

Section 1

The issue, as Cooper sees it, is between three main positions. Those positions are:

The Conservative / Moralist Position: The legal enforcement of traditional concepts of morality.

The Liberal Position: Accept the existing framework of legal thought as (mostly or entirely) value neutral, and seek to permit individuals the greatest possible freedom to determine their own behavior.

The (Radical) Feminist Position: Questions the bases of law and society. A focus on sex and gender, rather than economics or politics, provide the key to understanding social order. Male power has been embodied and protected in the economic and political spheres, and so the way to empower women is to develop a new system. (pg 99)

Given these three positions, the question at issue in the paper is how the feminist position should answer the question about whether or not prostitution should be illegal.

Section 2a

Cooper outlines a history of the attitudes and laws rooted in the Christian history of both the United States, and western Europe. Given that she is discussing Western attitudes towards prostitution, she does not discuss how prostitution is viewed in other parts of the world. One of the most important ways to view women, in this tradition, is either as a would-be mother or a source of sexual release. Women, according to the Western tradition, have a dichotomous nature.

"This dichotomous view of the female's purpose has cast women as either wives-"pure" and not desiring sex--or prostitutes: the so-called "whore/madonna" dichotomy." (pg 102)

In essence, Cooper views the Western history as one where either prostitution was seen as a necessary evil so that men could have 'sexual release'. Sex in marriage, Cooper claims, has been either seen (historically) as functional (for the purpose of procreation), or (later) as an expression of romantic attraction. Earlier in history, the functional understanding of sex in marriage allowed for a begrudging acceptance of prostitution by the Church. As the romantic view of sex in marriage became more accepted, however, the tolerance of prostitution diminished. Cooper claims that a striking cycle is evident through history: toleration of prostitution is usually followed by extreme moralistic movements which harshly repress prostitution. (pg 102)

Practical Objection

Despite this history, modern citizens tend to be more accepting of the idea of - at least - decriminalizing prostitution. Such legal ideas are usually rejected by those who would claim that prostitution and crime, or prostitution and STIs, or both, are necessarily connected. In response, Cooper highlights, of course, prostitution and crime are connected when prostitution is illegal. If it was no longer illegal, then its connection with crime would reduce. Additionally, STIs tend to reduce (at least among prostitutes and their clients) when prostitution is legal and regulated. (see footnote 33)

Paternalistic Objection

These practical considerations, however, are not the only pieces of evidence that the conservative / moralist appeals to. Many who are opposed to legalizing prostitution claim that such a profession degrades the dignity of the prostitute, and harms their well-being. (pg 105) This paternalistic argument depicts the prostitute as a victim in need of saving. Cooper responds by stating that such a paternalistic approach ignores the free choices of the people involved, and ignores the socio-economic factors that make prostitution appear preferable to its alternatives.

Commercialization Objection

Third, Cooper focuses on the argument that sex is just not the kind of thing that should be sold. The strongest argument here is that marriage, or long-term relationships in general, are special. Sex is meant for those kinds of circumstances. Such a view, according to Cooper, relies on a Christian view of marriage, and, therefore, should not be a basis for public law.

A final consideration Cooper raises is whether or not the law ought to enforce 'public morality'. (pg 107) The liberal critic would claim that the law should only enforce laws which prevent 'quantifiable harm to individuals'. The feminist, in contrast, would reply by claiming that such 'public morality' assumes a dichotomous view of women, and so should not be enforced.

She closes this section by surveying what were, at the time of this paper's publishing, a number of relevant court cases / legal rulings. Cooper highlights, however, that these minor legal victories do nothing to question the assumed conservative / moralist condemnation of prostitution. As such, they fail to address the core issue as she sees it.

