. To this end, an intersectional approach is required to explore the “systems of power and privilege that interact to produce webs of advantages and disadvantages” (Fineman, 2008: 16). Fineman has further theorized that recognizing human vulnerability strongly invokes the responsibility of the State, not only in relation to producing this condition, but also for addressing and mitigating it through its institutions (Fineman, 2010).

Sex workers are widely recognised as vulnerable subjects who are particularly affected by unequal allocation of resources and social power among groups and individuals in society. And yet, the notion of vulnerability discussed so far suggests that we may conceptualize it not as the opposite of agency in subjects, but rather as an ineliminable part of agency. This also leads to a different view of what is meant by free action, in a context of relations of power and dependence that affect subjects’ behaviours and cognitive patterns.

A relational notion of the subject rules out both excessively individualist tendencies and victimologies arising from dominance theories. While choice feminism separates individual autonomy from its material and symbolic contexts, disregarding gendered discourses of power in society, dominance feminism describes women as subject to the systemic oppression of patriarchal power, especially in the sexual domain, and conceives social, cultural, and political structures as impediments to women’s autonomy. Yet, if women’s autonomy is a “fiction perpetrated by and for the benefit of men and as part of a vocabulary by which women’s sexual use can be rationalized and normalized, or minimized and made exceptional in its more violent manifestations”, then no room is left for recognizing “meaningful women’s agency” (Reynolds, 2015: 208-209).

In challenging the existence of a separate and abstract autonomy, the notion of the relational subject allows for an understanding of agency as inevitably deployed in social, economic, cultural and institutional contexts that both enable and constrain it, conditioning individual behaviours as well as ways of thinking. This means that, while there is no such thing as absolute individual freedom, women may be said to have agency, albeit within highly constraining power structures (Kandiyoti, 1988; Ortner, 1996; Narayan, 2002).

Feminist perspectives generally categorized as post-structuralist (Cavaliere, 2011) challenge the dichotomies of “victim” and “worker”, “exploitation” and “choice” as an inadequate rendering of the complex dynamics of power and resistance, reconceptualising agency and subjectivity from a non-abstract, historicized and situated perspective.

A non-individualist and non-essentialistic understanding of women’s agency reaffirms the crucial importance of the social and cultural contexts in which gender relationships are enacted.

Agency contains within it the aspiration for the conditions for free choice and self-governance described by autonomy, but recognizes the particular contingencies and constraints of agent and context that material conditions of social and cultural conjuncture bring. Agents are both self-constituting, but at the same time constituted by the context and conjuncture within which they are set, and this contradictory duality in ‘making’ and ‘remaking’

the agent creates a constant and continuous tension between agent and context. There is no abstraction from context, no prefiguration, and so no understanding outside of women in their worlds. (Reynolds, 2015: 200).

From this perspective, rigid distinctions among sex workers, such as those associating prostitutes from developing countries with passivity, innocence and manipulation, and those from Western countries with independence and self-awareness, are represented as false and misleading. Explorations of situated subjectivities, desires, needs, and personal experiences allow the identification of "sites of transformative practices within the context of both structural constraints and dominant relations of power in the global sex industry" (Kempadoo, 1998: 8). Indeed, post-colonial accounts of prostitution show that, under circumstances that are context- and agent-sensitive, a sex worker may situate herself as a resistive subject:

The sex worker challenges imperialist constructions of the sexual subject in the Third World as an abject subject, impoverished and victimized. [...] She situates herself as a resistive subject, challenging "patriarchal" control within the family and marriage as well as a subject who exercises economic choices and social mobility. She is claiming her human rights by organizing and demanding that her interests be accommodated on her terms. (Kapur, 2001: 880).

This may equally be affirmed regarding the experiences of migrant sex workers in the global North: in his study on Nigerian sex workers in France, Nicola Mai deconstructs, alongside the notion of "free choice", that of "exploitation", by calling for both categories to be interpreted and articulated in light of the priorities and needs that emerge from the precarious and marginalized lives of migrant people. He shows that in the experience of these women, "being free and agentic" can mean "being able to leave home and endure a higher but bounded degree of suffering in order to alleviate the suffering of her family, not the absolute absence of suffering promised by the sexual humanitarian neoliberal utopia" (Mai, 2016).

