A Philosophical Exploration of Prostitution and Sexual Agency

By

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I, Claire Forgan, declare that this dissertation for the Philosophy masters degree at the University of Johannesburg hereby submitted has not previously been submitted for a degree at this or any other university and that it is my own work in design and in execution and that all the reference material contained herein has been duly acknowledged.

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Claire Forgan
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Abstract

Whether or not prostitution can be considered a legitimate form of employment contract is an issue that is much debated. In conjunction with this there is much debate as to what rights and protection the women working within the prostitution industry should be afforded, if any. This thesis analyses in some depth three influential theories relating to prostitution, namely a contractarian defence of the decriminalisation of prostitution (Lars Ericsson), a critique of prostitution viewed as contract (Carole Pateman) and a defence of decriminalising a reformed prostitution industry in the name of women’s autonomy (Drucilla Cornell). Drawing on the strengths of each of these theories, I will build a specifically feminist theoretical position in support of the claim that decriminalising a reformed prostitution industry and considering prostitution as a legitimate form of work, is the morally best stance to adopt regarding the industry. It is argued that the decriminalising of prostitution will not only benefit prostitutes in terms of decreasing the amount of abuse and violence they face but it will also aid in ensuring that they are afforded the same rights and protection as the rest of society. This transformation will also impact favourably on the sexual status and autonomy of women more generally.

According to the contractarian defence of prostitution provided by Ericsson (1980:353), the prostitution contract should be considered a form of employment contract just like other forms of employment contract. This viewpoint further asserts that the most fundamental problem with prostitution is not prostitution itself but rather the hostile and punitive attitudes that are held towards prostitution and prostitutes (343). Pateman (2006: 50), on the other hand, asserts that prostitution contracts are integral to patriarchal capitalism in that they help ensure that all men have some access to women’s sexuality, by turning it into a commodity. The prostitution contract thus plays an important role in subordinating women to the control of men and these women in essence become the property of men for the duration of the contract (66). Whilst Ericsson sees the prostitution contract as one that could aid in the liberation of
women’s sexuality and the overcoming of male oppression, Pateman sees it as one of the most fundamental forms of male domination and the subjugation of women.

Lastly, Cornell (2006: 116) looks at prostitution from the perspective of sexual agency and autonomy. She argues that prostitution can be a means through which women express their sexuality and so should be a decision that is respected. Cornell (1998: 50) further argues that prostitutes should be respected as women with the capacity to make decisions for themselves, especially with regards to how they live out their sexual lives. Therefore, Cornell (50) asserts that prostitution should be decriminalised and reformed so as to ensure that women working as prostitutes are afforded basic human rights and have the possibility of developing into whole ‘persons.’

These theories present valid arguments both for and against prostitution. However, research, including that presented by the South African Law Reform Commission (2009: 20, 56), suggests that the criminalisation of prostitution does not prevent the prevalence of prostitution nor does it serve the interests of prostitutes or the community. Therefore, by taking into consideration all the best arguments put forth by the three theories as well as other research it can be concluded that the decriminalisation of prostitution will be a positive step in improving the lives of women within the prostitution industry, and of women more generally by allowing women to determine their own sexuate lives and how they wish to express their sexuality. Decriminalising prostitution also tends to decrease other negative factors associated with prostitution, such as organised crime, and so could also be in the best interest of broader society (56). Ultimately, women should be afforded the freedom to choose how they use their own bodies and prostitutes should be afforded the same rights and protection as all other citizens.
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Introduction

The prostitution problem

Prostitution has long been a morally, politically, legally and philosophically contentious issue, with debates touching on the issues of individual freedom, freedom of expression, equality, exploitation and abuse. Over the course of history prostitutes were viewed and treated in many different ways and today different societies have adopted varied legal frameworks with regards to prostitution. I think it is important to clarify the concepts and ideas used in prostitution debates in order to understand prostitution from a moral and philosophical perspective. There is also a practical urgency related to the discussion of prostitution because of the violence and abuse that women within the prostitution industry face. Ultimately this study aims to make certain recommendations with regards to prostitution legislation, however, to do so it is necessary to first investigate the presuppositions of the legal frameworks from a philosophical perspective.

Currently in South Africa there is much debate as to the status of prostitution and what form of legislation should be adopted, especially in light of South Africa hosting the 2010 Soccer World Cup. At present prostitution within South Africa is fully criminalised, with the clients of prostitutes also being criminalised (SALRC\(^1\), 2009: 14-16). However, there are varying opinions as to whether this is the most beneficial form of legislation for prostitutes and for society at large. The South African Law Reform Commission (2009) has been assessing the current situation regarding prostitution and what effects implementing another form of legislation might have on prostitution and on society. The aim of this study is to investigate the link between

\(^1\) The SALRC document is one which was compiled by the South African Law Reform Commission. It was published during 2009 and focussed on many issues relating to prostitution. This document examined four types of legislation relating to prostitution, including criminalisation, partial criminalisation, non-criminalisation (or decriminalisation) and regulation (or legalisation). The effect of each of these legislations was discussed in terms of their effects on prostitutes and the society at large. I will be discussing this document in detail in the final chapter of the dissertation.
prostitution and sexuality and sexual identity, and to look at various arguments both for and against the industry as a whole. Based on all the evidence to be presented, including the SALRC's report, I finally argue that the decriminalisation of prostitution is necessary in order to reform and improve the prostitution industry and make it one in which women can develop their sexual identities and be regarded as worthy of the same rights and protection as the rest of society. In other words, I make a feminist argument for the decriminalisation of a reformed industry, and will show how this is in the best interest of prostitutes as well as the broader society.

In order to understand how and why any particular society decides to adopt a specific form of prostitution legislation it is necessary to understand what attitude they hold toward prostitution and what their aim with regard to prostitution is, for example the eradication of prostitution or the improvement of the prostitution industry. Therefore it is necessary to have a general idea of what the different forms of prostitution legislation entail. The type of legislation a country adopts towards prostitution is generally based on moral codes, human rights principles and the way in which sexuality, and women’s sexuality in particular, is viewed and valued. The legislation societies adopt towards prostitution in its turn also seems to have a direct impact on the way that prostitutes are viewed and treated. For instance, in countries where prostitution is criminalised and not tolerated there seems to be more stigma attached to prostitution and prostitutes encounter more abuse (SALRC, 2009: 19-21).

There are four general categories that prostitution legislation can be divided into, according to the South African Law Reform Commission (12-14). **Firstly**, there is full criminalisation; this is when prostitution and all activities relating to prostitution are illegal and punishable by the law. **Secondly**, there is partial criminalisation. With partial criminalisation prostitution itself and prostitutes themselves might not necessarily be criminalised but certain activities relating to prostitution are illegal, such as soliciting or hiring prostitutes (in other words, the client is criminalised). The
third form of legislation is regulation or legalisation. Legalisation means that prostitution and its related activities, such as solicitation, are legal, however there are certain laws that must be adhered to, for example the compulsory registering of brothels. The fourth form of legislation is decriminalisation. Decriminalisation makes prostitution and its related activities legal and, unlike legalisation, does not place any regulations on prostitution or its related activities. This means that prostitutes are able to, amongst other things, work from wherever they choose and advertise their services without restriction. In the final chapter of the dissertation I will discuss legislation, but will look in detail only at full criminalisation and full decriminalisation. The reason for this is that most of the elements within partial criminalisation are the same as or similar to those within full criminalisation. Legalisation and decriminalisation also share many of the same aspects. While it is said that decriminalisation is free of restriction this is not necessarily true as there are still certain restrictions, generally in the form of municipal by-laws regulating prostitution. For example it would still not be acceptable for a prostitute and her client to engage in sexual activity in places where they can be seen by the general public. These laws will regulate certain aspects related to prostitution even where the practice is fully decriminalised. Therefore when I refer to criminalisation it relates to both full criminalisation and partial criminalisation and when I refer to decriminalisation it relates to both decriminalisation itself and to what is called legalisation.

Deciding how prostitution should be addressed in law is a difficult task since each form of legislation has both negative and positive factors. As mentioned, the form of legislation that is adopted reflects how a society views prostitution, for example criminalisation is often adopted with the aim of diminishing or eradicating prostitution for the betterment of society and / or the protection of women against domination and abuse. Decriminalisation, on the other hand, could be adopted with the aims of improving the attitudes held towards prostitution and emphasising the notion that prostitution is a legitimate form of employment. From a feminist perspective, by
which I mean a perspective that emphasises the rights of women, including those of female prostitutes, the main problem may be formulated as the problem of deciding whether prostitution can be seen as a legitimate form of employment for women or whether it is rather a means through which men exploit and subordinate women. Once this has been decided, the feminist would promote the form of legislation which best correlates with her conception of prostitution as an industry. This study aims to formulate and defend such a feminist understanding of prostitution and to recommend the most appropriate form of legislation following from that understanding.