Section 2b

The liberal approach emphasizes the autonomy of the individual. If consenting parties freely wish to engage in various sexual behaviors, then (in general) there is no good reason that the law should prevent them. Prostitution is the sale of a service, and so should be treated as such. A liberal feminist will also highlight that in some circumstances, prostitution may be the best way for a woman to economic and social independence. (pg 109)

Prostitutes, additionally, often serve their clients in non-sexual ways. These services would expand to others if prostitution was legalized. The cost / benefit analysis, the liberal claims,

weighs in favor of decriminalization / legalization. Such decriminalizing / legalizing, however, has been rare (despite it resulting in the legalization of homosexuality). While some western areas have legalized prostitution, there is a double standard at play. Certain social benefits, despite paying taxes, are denied to prostitutes. (pg 110) The contracts between client and prostitute were deemed 'immoral contracts' and, so, cannot be enforced. Despite the liberal justification for prostitution, German courts have 'determined that a brothel owner is guilty of promoting prostitution (a criminal act) if the conditions provided are too pleasant, because this could encourage prostitutes to remain in the profession.' (pg 111) Hence, the social and legal stigmas, though less, still persist. Such stigmas are at odds with the liberal approach and show, according to Cooper, its failings.

There is something that is a bit more implicit than explicit in this and the next section. The idea of a value-neutral law seems wrong to Cooper. On page 113, for example, she claims that a feminist solution to sexual / gender inequality in society must be rooted in female values. Hence, her criticism of the liberal position is not just that it is applied inconsistently. It is that the law cannot be value-neutral if we are to prevent harm to certain classes of people in society.

Section 3

Whether or not prostitution should be decriminalized / legalized is not a straightforward issue for feminists. The idea of institutionalizing sexual subjugation of women to men is a clear negative, whereas the economic opportunities and the control over one's sexuality are clear positives.

The radical feminist is not just concerned with people being able to freely choose what they want because some people live in socio-economic conditions which deprive them of a fully free choice. Being poor is a kind of coercion which the liberal position does not seem to recognize. For the feminist, it is not because women are autonomous that prostitution should be legal, but because its being illegal is a greater harm to women than legalizing it.

The issue for the radical feminists, interestingly, is *not* one primarily about consent. The issue is how to best empower women. Respecting consent is, of course, part of that, but it is not all that there is to empowering women. Many high class 'call girls' may consent to what occurs, but there is still a power imbalance that needs to be addressed. Empowering women would focus both on allowing women to choose what profession they wish, but would also confront (through law) the power imbalance in a way that the liberal position does not.

The radical feminists does not want for women to merely be able to do what men do. This is because, in Cooper's summary of the power imbalance, women would just be seeking equality *within* a value system based on the suppression of women. Feminism, in contrast, proposes a new value system from which to structure society. The idea of separating sexual actions from the person is not in line with the feminist value system. This is so for two reasons. The first is that separating sex and the individual results in a failure to take responsibility for one's actions. Women, Cooper claims, value the connectedness of sex and the individual, such a separation directly hurts them. Secondly, such a separation still allows for the possibility for men to focus

just on women as sexual objects. If men could keep just the sexual side of the women in mind, then they would never have to respect them as persons. This is the antithesis of feminism.

Section 4

Cooper concludes that 'prostitution should therefore be decriminalized and placed under the control of women'. (pg 117) Lawmakers should write laws only after being informed about how best to empower women by prostitutes themselves. Prostitutes should have the full protection of the law, and the full ability to pursue criminal charges against offenders without fear of being stigmatized for being a sex worker. While some government regulation is required, it should not be burdensome. STI testing is needed, but not because prostitutes are inherently gross or more likely to contract disease. Clients, too, should likely be tested regularly. And, should they wish, prostitutes should be provided ways to exit the profession. She closes paper with the following bit of honesty:

"But for the sake of the many women who continue to turn to prostitution as at least a temporary road to economic security, feminists must support decriminalized prostitution and must ensure that the terms of its legalization are drawn up at least in part by prostitutes themselves, and with their empowerment in mind." (pg 119)