Feminist theorists are thus invited to consider the exchange of sex for money in terms of its situatedness, without attempting to produce a universal understanding of the phenomenon, given that it is shaped by social, economic and cultural factors "with law, money and sex playing key structuring roles" (Scoular, 2004: 352).

7. A feminist, intersectional, context-sensitive approach

How may we recognise and respect sex workers' agency, while protecting their vulnerability and challenging the structures of gender power?

I propose an approach to designing public laws and policies on prostitution that qualifies as feminist, intersectional, and context-sensitive. It is feminist, in that it treats prostitution as a practice linked to structures of gender power. According to anthropologist Paola Tabet, prostitution is a form of asymmetric exchange and a function of the "rules on property in women", hence "a discourse on and of male power, however diverse

this power is in its expressions and forms in various societies" (Tabet, 1994: 33-34). This means placing gender inequalities in access to economic, but also social, political, and cultural resources, at the root of supply and demand in commercial sex.

However, unlike other theoretical approaches that fail to acknowledge the plurality of subjects and relationships within the sex market (ignoring the possibility of different forms of exchange, and the presence of men and transgender individuals among sex workers, and of women among sex buyers), the approach I propose qualifies as intersectional because it takes into account the impact of a plurality of "axes of social power" (Yuval-Davis, 2006: 198) – gender, class, race and ethnicity and other social divisions – which define differentiated hierarchies of access to a variety of resources. The simultaneous effect of multiple inequalities enables us both to explain the "uneven distribution of agency and subordination" (Weitzer, 2010: 26), and to include in the picture all subjects, other than ciswomen, who share the same condition of precariousness, especially racialized people (inferiorised due to their race or ethnicity), migrants and LGBTIQ individuals (lesbian, gay, bisexual, trans, intersex, queer).

This results in the need for a context- and subject-sensitive approach. Attention to contexts implies both evaluation of the rules defined by law – which establish the rights and freedoms of the subjects, thereby determining legal spaces for the exercise of the agency – and the social, economic, and cultural conditions constraining individual agency. This means that any policy approach to prostitution should not only aim to enhance individual agency and self-determination, but also to reduce vulnerability by combatting its social, economic, and cultural determinants, promoting subjects' resilience, and expanding the range of options available to them for the exercise of autonomous choice.

Starting from these premises, I claim that political reforms concerning prostitution should pursue the threefold goal described by Nancy Fraser in her three-dimensional theory of justice: redistribution, recognition, and representation (Fraser, 2013). It is indeed the peculiar interweaving of economic and social discrimination, denial of rights and cultural stigma, as well as exclusion from political deliberation that produces vulnerability, social marginalisation and exposure to violence for sex workers in all parts of the world (Amnesty International, 2016).

Stereotypes and prejudices representing sex workers as "unintelligible" and "unimaginable" (Kulick, 2005: 226), as less than human, contribute to their vulnerability (Chris Bruckert and Stacey Hannem, 2013). However, struggles for recognition need to be integrated with struggles for redistribution that challenge the structure of capitalism and critically explore the marketization of sex (O'Neill, 2010). To this end, it is also vital to address issues of "misrepresentation" that prevent sex workers from participating on equal terms with others in social interaction.

Establishing the best way to pursue this threefold goal is however far from uncontroversial. Identifying and addressing the needs of a target group is invariably the object of political struggles conducted to "establish or deny the political status of a given need", or to affirm "the power to define it and, so, to determine what would satisfy it", or finally "to secure or withhold provision" for its satisfaction (Fraser, 2013: 57).

When seeking to define the needs of people involved in prostitution, conflicting interpretations stem from the opposite positions of liberal feminists upholding sex workers' claims, and abolitionist feminists giving voice to prostitution "victims" and "survivors." The former highlight the need for individual empowerment, normalization of sex work, and recognition of the subjects involved as entitled to make choices and participate in political decision-making; the latter, on the contrary, refuse to conceive prostitution as work, claiming the need for people involved in prostitution to be recognized as victims and helped to exit the sex market. For this reason, the former demand the complete decriminalisation and depenalisation of sex work, while the latter support the criminalisation of sex buyers and third parties.