The questions related to whether prostitution should be seen as a legitimate / valid form of employment or as a tool of subordination and exploitation through a feminist lens are not easily answered. There are many intricacies and nuances involved in the prostitution industry which makes it difficult to determine whether all prostitutes are degraded and exploited, whether only some prostitutes face these challenges or whether prostitution is actually a way through which women can overcome exploitation and subordination. In this dissertation I adopt an explicitly feminist perspective towards prostitution, as indicated. I do this by focussing on the way in which female prostitutes specifically are affected by the prostitution industry, and I place special emphasis on the interest of women with regard to prostitution. To begin to discuss the issues related to prostitution it is necessary for me to first explicate what form of prostitution I am referring to and which type of prostitute I will be focussing on in this dissertation. There are many ways that prostitution can be defined but the definition I will use is that “prostitution consists of any sexual acts, including those which do not actually involve copulation, habitually performed by individuals with other individuals of their own or the opposite sex, for a consideration that is non-sexual” (SALRC, 2009: 10). In light of this definition, I understand prostitution as sexual acts, including oral sex and non-penetrative sexual acts,
performed by an individual on a regular basis for a reward which could include money, food or any other form of non-sexual compensation.

Prostitution takes on many guises and is a very varied practice. Prostitution is not an act performed only for direct financial gain, as individuals may engage in prostitution for the purposes of gaining food, clothing, drugs or even protection. Prostitution can also act as a means through which women express their sexuality, gain some form of self-fulfilment and it can serve as a form of therapy for women that have been abused by men in the past. Therefore, not all acts of prostitution are performed for the same reason or by individuals sharing similar circumstances. Prostitutes can range from uneducated, lower class citizens to people with a tertiary education from an upper class background. The reasons for entering prostitution and for remaining in prostitution are diverse and it is necessary to take into consideration these factors when discussing prostitution.

I am aware of the fact that it is not only women who work within the prostitution industry as there is a minority of men who work as prostitutes. However, for the purpose of this study I am going to focus exclusively on female prostitutes. My reasons for doing so include the scope of the dissertation and the fact that male prostitutes arguably face issues different to those of female prostitutes. Female prostitutes face different problems because of the fact that they are women. Female sexuality is viewed differently to male sexuality and therefore the way men and women are treated in terms of their sexuality differs. It could be argued that the majority of male prostitutes are homosexual and therefore are in a way similarly placed in society to women, in the fact that their sexuality is regarded as deviating from the heterosexual male sexual norm. It could also be argued that male prostitutes face similar challenges as female prostitutes such as discrimination, and thus should also be discussed here. While it may be true that male prostitutes face some of the same issues as female prostitutes I would argue that the kind of stigma
attached to male prostitution and the way male prostitutes are treated is not always the same as with female prostitutes and prostitution. I think to do justice to the issues relating to male prostitution would require a separate body of work and so only issues relating to women working within prostitution will be discussed.

Finally the nature of prostitution that will be discussed in the dissertation: I will deal only with voluntary, un-coerced, adult prostitution. I will not be discussing the issues that face underage prostitutes, these being prostitutes under the age of 18. I will also not be discussing forced or coerced prostitution or prostitution which is the result of trafficking for the purpose of sexual exploitation. Again, I am well aware that individuals involved in these kinds of prostitution are exposed to extremely exploitative and degrading conditions often in addition to some of the problems that are experienced by those within voluntary adult prostitution. However, in my opinion the issues that are encountered by forced, underage and trafficked prostitutes are very complex and again would need their own body of work if the issues they experience were to be discussed sufficiently. Therefore, it is not that I deny that there are forms of prostitution other than voluntary, female adult prostitution. I am fully aware of the fact that these exist. My interest is in the kind of prostitution that adult women apparently enter voluntarily, and my study raises the question about the appropriate feminist response to this phenomenon. Moreover, from the research I have done, it has become clear that the majority of prostitution is voluntary and involves adult females (cf. Gould & Fick\textsuperscript{5}, 2008: 154-159). Thus, when we speak about the issue of prostitution and legislation, we should clearly distinguish between coerced and voluntary forms of prostitution. There is no doubt in my mind that all forms of coerced and under-aged prostitution should be outlawed. The interesting case from a feminist perspective which forms the topic of my dissertation is the case of adult women voluntarily entering prostitution, and how to best respond to this phenomenon.

\textsuperscript{5} Gould and Fick collaborated on a two year research project of the sex work industry within Cape Town in order to understand the climate within which prostitutes work as well as to discover the extent to which people are trafficked into prostitution. I make use of their valuable and rather surprising findings, especially later on in the dissertation.
An outline of the philosophical investigation

Within this dissertation I have decided to focus on three main philosophical approaches towards prostitution. The first theory I focus on is a contract theory view of prostitution as held by Lars Ericsson. Ericsson (1980: 337) discusses prostitution from a contractarian point of view with the aim of showing that prostitution is (and should be viewed as) the same as any other form of employment. Thus prostitutes should be afforded the same rights as other employees. Ericsson (355) is also of the opinion that prostitution is a means through which women can overcome exploitation and gain independence. Thus prostitution can act as a feminist tool for women seeking to overcome patriarchal subordination. I have chosen to use Ericsson as many of the issues he discusses in relation to prostitution are raised by prostitutes’ rights organisations as well as prostitutes themselves. Despite the fact that Ericsson published his article on prostitution almost 30 years ago his concerns are still very pertinent today and form part of the current debates surrounding prostitution. The argument from this specific contractarian point of view raises questions concerning freedom of choice, the role of capitalism in prostitution and how it is very unlikely that prostitution could ever be eradicated. Ericsson presents a strong argument in favour of prostitution that I will draw on in the construction of my own argument. However, there are some flaws in his argument and he raises some contentious issues which could be disputed, as will be indicated in my discussion.

Secondly, I discuss prostitution from a point of view that is completely opposed to the contractarian viewpoint mentioned above. This position is explicated by Carole Pateman who is a formidable feminist thinker and has written on controversial issues such as prostitution and surrogacy. Pateman discusses prostitution in the context of a thorough critique of contract as such. She critiques contract itself and the prostitution contract in particular as means through which people in a position of superiority can keep others in a position of inferiority. Pateman (2006: 66) condemns
prostitution as a means through which men dominate and subject women. She understands it as an instrument through which men can ensure that they have a continuous supply of women available to them. According to Pateman’s (2006: 55) argument prostitution exists only because of the subjugation of women by men and so prostitution cannot be considered a free or voluntary contract (59-63). In other words, a woman may think she has become a prostitute voluntarily but in reality it is circumstances created by patriarchy and male domination that have forced her into becoming a prostitute and that keep her there. Pateman’s arguments go directly against those of Ericsson. She explicitly argues that Ericsson is wrong in assuming that the prostitution contract is the same as any other form of employment contract (64). From her feminist point of view prostitution can never be seen as an employment contract like any other, because the reason that men hire prostitutes is not the same as the reason that capitalists hire labourers (Pateman, 2007: 226). For Pateman then there can be no benefit for women to enter prostitution as they are merely being subordinated and retained in a position of inferiority to men.

Pateman is a harsh critic of the prostitution industry and she provides arguments that account for the reasons why it is predominantly women who work as prostitutes, which the other theorists discussed here do not try to explain. Pateman does not focus on social problems facing prostitutes such as violence and stigmatisation. Her argument deals instead with the circumstances which have led women to be in a position of inferiority to men and why men claim the right to have access to at least some women’s sexual bodies at all times (Pateman, 1988: 109). The prostitution industry, for Pateman, is an integral part of the male sex-right; a right built into the notion of the social contract. In other words, not only does Pateman see prostitution as harmful for prostitutes themselves, she also regards it as harmful for women and society more generally. This is because, as Pateman (2006: 61) states, prostitution serves to reinforce the notion that “men exercise the law of male sex-right [and] that
they have patriarchal access to women’s bodies.” Therefore, prostitution not only serves to subjugate prostitutes, according to Pateman it also serves to reinforce the subjugated position of all women within society. Pateman’s argument serves as valuable research into why prostitution can be seen as degrading, demeaning and unfavourable, and it is my contention that these insights need to be taken on board when one tries to formulate a responsible feminist stance on adult female prostitution.

The third theory I will discuss in relation to prostitution is one which does not fall within the contract debate described so far. This theory explores instead what effect a reformed kind of prostitution could have on women’s autonomy and sexual liberation viewed more generally. For this theory the focus will be on the arguments put forth by Drucilla Cornell. Cornell, like Pateman, is a well known feminist philosopher who has written on issues relating to legislation of abortion, pornography and sexual harassment. While Cornell examines prostitution in some detail she does not provide a thorough discussion of prostitution. However, the concerns she has with regards to pornography can be related well to prostitution. This will also be the way in which I will use her theory – by extending her thinking on pornography to the questions regarding prostitution which I raise in this study. Cornell focuses on problems such as ‘bodily integrity’, ‘the imaginary domain’ and the ‘sexual imago’. She does so with a view to show that the expression of sexuality and the freedom of an individual to live out their sexual life as they see fit is essential to them having the opportunity to develop into the whole, fully individuated person they imagine themselves to be (Cornell, 1998: 18). Therefore, Cornell’s theory also deals crucially with freedom of choice and the ability to make decisions for oneself.

Using her perspective on pornography and her theoretical apparatus, one could argue that the decision to enter prostitution is a choice that individuals must make for themselves and they should not be denied this choice. If an individual is denied the choice to live out their sexual lives as they see fit they are being degraded and are being considered as not worthy of personhood (Cornell: 1995: 9). Even though Cornell discusses prostitution only briefly I think her theories are very relevant within
current debates surrounding prostitution. Many theorists focus on what is wrong with prostitution and why it should be eradicated. Cornell instead takes a realistic view in that she recognises that prostitution is a reality but is in need of some reform in order to make it an industry which can benefit women. Cornell moves beyond the contract perspective on prostitution typical of the thinking of Ericsson and Pateman. In so doing she focuses on some of the most important challenges and problems facing women working as prostitutes. She does not only focus on what is wrong with prostitution or why prostitution is acceptable but looks at what can be done to improve the lives of women working as prostitutes.

Cornell addresses issues such as political action and trade unionisation which is necessary if prostitutes are to be afforded normal workers’ rights such as decent working conditions and protection within their working environments. By addressing issues such as these Cornell does not merely theorise about what is wrong and right with prostitution in principle but rather offers ways in which prostitution can be reformed and improved so as to make it a safer industry for women and an industry through which women can become autonomous and live out their sexual lives as they see fit. I think it is important to move beyond the debates found within contract theory and look at Cornell’s arguments as they provide one with a realistic view of prostitution. Cornell takes into consideration the fact that there are both positive and negative factors associated with prostitution but she also takes into account the needs and rights of women, which I do not think is adequately addressed by the arguments put forth by the likes of Ericsson and Pateman.

Criminalisation vs. decriminalisation

By discussing each of the three above mentioned theories in detail, I have come to have a better understanding of many of the issues surrounding prostitution. Each of
these theories provides one with a greater understanding of the intricacies involved in prostitution and each has its own set of fairly complex reactions to prostitution. There are clearly good reasons to argue that prostitution is undesirable and degrading for women. But despite these strong arguments I finally contend that it is probable that prostitution functions or may function as a feminist means for women to gain independence and empowerment. It is the aim of this dissertation to formulate a feminist argument in favour of the decriminalisation of prostitution, taking into consideration the most convincing arguments against prostitution. Whilst I take into consideration the fact that exploitation and abuse do take place within the prostitution industry I believe this exploitation and abuse are mainly due to the perceptions that societies hold with regards to female sexuality which are further reinforced by the form of legislation many societies adopt towards prostitutes and prostitution. Therefore the central concern of this study is to decide which legislation is most effective in terms of empowering prostitutes and what can be done, if anything, to improve the lives of women working within the prostitution industry. I will also tentatively explore the effects on women’s lives in general flowing from the way society treats prostitutes and the way prostitutes’ sexuality is viewed by society.

It could be argued that if prostitution is to be considered a legitimate or valid form of employment as seen from a feminist perspective certain legal and social reforms are necessary, especially in countries like South Africa where prostitutes are afforded little or no rights, and where the high levels of sexual violence suggest that misogynist attitudes are deeply entrenched within society. The question about which form of legislation should be implemented comes to the fore when trying to determine what will be best for prostitutes and for society at large. The first broad stance towards prostitution would be that it should be criminalised because that would act as a deterrent for women who are thinking about becoming prostitutes. It might also decrease the demand for prostitutes as clients will not hire prostitutes for fear of the legal repercussions. The reduction or eradication of prostitution through legal or any other means may be seen as desirable because of the supposed detrimental effects of prostitution on the prostitutes, the clients and / or on society in general. An example of how the eradication of prostitution may be viewed as beneficial to society is the notion that it will aid in decreasing the amount of criminal
activities often associated with prostitution, such as organised crime, drugs and trafficking. Many countries, including all African countries and the United States of America criminalise prostitution with the view to reduce or eradicate certain criminal activities and protect women from becoming the victims of trafficking or forced prostitution. Whilst it appears that the criminalisation of prostitution is enforced for the protection of vulnerable women and society, there are a multitude of problems associated with criminalisation. These include first and foremost increased violence at the hands of clients, pimps and police. Within a criminalised framework women working as prostitutes are often in a more vulnerable position because of the illegal nature of their work (SALRC, 2009: 21). Thus while there may be some positive aspects related to the criminalisation of prostitution there are also quite clearly various negative aspects.

The second broad stance towards prostitution legislation is that prostitution should be decriminalised. This means that prostitution would no longer be considered an illegal activity. An argument against decriminalisation could entail that by making prostitution legal it is as though the government is endorsing prostitution and suggesting that prostitution is acceptable (175). Against such criticism I would argue that the point of decriminalisation is not to endorse or promote prostitution, but it is rather to give priority to the rights of women who work as prostitutes and to ensure that those rights are protected. Decriminalising prostitution focuses on the human rights of prostitutes as citizens of a society and demands that prostitutes be treated as of equal worth. Within a decriminalised framework prostitution is also viewed as a legitimate form of employment and this affords prostitutes the same rights that are afforded to the employees of other occupations. Decriminalisation therefore aims to improve the lives of women working as prostitutes and to decrease the amount of exploitation, degradation and abuse they face. This however is not to say that decriminalisation is free of flaws and is a perfect form of legislation. There are various areas that decriminalisation does not address as effectively as possible, and these will be dealt with in the last chapter.
The question then remains, is prostitution an industry that should be encouraged or at least be allowed to continue or is it one that should be eradicated for the sake of women? In response to this question I would firstly argue that it is not necessarily even possible to eradicate prostitution. Throughout history attempts have been made to eradicate prostitution, all to no avail. It does not matter what economic system a society has, or in what regard the women of a society are held, prostitution still exists and is a feature of practically every society on Earth. Therefore, it seems that the question that should be asked is not whether prostitution should be abolished or not but rather what can be done to improve the prostitution industry and make it one in which less exploitation and abuse takes place. Since it appears almost impossible to eradicate prostitution I would argue that it is more pertinent that societies deal with the challenges facing prostitutes rather than criminalising them and placing them in more vulnerable positions. There is virtually no form of employment that does not involve power relations and some form or extent of domination. Therefore societies are not justified in condemning prostitution based on the mere fact that domination exists within the industry. I would argue that rather than condemnation what is necessary is reformation and the improvement of the prostitution industry as a whole. In my mind it does not make sense to condemn women because they choose to express their sexuality and gain material benefits through prostitution. Prostitution could possibly be a means through which women gain sexual liberation as well as a means through which they gain liberation from other social factors, such as patriarchy. These notions are explored in detail below.

As I mentioned earlier, prostitution is a complex industry where each person involved has entered the industry and remains in the industry for different reasons. It is difficult to judge to what extent these women are exploited and abused, especially when many prostitutes say that they are not exploited and abused. It is also quite difficult to judge prostitution when one has not been in the position oneself and does not know exactly what being a prostitute entails. It therefore seems more reasonable, in my mind, to assist prostitutes in improving their lives rather than condemning them without being fully aware of their circumstances. I think that one of the necessary steps to improving the situation of women who work as prostitutes would be to decriminalise prostitution and ensure that prostitutes are given the same rights and
protection as the rest of society. Decriminalisation might not solve all the problems related to prostitution but it is an important step in improving the conditions surrounding prostitution. Through the decriminalisation of prostitution the way in which female sexuality is viewed and the sexual expression of women will both be improved for the benefit of all women of society.