Nonetheless, significant common ground has also been established between the two main competing feminist perspectives. First, both discourses recognise that individuals from marginalized groups are likely to sell sex in disproportionate numbers; hence, the need to address structural inequalities. Second, both recognise sex workers as one of the groups that is most discriminated against and exposed to violence in the world; hence, the need to provide for their health and safety, as well as ensuring that they are protected from violence and exploitation, and enjoy equal access to justice. Third, both affirm that sex workers, as vulnerable subjects, are made more vulnerable by legislative provisions criminalising their activities; hence, the need to repeal legal policies enforcing criminal sanctions against sex workers.

In identifying a "third way" between the two positions¹¹, I intend to build on this common ground, and to show that the needs prioritized by both sides may be – at least partially – satisfied within the same political framework.

8. Recognise agency, protect vulnerability

Distancing myself from both the "dominance" and "choice" theories, I view sex work as a form of work, but not "a job like any other". Not least because power inequalities in the global sex industry, the precarious life conditions of the people involved in this market (poverty, exposure to trafficking, sexual and gender violence, sexual exploitation), stigma and its effects on social relations, and exclusion from decision-making processes, all severely undermine sex workers' possibilities of self-expression and self-determination. Indeed, this may also apply to other economic sectors. Sex work differs from other economic activity in that it directly affects the sexual freedom of individuals, which implies "personal expression, identity and spontaneity (meaning one can stop at any moment)" (Jean, 2015: 64).

With this in mind, I intend to suggest some basic principles that may inform policies in European countries, particularly in countries like Italy, where the political debate

¹¹ A similar attempt to propose a "third" feminist approach has been made by Shelley Cavalieri (2011) with regard to feminist stances on trafficking policies.

on prostitution law reform is dominated by the dispute between the two main available models: legalisation and neo-prohibitionism.

Recognising sex workers' agency. If we admit the possibility of agentic action in prostitution, despite the embeddedness of this practice in multiple conditions of oppression, laws that make the sale of sex a criminal offence should be repealed, and so should all those legal provisions that penalize directly or in practice the exchange of sex for money among consenting adults. On the contrary, law should promote sex workers' enjoyment of basic human rights such as the right to non-discrimination, safety, just and favourable conditions of work, adequate housing, equal access to justice.

Providing the conditions for sexual autonomy. If we are to take the structural nature of gender and power inequality seriously, and understand oppression as a social rather than an exclusively individual dimension, merely allowing space for agentic action is insufficient. We should identify positive action for overcoming the power differentials between sex workers and clients, and sex workers and third parties, to ensure sex workers' empowerment and control over their own working environment and conditions, and to prevent them from having to perform any individual sexual act against their will. Sex work is a kind of activity that directly involves a person's sexual freedom, thus requiring consent to be expressed in relation to any single sexual act, and not, as in other activities, by signing an employment contract assigning duties to be fulfilled. Continuous negotiation and acceptance or non-acceptance of clients' requests should be made possible on a case-by-case basis, and not limited or compromised by external provisions. Positive interventions in this field may include supporting sex worker self-organisation, distinguishing between traditional facilitation and worker-controlled initiatives, or limiting the size of permitted prostitution businesses (Kuo, 2002). They may also include providing all sex workers with legal, social and health assistance, to prevent marginalisation and reduce the risk of exploitation.

Protecting sex workers' vulnerability. Sex workers should be recognised as both agentic and vulnerable subjects, and their vulnerability as often being both at the basis of and resulting from their participation in sexual commerce. This means anti-poverty and anti-discrimination policies should be part of a comprehensive approach to prostitution. It also means that prostitution policies should ensure the opportunity to exit the sex market. Besides repealing all forms of registration which may violate sex workers' right to privacy and seriously limit their access to other employment opportunities, positive measures are also necessary, given the legal, economic, social, and cultural obstacles that prevent or hinder the concrete possibility of leaving the sex trade. Such measures may include: legal, social and employment assistance provided to anyone willing to leave the sex market, regardless of their status as victim or voluntary agent¹²; and residence permits and social

¹² In the case of exploitation, it should be viewed as irrelevant that the original decision to perform sex work was a voluntary choice, either because the working conditions may not match the worker's expectations or because at any moment a sex worker may have changed his or her mind without being able to escape due to various forms of constraint.

protection for foreign nationals exiting trafficking and forced prostitution, regardless of whether or not they are willing to denounce their exploiters.