This dissertation aims to determine whether or not prostitution can be seen as a legitimate form of work for women and a means through which to improve their lives or whether it is just a way for men to dominate women. By looking at Ericsson, Pateman and Cornell’s arguments I will determine to what extent women are dominated and subjected within prostitution and to what extent becoming a prostitute is a personal choice that allows one freedom to determine and give meaning to their own sexuality and sexual identities and through so doing gain independence and autonomy. Thus, in the first chapter I will look at Ericsson’s argument by first giving some background on social contract theory by looking at some of the notions of contract and the state of nature as suggested by Thomas Hobbes and John Locke. I will then be discussing how Ericsson relates contract theory to prostitution. In the second chapter I will examine Pateman’s arguments relating to prostitution. I discuss her notion of the story of the original contract and her claim that the part of the story relating to the sexual contract is excluded from recollections of this story. After discussing the original contract story I move on to discuss how sexual contracts form the basis of modern society and then contracts between unequals, as Pateman conceives of them. Finally I explicate Pateman’s arguments against prostitution, based on her critique of contract. The third chapter deals with Cornell’s theory in terms of ‘the imaginary domain’, the ‘sexual imago’ and the possibility of becoming a ‘person.’ Each of these ideas will be explored, as well as the notion of the degradation prohibition. After examining Cornell’s general theory I will discuss how she relates these to pornography and how these ideas can be related to prostitution.

In the fourth and fifth chapters I bring all the theories together and apply them to prostitution legislation. Specifically, in chapter four I consolidate the three theories by evaluating and critiquing them. This is done with the view to determine which parts of
each theory are of the most importance, as well as to identify some of the flaws within each of the theories. Also, in this chapter I will clearly put forward my own stance on the matter, based on this critical discussion. In the final chapter, I am going to present an argument against criminalisation and an argument for the decriminalisation of prostitution. I do this by critically applying the conclusions I reach with regards to the three above mentioned theories to the discussion paper produced by the South African Law Reform Commission (SALRC). Within this discussion paper criminalisation and decriminalisation are discussed with regards to their effectiveness as forms of legislation. The effects of each of these legislations are examined in terms of how it assists women working within the prostitution industry, as well as how it addresses the needs of society. Many points raised by the three theorists correlate with the problems, challenges and rights issues discussed by the SALRC. The goal of this study is to discover whether the hypothesis that the decriminalisation of prostitution is in the best interests of prostitutes specifically and women more generally proves to be true. And if so in what ways it is likely to benefit the women who work within the prostitution industry.
Chapter One: Contract Theory in Defence of Prostitution

Introduction

Social contract theory explains why modern Western society is based on relationships formed through contracts rather than on natural associations such as familial bonds (Locke, 2005: 415), as was the case in ancient societies. Before the emergence of modern society the formation of relationships occurred through bonds, such as family and parental bonds. It was through these bonds that power relations formed, and through these bonds that certain members came to be in positions of authority over other members of society. However, with the emergence of modern society familial bonds were no longer seen as the determining factor in relationships. Contract theorists such as Hobbes (2005: 112) and Locke (2005: 468) explain how in this society the formation and voluntary entering into of contracts is what predominantly determines the relationships formed within a society, as well as how societies are governed. These contract theorists explain how through these agreements and contracts, modern institutions and power relations came into being and are maintained. Contract theory postulates that humans are rational and have free choice and therefore are able to freely enter enforceable contracts which are (at least seen as) mutually beneficial to the parties involved. One of the contracts that some contractarians⁹ believe individuals can enter at will is the prostitution contract. For this reason some contractarians⁹ believe individuals can enter at will is the prostitution contract. For this reason some contractarians believe that if the prostitution contract is entered into by two consenting adults the contract cannot be seen as immoral, but is rather an autonomous expression of their complementary desires. Rather than seeing the contract as immoral and exploitative, contractarians view the prostitution contract as

⁹ Contractarianism is a branch of social contract theory which is based on the notion of individual self-determination and self-ownership. This theory is more of an 'individual' contract theory that insists that individualist acts/contracts are considered permissible as long as they do not involve force or fraud. Contractualism, on the other hand is more of a 'social' theory whereby people agree to what acts are permissible if everyone would agree to the rules that permit these acts (Freeman, 2006: 58–59). In this chapter I will be focusing on contractarianism as Ericsson focuses on individual contracts rather than on contracts involving society as a whole.
a form of employment contract and a means through which both the prostitute and her clients can gain some form of mutual benefit.

Lars Ericsson is a contract theorist who argues that the practice of prostitution is ideally based on the modern idea of the contract, and as such - freely created and freely entered into for the sake of obtaining mutual benefit - not morally problematic. It is a kind of employment contract and therefore as valid as any other form of contractual employment. In an influential article published in 1980 entitled “Charges against prostitution: An attempt at ethical assessment” Ericsson elaborates on the contractarian moral defence of the practice of prostitution. He does so by looking at and rejecting various arguments against prostitution. These arguments include the views of conventional morality where moralists argue that prostitution is immoral due to the nature of sexuality. Other arguments that claim prostitution to be immoral include those from a sentimentalist point of view, a paternalist point of view and a feminist point of view. These are only some of the arguments Ericsson attempts to counter, and each of these will be discussed in detail within this chapter. Ericsson provides a strong argument in the defence of prostitution. He also provides some valid reasons for why prostitution can be considered a legitimate form of employment and why prostitution should not be considered immoral. Ericsson defends prostitution against its harshest critics by arguing that prostitution is not morally problematic, viewed from a contractarian perspective. Ericsson’s overall view with regards to prostitution is that the biggest problem in relation to prostitution is the outdated negative valuation of women’s sexuality on which the moral condemnation of prostitution is ultimately truly based. A misogynist view of female sexuality and how it should be dealt with underlies almost all moral opposition to prostitution, he argues. These views and attitudes are what Ericsson claims need to be altered in conjunction with various other reforms in order to improve the lives and working condition of those working within the prostitution industry.

In this chapter I will firstly give a brief, general overview of social contract theory, in order to show how modern society and the relationships formed within modern society are based on contracts. I will then go on to look at the arguments against
prostitution that Ericsson discusses and his responses to these arguments. I will do this with a view to show how this particular contractarian view conceives of prostitution and what reforms are necessary, from a contractarian perspective, in order to improve the prostitution industry as found within contemporary society.

Social Contract Theory

Social contract theory rests on the basic idea that “the agreement (or consent) of all individuals subject to collectively enforced social arrangements shows that those arrangements have some normative property” (D’Agostino, 2008\(^\text{10}\)). In other words if contracts, or agreements, are entered into by willing individuals those contracts are said to be legitimate, just or obligating / binding. The notion of contracts as being an integral part of the formation of relationships developed with modern society. Two prominent philosophers discuss the notion of social contracts, the way in which the importance of contracts emerged and how contracts function to create relationships and govern societies. These two philosophers are Hobbes and Locke. I shall now briefly look at the theories put forth by each of these philosophers with regards to contract theory in order to show the role that contracts play within contemporary society.

Hobbes was of the opinion that human behaviour can be explained with universal laws. These behaviours, or actions, arise through actions within our bodies which have arisen from our bodies’ interactions with other bodies (Friend, 2006\(^\text{11}\)). Therefore the interaction of people with one another has a kind of cause and effect relationship with the kinds of behaviour or actions people carry out within their societies. People do not live in isolation from others; rather, they are affected by the

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\(^{10}\) This quote is taken from an article within the Stanford Encyclopaedia of Philosophy. This article can be found online at [www.plato.stanford.edu/entries/contractarianism-contemporary](http://www.plato.stanford.edu/entries/contractarianism-contemporary).

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relationships and interactions they have with other people and this serves to determine the way people will behave towards others in their societies. However, Hobbes also points out two other characteristics of humans: firstly humans are self-interested (Hobbes, 2005: 111) and secondly humans are reasonable (63). What Hobbes means by the statement that humans are self-interested is that everything that humans do is to improve their own situations and fulfil as many of their desires as possible. And by the statement that humans are reasonable Hobbes is alleging that humans have the capacities necessary to allow them to determine what will enable them to achieve their desires most effectively and optimally (Freeman, 2006: 58). Taking into consideration the notions that humans are self-interested and reasonable, Hobbes is attempting to show that humans will weigh up the various options available to them and choose the option which will allow them to improve their own lives and achieve as much as they possibly can. According to Hobbes (2005: 112) it is this reasonableness and self-interest which, inadvertently, lead to the formation of societies based on contracts.

Prior to the development of society what is known as the state of nature is postulated by contract theorists. According to Hobbes within the state of nature all men\(^\text{12}\) are equal, either in terms of physical strength or in terms of intellectual capacities (134). Therefore, even if one man is physically stronger this does not necessarily give him an advantage over another man because the other man’s intellectual capacities will also give him an advantage and so even-out the ‘playing field’ as it were. As such all men are in a relatively even position within society, and all are equally afraid of losing their lives to another (Friend, 2006). Because all humans are self-interested and equal, within the state of nature there is no way to guarantee that one will achieve their desires, however there is also no way to determine that one will not be killed in order for another person to improve their life or achieve what they desire. For this reason Hobbes claims that within the state of nature there is unending war and brutality as people use whatever means possible to improve their lives and

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\(^{12}\) As you will notice, the classic contract theorists such as Hobbes and Locke tend to use specifically masculine language. It is thought that Hobbes and Locke intend to refer to humans, including women, however they continually refer specifically to men. This relates to Pateman’s argument in the following chapter that while contracts are supposed to relate to both men and women they essentially become contracts for men, with the exclusion of women.
ensure they gain what they want (Hobbes, 2005: 137). Within the state of nature there is no long-term trust or cooperation and there can be no real chance of forming relationships as every person will suspect every other person of attempting to kill them or take their property. However, there is a means through which this turmoil and state of anarchy can be transcended and according to Hobbes this can be done through the formation of contracts (Gauthier, 1997: 29).

In order for the formation of contracts to be possible people must be willing to agree to two laws. The first of these laws is that “every man, ought to endeavour peace, as far as he has hope of obtaining it; and when he cannot obtain it, that he may seek, and use, all helps and advantages of war” (Hobbes, 2005: 141). What this means is that men must pursue peace if everyone else is willing to do the same. However, if peace cannot be attained then people have the right to defend themselves through the pursuit of war. The second law which must be agreed to is that “a man be willing, when others are so too, as far-forth as for peace and defence of himself he shall think it is necessary, to lay down his right to all things; and be contented with so much liberty against other men, as he would allow other men against himself” (141). Therefore, people must be willing to give up their claim to all things and be happy with the freedom they afford other people and that is in turn afforded to them. Since humans are (assumed by Hobbes to be) rational, they will agree to form a social contract and thereby create a civil society based on these principles.

Within civil society there are two preconditions necessary in order for contracts to be successful. Firstly, everyone must renounce the rights they had against one another within the state of nature in terms of their right to achieve their desires through whatever means necessary. Secondly there must be one person or group of persons who can enforce the contracts (Gauthier, 1997: 29). This means that people should be willing to give up part of their autonomy to a governmental power in order to allow a state of order and control to be implemented. Through the formation of an ordered and controlled society, people are better able to form and maintain long-term relationships, thereby creating a more peaceful and unified society. Because people can receive punishment for going against laws they will act in accordance with them,
adjust their morality and their sense of justice. Therefore it is through contracts that the formation of societies and the development of reciprocal relationships are possible (Gauthier, 1997: 29). Although all contracts are presumably freely and voluntarily entered into, the existence of the state or government power provides the back-up force or threat of force needed to render contracts binding or enforceable.

While Hobbes views the state of nature as chaos and unending turmoil, Locke views the state of nature as the most “perfect and complete liberty in which to conduct one’s life as one best sees fit, free from the interference of others” (Friend, 2006). Within the state of nature all people are equal, all power and jurisdiction are reciprocal and no one has more than any other (Locke, 2005: 379). Although people in Locke’s state of nature have liberty and autonomy, they are not free to do exactly as they please. According to Locke (380) “no one ought to harm another in his life, health, liberty or possessions.” Rather than being governed by any external authority, people within the state of nature are governed by morality and bound by laws of nature (Friend, 2006). These laws of nature and morals are given to the people by God (Friend, 2006) and these are what ensure that the state of nature remains peaceful and through which people can remain autonomous.

However, the state of nature can, according to Locke, turn to a state of war in two instances. The first instance is if one man steals from another and the second instance is if one man tries to make another his slave. Locke (2005: 388) claims that “being reasonable and just, [one] should have the right to destroy that which threatens [one] with destruction: for, by the fundamental laws of nature one may destroy a man who makes war upon him.” As such the “state of war is a state of enmity and destruction” (388). Because there is no authority to protect one within the state of nature, one can kill anyone who is forceful, thereby protecting one’s own life and property (Friend, 2006). Once a state of war has been entered, it is unlikely to end, Locke (2005: 391) imagines, unless the aggressor offers peace, because there is no form of authority to put an end to the war. Therefore, whilst the state of nature may seem idyllic it is susceptible to changing into a state of war and it is for this reason that it is necessary to form civil society through contracts (Gauthier, 1997:
...This means that Locke ends up quite close to Hobbes’ initial position where civil society needs to be created in order to overcome the threat of chaos and brutality.

Within Locke’s state of nature, society is made up of families and is based on voluntary agreement by fathers and mothers to care for their children (Gauthier, 1997: 29). This type of society Locke refers to as ‘conjugal society’. Part of the agreement within conjugal society is the agreement by husbands and wives to the sexual use of each other’s bodies, however, although this is in general only for the purpose of procreation, it also affords the husbands and wives other forms of mutual support and assistance (Locke, 2005: 415). In this society relationships were formed through informal, familial bonds. This is the type of society that existed before modern civil society which is based on more formal contracts and agreements. The formation of civil society only takes place when people voluntarily give up their right to complete liberty and their natural right to punish transgressors to a public government who will ensure the protection of the people and their property (437). According to Locke (438) “those who are united into one body, and have a common established law and judicature to appeal to, with the authority to decide controversies between them, and punish offenders, are in civil society one with another.” In other words, in order for civil society to emerge, people need to consent to being governed and in so doing become subject to the will of the majority (Freeman, 2006: 63). Through the formation of civil society three things are gained: firstly, laws to govern all the people, secondly, judges who are able to act indifferently and determine differences according to established laws and thirdly, an executive power to enforce the laws (Locke, 2005: 468).

For Locke civil society is not the ideal form of society as it means that people have to give up their natural liberty to a governing body in order to ensure the protection of themselves and their property. Locke views the state of nature as the ideal state, however because of the volatile nature of humans; he believes that the state of nature is very susceptible to turn into a state of war. As such it is preferable to institute the lesser evil of a civil society rather than live in a constant state of war where everyone punishes their transgressors in any way they deem necessary.
From my understanding, while civil society may not be the ideal Locke has in mind for society he sees it as better than a state of war. Within civil societies contracts are fundamental, as it is through contracts that civil society is able to come into existence in the first place and it is through contracts that people are able to establish relationships of reciprocity and mutual benefit, and thus maintain civil society. Long-term security in relationships engaged in for mutual benefit is guaranteed by the state power which enforces contractual agreements. From this viewpoint, the only way in which labour power or property can now be legitimately acquired is through contracts between members of a society. Hobbes and Locke disagree on the state of nature, as I have shown, however, both are in agreement that “what is just depends on what people choose to agree to – what they will” (D’Agastino, 2008). Contracts thus allow people to part with their property or provide services to one another based on a mutual agreement which now becomes enforceable through the state. It is from these formative ideas of the classic contract theorists like Hobbes and Locke that the notion of contractarianism arises.

According to Ann Cudd (2007) “contractarianism names both a political theory of the legitimacy of political authority and a moral theory about the origin or legitimate content of moral norms.” This means that the legitimacy of the ruling political authority within a society is derived from those who are to be governed by that authority because of their freedom to consent to the contract by which the government is established. Also, morality, from a contractarian understanding, has normative force because of the notion of contract or mutual agreement. Therefore, it could be said that contractarians believe that moral and political contracts are legitimate because people agree to enter into those contracts of their own free will and in turn receive some kind of mutual benefit from the contract. However, for contractarians there are two fundamental elements which must be addressed in relation to contracts in order for them to be legitimate: firstly, there must be a characterization of the initial situation in which the contract occurs, and secondly, there must be a characterization of the parties involved in the contract (Cudd, 2007).
It is necessary to have a characterization of the initial situation because if the agreement or contract, does not work out, the parties can return to this initial situation and re-negotiate the terms of the agreement. It is also essential that the initial starting point of the contract be fair and impartial in order for the contract to be a success (Cudd, 2007). Contract theorists believe that if in the initial position there is sharp inequality or unfairness it is unlikely that the contract will be legitimate because one party to the contract will be negotiating at a disadvantage. The second element mentioned above, namely the notion of the characterization of the parties involved, has to do with the rationality of these parties. There are two reasons that people would, rationally, enter into contracts. One reason is that people are self-interested and wish to advance their own positions; the other reason is that people want to benefit from social interaction if this can be done without detriment to their own self-interest. Whether a person enters a contract for self-interest or for the benefits from social interaction it is essential that both parties involved in the contract consent freely and autonomously to the contract and agree to its terms. This relates to Cudd’s claim that contracts are legitimate only if they are mutually agreed to. From a contractarian understanding, if roughly equal parties involved in the contract rationally and self-interestedly agree to the terms of the contract then the contract is legitimate. However, there are pitfalls to this conception of contracts in that it is difficult to determine if someone has consented to a contract for their own benefit or if they have been coerced into entering the contract by some other factor, such as ensuring their own safety or survival. Therefore, it is necessary to determine to what extent the parties have freely consented to a contract to determine if the contract can be considered legitimate or not.