Raising awareness of sex workers' right to enhanced protection. Cultural barriers that prevent sex workers from having a full relational life within their family, social and working environments should be removed. This is to counteract the stigma and stereotypes affecting people who sell sexual services, through awareness-raising campaigns and training programs for law enforcement agencies, the judiciary, and social and health services, which promote respect for the human dignity of sex workers and their families. Combating stigma includes empowering sex workers, thereby challenging their representation as exclusively passive victims. It also involves encouraging clients to

recognise prostitutes as workers with rights, including the right to refuse requests for services they do not wish to provide; to freely retract from contracts with clients; to be protected from abusive and slavery-like employment practices, and so on. Campaigns to destigmatise prostitution and recognise it as a form of work may thus, in some settings, represent a vital part of protecting women within prostitution, and it is not at all clear that this objective is compatible with calls for the universal penalisation of clients. (O'Connell Davidson, 2003: 61-62)

Promote sex workers' participation in policy-making processes. Policies should foster the participation of sex workers in the design of laws and other measures that impact on their lives, health, and safety. This may be effected via organized representation or participatory action research tools facilitating democratic decision-making processes (O'Neill, 2010). A similar approach should be brought to bear on designing policies on street prostitution, with the aim of pursuing concerted solutions regarding designated areas, minimization of impact on neighbourhoods and maximization of safety for sex workers (O'Neill, Campbell, 2008; Serughetti, 2016b).

None of these objectives should be conceived as separate from each other and from more global efforts to remove structural inequalities, discrimination and stereotypes that induce people who suffer from social marginalisation due to their gender identity, sexual orientation, race or ethnicity, migratory status or other characteristics, to sell sexual services as the only survival option. Coordinated interventions are also required to prevent and combat child prostitution, trafficking, and sexual and gender-based violence.

8. Conclusions

The policy approach I have described starts from the notion of a relational and vulnerable subject in prostitution to ponder the weight of structural inequalities and the conditionality of many choices leading to sex work, as well as to emphasise the forms of agency that may be expressed even within such constraints.

I have therefore argued for the rejection of models that criminalise prostitution, denying sex workers' agency and producing precariousness and vulnerability; as well as models that risk perpetuating power inequalities between the suppliers of sexual services, sex buyers, and third parties; and those that would hand the state an excessive degree of control over the lives of sex workers.

The need for a careful look at the contexts and conditions experienced by individuals prompts a shift in focus from criminal intervention to social intervention, within a legal framework that recognizes and supports the possibility of agentic action. This includes fostering economic and social conditions that offer alternatives to sex work; protecting those involved in the sex market; and ensuring the opportunity to exit the sex market. Having challenged the rigid dichotomies of vulnerability and agency, force and consent, I advocate the need to disentangle policy from any bureaucratic distinction between "victims of prostitution" and "voluntary sex workers", and to conceptualize it as offering inclusive measures catering for the needs of all subjects.

Finally, I have outlined a number of basic principles for a public policy approach to prostitution that recognizes subjects' ability to make meaningful choices in relation to engaging in sex work and to be critically reflective and responsive about their actions, while stopping short of viewing sex work as "a job like any other."

This means that sex work should be treated as work, and yet that it should not be left to the forces of unregulated markets to determine the features of this business. Policy can help to promote an ideal towards which actual sex work practices may tend, whereby power relations are reversed, and sex workers' protection and safety is ensured, without compromising the recognition of their agency or yielding to forms of paternalism.

Feminist-inspired policies should, in conclusion: acknowledge the impact of gender oppression and yet assert women's ability to make meaningful choices; recognise sex work as economic activity, but reject neoliberal, laissez-faire approaches; affirm the need for protection, while shifting the focus from paternalistic legal prohibitions to equal rights, social support, and political recognition.

Italy and other European countries where regulations are in force that neither forbid prostitution nor institutionalize the places and modalities of sexual commerce, could, from this perspective, lay aside the alternative between prohibition and legalization, taking advantage of a lighter and more tolerant regulatory framework to proceed towards forms of decriminalisation that preserve the "free, personal and private" character of this activity (Tatafiore, 1997: 136) while investing in social security and protection measures.

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