Consent is one of the core values necessary for contracts to take place and for contracts to be considered legitimate. The only way through which contracts can be formed is by each of the parties involved giving their consent to the contract and agreeing to the terms contained within the contract. The consent necessary for entering into contracts must be freely given consent. As Cudd (2007) states, when making contracts there must be no force or fraud, because when a party is coerced or deceived there is no real agreement and no security for the coerced party. In other words if one of the parties to a contract is coerced or forced into making a contract
there is no guarantee that they will receive any benefit from that contract or that the other party will adhere to the terms of the contract. Therefore when making contracts it is imperative that all the parties involved freely consent to the contract and that no one is in a position where they might be disadvantaged by the contract, or deceived about its terms. This implies that if a person enters a contract out of fear of starvation or potentially fatal violence, e.g., then the validity of the terms agreed to necessarily becomes dubious, because the person’s freedom in regard to the contract had been seriously compromised.

According to Rosalyn Diprose (1994: 2) one of the principles involved in contractual relationships between individuals is the principle of justice. According to this principle relationships must not involve exploitation and must “best serve the interests of those involved [in the contract]” (2). This again reinforces the notion that contracts cannot be considered fair and equal if they involve coercion or exploitation; contracts must rather serve the best interests of all the involved parties and must benefit each of the parties involved in some way. In order for any contract to be valid the terms of the contract of course also need to be adhered to. Fred D’Agostino (2008) argues that the result of entering into a contract is obligation. This means that once a party has consented to a contract and agreed to the terms within that contract they are obliged to adhere to those terms and fulfil the necessary requirements of the contract. However, this means that the parties involved in the contract need to be able to reasonably foresee the outcomes or consequences of the contract and be willing to agree to those outcomes. In order to make the free choice to enter into a contract it is implied that one must be fully informed of the consequences of making the decision to enter into that contract (Diprose, 1994: 7). One of the main claims of contractarianism is that individuals are the best judges of their own interests and of the means through which to satisfy their desires (Cudd, 2007). Therefore individuals should be allowed to make choices regarding what contracts to enter into, as they best know which contracts will be to their advantage and through which contracts they will be able to satisfy their desires. While individuals should be given the choice to enter into contracts these contracts should not put another person in a disadvantaged position or harm another person (Locke, 2005: 465).
This view of contracts and free choice also relates to sexual contracts. As Soble (1998: 723) says “as long as the persons involved are participating voluntarily, they are not merely using each other for their own purposes; the free and informed consent of each to the acts that occur is sufficient to eliminate mere use and thus make sexual activity, of whatever flavour, morally permissible.” Therefore, the contractarian view does not see contractual sexual relations as morally reprehensible, no matter what form they take, as long as the parties involved are freely consenting and do not cause harm to one another. The same limitations and conditions apply to sexual contracts as do to all other contracts. This contractarian view further implies that through consensual participation in sexual activity the parties involved are respecting each other as autonomous agents who are capable of determining the value of the sexual relationship for themselves (724). Again, individuals are free to enter any sexual relationships they desire as long as all the parties involved have consented to that relationship and agreed to certain terms and conditions with regards to that relationship. Through consent the individuals retain their autonomy and respect the autonomy of the other party involved, thus implicitly regarding the other person as more than just a means to their end, even if the contract by its very nature means that I use another as a means to achieve some desired end. Even a contract such as the prostitution contract is one which anyone can enter into, according to the basic principles of contractarianism, as long as the parties involved have freely and autonomously consented to the terms of the contract (Soble: 2006: 598). The prostitution contract will now be looked at in more detail from a contractarian viewpoint.

Prostitution and contract

According to Karen Peterson-lyer (1998:19) the overwhelming majority of prostitutes are women and nearly all the clients of prostitutes are male. For many feminists the reason for this is that prostitution is an industry of female exploitation and degradation at the hands of men (Green, 1989: 526). However, from the
contractarian perspective prostitution is a form of employment just like any other, and is not submersed in the power relations and exploitation that it is claimed to be. The claim that prostitution is a contract in which one party is exploited and subjugated is one of the main claims that Ericsson attempts to counter. He does so by showing that the prostitution contract is one that is entered into freely and equally and so can be considered a legitimate form of employment contract, rather than it being a contract of exploitation and abuse\(^{15}\). As said before, for Ericsson (1980: 337) the most fundamental problem relating to prostitution is “the hostile and disciplinary attitudes that ‘hypocritical’ society holds towards promiscuous sexual relations in general and prostitution in particular.” In order to elucidate this argument Ericsson attempts to counter seven of the most common arguments used against prostitution. These seven arguments are: the conventional moralist argument, the sentimentalist argument, the paternalistic argument, the Marxist argument, the feminist argument, the commercialisation of society argument and the argument that prostitutes live disturbed emotional lives (337-357). I will now briefly discuss each of these arguments together with Ericsson’s retort to each, in order to finally spell out more clearly this particular contractarian understanding of why prostitution is not immoral and how prostitution can in fact serve to empower women, within the context of contractarian relations.

The first argument Ericsson attempts to counter with regards to prostitution is that presented by conventional moralists. Ericsson’s understanding of this argument is that conventional moralists regard prostitution as being undesirable because it amounts to sexual immorality (337). Therefore prostitution is condemned by society as immoral, and at most tolerated by society. Ericsson further elucidates this argument by saying that there are generally two views adopted by conventional moralists with regards to prostitutes themselves. The first view is that prostitutes are sinful, suffer from a total loss of character and should be banned from society, whilst the second view is that prostitutes are victims who degrade themselves for men (337). This latter view entails that women are, in a sense, duped by men or patriarchal society into becoming prostitutes in order to perform degrading sexual
acts to fulfil male sexual desires. Prostitutes, therefore, do not necessarily choose prostitution for themselves; they are rather victims of circumstance who do not benefit in any way from prostitution, or who engage in it only for survival. In essence then, from this viewpoint prostitution is only beneficial for one of the parties of the prostitution contract, the men, and the women who work as prostitutes do no more than degrade and belittle themselves for the satisfaction of males; they are the equivalent of sexual slaves out of desperation. These two rather extreme opposite views of prostitutes are typically present in most societies: prostitutes are often seen by conventional moralists as either being victims who were forced through desperate circumstances to become prostitutes, or as immoral degenerates who freely chose to become prostitutes, and who must therefore be “social misfits, drug addicts and tools of organised crime” (Jenness, 1990:403).

According to Ericsson there are various reasons for the emergence and maintenance of this view of prostitution. Ericsson (1980: 337) states that if one looks at sex from an anthropological perspective the most important form of sexual relations are those related to reproduction. The less sexual relationships have to do with reproduction the less socially important and less sanctioned they are. Therefore sexual relationships, such as those involved in the prostitution contract, which are for nothing more than sexual pleasure or gratification are seen as unnecessary, in a sense, and are the least approved of. According to Ericsson (338) this anthropological claim against prostitution entails that sexual relations for nothing more than pleasure are regarded as a threat to the continuation of the family unit where sex is enlisted mainly for procreation. Ericsson suggests that proponents of this argument are of the view that if men are able to make use of prostitutes then they will not engage in sexual activity for the purpose of procreation or even enter the marriage contract at all for that matter. However, in his reaction, Ericsson rightly asserts the reason that people get married and the reason for visiting prostitutes are not the same. A man, for example, might make use of a prostitute because he wants to engage in some kind of sexual fantasy that he does not want to engage in with his wife, and marriage will not necessarily prevent him from doing that.
Another reason Ericsson (1980: 338) mentions for the moral condemnation of prostitution is the development of Christian heritage, especially the Lutheran and Calvinistic heritages. According to these doctrines it is bad to indulge in sexual activities and even worse to do it just for the sheer fun or pleasure of it. Through these doctrines the notion that sexual relationships should not be indulged in for anything other than procreation was, and still is, reinforced. From my understanding of this argument, prostitutes and their clients go against anthropological and orthodox Christian notions of the meaning and value of sexual relations, in particular the idea that sexual activity should be reserved for the project of procreation, and that all sexual activity outside of that frame is somehow morally suspect. Those involved in prostitution, and those who make use of prostitutes, do so not with the prospect of procreation but rather for some form of external remuneration (the prostitute) or to have their sexual desires fulfilled (the client).

Ericsson (338) claims that the anthropological arguments and Christian doctrines concerning human sexuality are basically irrational in the sense that the existence of the prostitution industry has not, nor will it ever be a threat to the institution of marriage, the family unit or human procreation as such. People will continue to enter the marriage contract and produce children whether or not prostitution exists. Ericsson further claims that this argument is outdated (338), because it rests on a pre-modern understanding of human sexuality where sexuality stood in the service of the community and did not properly belong to the individual person. I understand Ericsson to mean that within contemporary society there should be an emphasis on sexual liberation for both sexes and not a return to sexual values that constrain and inhibit people’s sexual desires. In Ericsson’s (338) words “if two adults voluntarily consent to an economic arrangement concerning sexual activity and this activity takes place in private, it seems plainly absurd to maintain that there is something intrinsically wrong with it.” This view of prostitution is echoed by some liberal feminists who assert that as long as prostitution is voluntary and not coerced then it is not morally wrong (see e.g. Green, 1989: 527). This contractarian view holds that prostitution is ideally an arrangement entered into, or a contract agreed upon, by free, rational and consenting adults who have made the conscious decision to enter into that contract, in order to gain some form of benefit from the contract. Moral
disapproval of prostitution, in Ericsson’s (1980: 525) mind, is an “archaic and irrational taboo” and the single biggest problem in relation to social responses to prostitution. I understand Ericsson to mean that this common attitude is a major problem because instead of trying to constrain sexuality society should be trying to liberate sexuality and should not be condemning those that do choose to express their sexuality in a specific way. Valerie Jenness (1990: 405) concurs by saying that there is “no reason except old fashioned prudery to make sex for money illegal.” If a woman chooses to enter the prostitution industry and willingly enters into the prostitution contract the sexual relationships involved in the prostitution contract are not immoral, because they do no harm to anyone. Therefore, from this understanding, the conventional moralist charges against prostitution do not hold and prostitution should not be considered immoral.

The second argument Ericsson (1980: 339) aims to counter in relation to prostitution is what he calls the sentimentalist argument. The sentimentalist argument claims that the sex involved in prostitution is “impoverished, cold and impersonal” (339), and does not involve the qualities found within loving sexual relationships. The separation of love and sex by a prostitute (and her client) is considered to be deviant and in a sense immoral (Scambler, 1997: 110) because of the absence of emotional attachment. The assumption underlying this claim is that there are no feelings such as love or affection involved in the emotionally and otherwise detached sex within the prostitute-client relationship and as such this kind of sex is of a poorer quality than supposedly ‘normal’, loving sex. In ‘normal’ or non-contractual sex, the assumption goes that sex is the physical expression of love and thus in the service of building and maintaining bonds of love and family. Therefore, sentimentalists claim that intra-marital sex is ‘good’ while extra-marital sex is ‘bad’ (Ericsson, 1980: 340). The sentimentalist view insists that what makes sex good and what allows for the mutual satisfaction of desires are the feelings of love between the two people involved in the sexual act. The sentimentalist argument is basically that “sex without love or affection is no good” (341) and even immoral. It could be argued that because two people love each other they are more connected and therefore they are able to have a closer, more intimate sexual connection, which enhances the quality of the sex as well as serving to cement the emotional bond.
However, Ericsson (1980: 339 – 341) responds to this argument by saying that to claim that the sex between a prostitute and her clients is not of the same quality as the sex between two people who love each other is, first of all debatable, and secondly, not a good reason to condemn prostitution itself. Ericsson argues that the sentimentalist view of sex is an ideal, far from being obtained in many or most intimate relationships, including marital or long-term ones (339). Many sexual relationships do not take place within a loving, romantic relationship, but this does not mean that those that take place outside of marriage or loving relationships are not of some worth to those who engage in it. Who is to say that the sexual relationships between two strangers cannot be of as good a quality as those which take place between people who love each other over time? According to Ericsson (340) the only real difference between prostitution and marital sex is the legal arrangements involved. He further adds that the “best prostitution sex is probably better than the average marital sex” (340), since an existing or legally formalised relationship definitely does not guarantee fulfilling or loving sex. While it cannot be determined precisely whether intra-marital sex is of a higher quality (in the sense of more fulfilling) than extra-marital sex or vice versa, the argument for the quality of the sex is not really a conclusive moral argument against either the prostitution industry or extra-marital sex as such. Even if the quality of the sex is not of a high standard, seen from a sentimentalist perspective, this does not logically imply that there is necessarily anything wrong or immoral about prostitution itself, according to Ericsson (341). Some clients might experience a great deal of pleasure from sexual intercourse with a prostitute, possibly more so than they have experienced with a romantic partner. Moreover, people would not buy sex if they did not think it worth the money; again, the contractarian logic holds.

In the case of the prostitute, however, her interest in the prostitution contract is arguably not about the sexual satisfaction she can derive from the interaction, it is instead about the material benefits that she can receive from entering the contract. The quality of the sex that takes place between a prostitute and her client is not what is of the most importance to her. The prostitute enters the contract with the aim of providing sexual satisfaction so that she can in turn receive some form of remuneration, and in that way perhaps she receives satisfaction of a different nature.
However, that is not to say that prostitutes do not receive sexual satisfaction in their interactions with clients. It could be the case that through the prostitution contract prostitutes are also able to have their sexual needs met and their own sexual desires and/or fantasies fulfilled. One cannot condone the prostitution contract based on the notion that the sexual satisfaction for the prostitute might not be of a high quality, viewed sentimentally in Ericsson’s sense. In the first place, it is not necessarily true that the contractual sex is not of a high standard simply because of its contractual nature, and if the low sentimental quality of a sexual relationship is the basis of moral condemnation then many long-term or marital relationships could be deemed immoral if the sex within those relationships is not fulfilling or of a high quality.

The main argument Ericsson is attempting to make here is that whether sex takes place between two people involved in a romantic relationship or between a prostitute and her client what is of importance is that the satisfaction of the client’s sexual desires is taking place and that the prostitute receives some benefit too, in other words, that there is mutual benefit enough to make the contract valid/legitimate. Ericsson (1980: 341) claims that satisfying sexual desires is a basic human need and similar to the basic needs for food, clothes and shelter. To add to this Ericsson (341) argues that while people should be provided with basic needs this is idealistic, just as the notion that people should be provided with sex within romantic relationships is idealistic. While people should be provided with basic needs freely they are not; it is rather the case that people have to pay in order for their other basic needs to be met. Even though people have to pay for what should be freely provided they do not morally condemn the people that they have to pay in order for these needs to be met (341). As such, although sex should ideally be freely provided, for some people because of various factors it is not, and they have to pay in order for their basic sexual needs to be met. Just as the sellers of basic resources, such as food vendors, are not condemned, the sellers of sexual services should not be condemned, according to Ericsson (342). Ericsson (342) states that there is “no more reason to despise the sex market and those engaged in it than to despise the food market and those engaged in it.”
Obviously, however, there are differences between sex and food and Ericsson does not deny these differences. Ericsson (1980: 342) claims that he does realise that food vendors, for example, are considered respectable, while prostitutes are considered indecent. But he says the reason for these contrasting views is not because the food vendor and the prostitute are that different but because of “cultural, religious and sexual taboos,” (342) which we have already seen he rejects as outdated and even damaging. Even though both the food vendor and the prostitute are selling, what Ericsson claims are basic resources; they are viewed in very different lights because of the socially and historically constructed ideals of what is reputable to sell and what should not be on sale as a commodity. Ericsson thinks that society needs to liberate itself from these socially constructed taboos. In so doing prostitution will not be any more condemned than other social service jobs, such as nursing, which sells basic care of the intimate needs of some people (342) who cannot do it for themselves and who also have no one to do it for them willingly and for free. Overall, then, against the sentimentalist charge Ericsson argues that it is unfair to compare prostitution-client relationships to romantic sexual relationships as romantic sexual relationships are an ideal which are not universally achievable. Therefore, the sentimentalist argument, like the conventional moralist argument, does not provide a strong enough reason for society to condemn prostitution and deem prostitution immoral. At most this sentimentalist argument can accuse prostitutes and their clients of engaging in detached sexual relations which is, on its own, not reason enough to claim that prostitution is immoral or ‘bad’.

The third charge against prostitution which Ericsson (342) counters is the paternalistic charge. The paternalistic charge is one which, at first, seems to have the best interests of prostitutes in mind as it argues that prostitution is immoral because it involves both physical and mental hazards for the prostitutes (342). It is known that many prostitutes face violence in their line of work, this violence coming from pimps, clients and sometimes even the police. Prostitutes also face social stigmatisation and are ostracized from their communities which can be psychologically damaging. As such paternalists argue that prostitution is not desirable because it is not in the best interests of the prostitutes, therefore people should be prevented from becoming prostitutes and those who are prostitutes should
be rehabilitated (1980: 343). Of course, it is paternalistic, because people other than the prostitutes themselves want to criminalise prostitution in order to limit people’s employment choices for those people’s own good. This makes it seem as if prostitutes are not autonomous (enough) to make rational decisions about what is best for their own lives. Ericsson questions the validity of this argument on the basis that prostitution cannot be considered immoral simply because it is conceived by others as hazardous for those who work as prostitutes (343).

To clarify his counter-argument Ericsson (343) uses the example of a miner. Like prostitutes, miners face extremely dangerous situations in their chosen line of work. However, the miner is not condemned because he faces this danger, instead everything possible is done to minimise the risks the miner faces because his job is seen as socially valuable (343). Because prostitution is not seen as a socially valuable form of work it is condemned and prostitutes are not afforded the protection that other workers are. From Ericsson’s perspective if prostitutes were seen as providing a socially valuable service society would do more to ensure that the risks involved in prostitution were minimised as much as possible. Ericsson (343) argues that prostitutes do not need rescuing from themselves, for wanting to take the risk to enter prostitution, if they voluntarily choose to enter the profession as do workers who enter into other relatively dangerous professions. Instead, Ericsson (343) argues that prostitutes “need protection from other detrimental factors [related to prostitution], especially hostile, punitive and condescending attitudes.”

From my understanding, these attitudes are harmful because they help create or reinforce the sense that prostitutes are not worthy of the same rights or protection as other people. This leads to the creation of conditions in which prostitutes face more physical harm and exploitation than they would if society held them in a higher regard. Women are generally aware of the risks involved in entering the prostitution industry. If adult women decide, despite the risks, that they want to enter this industry they should not be vilified; society should rather do all that it can to protect them in their chosen profession and try to decrease the dangers they face on a daily basis. Overall then the paternalistic charge against prostitution also does not provide
a strong enough argument, from this contractarian perspective, to condemn prostitution. Instead, it in a sense creates a double standard where some forms of employment are seen as more valuable and the workers of those occupations afforded more protection, despite the fact that they are equally as hazardous.

Fourthly, Ericsson challenges the Marxist argument against prostitution. The Marxist argument is not specifically against prostitution as such. It is rather an argument against the institution of wage labour. The Marxist opposition to prostitution is connected to the Marxist opposition to capitalism (Ericsson, 1980: 344). According to Marxist theory prostitution and wage labour are both degrading and inhumane, but the prostitute while not “morally depraved or vicious is the most degraded and miserable of her class” (345). In other words, the Marxists endorse the victim view of the prostitute and eschew the view of her as morally degenerate. This would place them roughly in the paternalistic camp already touched on above. All labourers within a capitalist regime are degraded and exploited but prostitutes are even more degraded and exploited (345) because they have to sell sex: one of the things that should not be part of the capitalist enterprise, according to Marxist theory. Ericsson (345) points out that there are two strengths to this argument: firstly, that it is not a moral argument against prostitution, therefore prostitutes are not put in a lower category from the rest of society and secondly, that prostitution is not considered an isolated phenomenon, but is placed within a socioeconomic context. However, Ericsson (345) also claims that this is a weak argument as a moral condemnation of prostitution, because it is not specific enough and if capitalism was to be done away with there would be no basis for this argument. I will briefly discuss each of his objections in turn.

Ericsson asserts, against this Marxist theory, that prostitution is a phenomenon found in all forms of societies, it is not only found within capitalist societies and can thus not logically be considered to be one of the ‘ills of capitalism’. Moreover, in instances where the number of prostitutes has been reduced it has not been due to economic circumstances, but rather due to strict authoritarian supervision, insists Ericsson (346). Therefore, the existence of capitalism is not the reason that
prostitution exists or even the reason prostitution began, and so prostitutes cannot properly or simply be regarded as victims of class, as the Marxists tend to do. Prostitution has been in existence since long before the emergence of capitalism. As such it is historically inaccurate to claim that the sole reason for the emergence and continuation of prostitution is capitalist institutions and exploitation. Ericsson (1980: 346) also asserts that the causes of prostitution are not only economic. He claims that the reasons for entering into prostitution are economic in the same way that choosing to enter into any other form of employment is economic. As Peterson-Iyer (1998: 26) states, in agreement with Ericsson, often “women choose [prostitution] from a list of available options” as it may seem like the most lucrative option available, or it might give them more freedom, such as flexible working hours, that other occupations do not. In other words, Ericsson negates the one stereotypical notion of prostitutes as desperate women who are excluded through their economic circumstances from entering any other profession. He basically sees prostitutes as women who had a number of other career options, but who happened to choose prostitution as the most lucrative or most flexible. Both Peterson-Iyer and Ericsson thus reject the view of prostitutes as desperate women who have no other option for survival; by insisting on prostitutes’ relative agency and freedom in choosing their profession, they insist on the validity or legitimacy of the prostitution contract.

Sometimes choosing to enter into prostitution might not be a woman’s first choice but it is chosen as the best alternative out of a limited set of options (36). Whilst choosing to enter into the prostitution industry might not be the first choice for some women, many other women (and men) enter into occupations that they would not necessarily choose for themselves in a perfect world, but which at the time is the best available option. Maggie O’Neil (1997: 3) says that “in contemporary society prostitution, for some women, offers a good enough standard of income for shorter working hours and some degree of autonomy and independence for those working for themselves.” It could be argued that choosing to enter the prostitution industry is the same as choosing to enter into any other industry in this regard. Many women choose to enter prostitution because of their socioeconomic positions in the sense that prostitution is a means through which they can supplement their incomes. However, it is an oversimplification, according to Ericsson (1980: 348) to view the
prostitute-client relationship as one of class exploitation where the client is necessarily wealthy and the prostitute is poor, as Marxists do. Not all prostitutes come from a working class background, as I have already indicated, and in some instances prostitutes come from upper class backgrounds and do not necessarily need to work as prostitutes to earn a decent living. As such the Marxist claim that prostitution is a product of capitalism could be refuted, as prostitution is not only entered into for economic survival only or only within capitalist societies. According to my understanding of this argument, Marxist analyses of prostitution thus tend to oversimplify women’s presence within the prostitution industry. Its paternalism also runs counter the contractarian logic of Ericsson who emphasises the prostitution contract as a situation freely entered into by women who have rationally calculated their best interests. Once again, this argument fails to provide a completely valid or convincing reason as to why prostitution should be seen as wrong or immoral, as far as Ericsson is concerned.

The fifth argument against prostitution Ericsson (1980: 355) addresses links up with the previous one and entails what he calls the commercialisation argument. According to this argument prostitution is one of the factors strengthening the commercial elements of society. According to this argument sex is the one thing that should not be sold as it should remain in the private sphere. Thus prostitution is said to contribute to the commercialisation of society because it sells something that should not be available as a commodity. According to Ericsson (356) prostitution is only a minor commercial and economic phenomenon within commercial societies. Ericsson (356) adds that if there is a causal connection between prostitution and commercialisation it is that the more commercialised a society the more prostitution there is because commercial society is more tolerant of prostitution. Ericsson (356) reinforces the notion that prostitution is not a capitalist invention. Prostitution did not start because of capitalism and it exists in non-capitalist societies. Therefore, Ericsson (356) argues that it is capitalism that creates commercialisation, not prostitution. Therefore, in order to diminish the degree of commercialisation in society it is necessary to “fight the roots [of commercialisation] rather than loosely related symptoms like prostitution” (356). Taken as a whole, Ericsson is arguing that prostitution is not the cause of the commercialisation of society. In order to decrease
the commercialisation of society it is not necessary to do away with prostitution, instead it is necessary to tackle the system of capitalism.

Ericsson’s (1980: 357) sixth claim contends that the argument that there is something wrong with prostitution because prostitutes live disturbed emotional lives is erroneous. According to the disturbed emotional life argument prostitutes suffer mental harm due to the nature of their work. According to Henry Trotter (2008: 174-175) many prostitutes suffer from depression, neuroses and compulsive disorders; they also suffer from self-degrading and self-destructive tendencies (343). It could be argued that prostitution is damaging to a woman’s mental and emotional well-being, therefore it should be eradicated for the benefit of women working within the prostitution industry. This aspect therefore ties in again with the paternalistic approaches discussed earlier.

Ericsson (357) rather predictably responds by insisting that many of the mental and emotional problems that prostitutes do arguably experience are due to the social stigma against prostitution and the variety of vulnerabilities created by this, rather than to the inherently traumatic or damaging nature of their work. It is difficult to determine how the emotional well-being of prostitutes would change if the social and cultural attitudes towards prostitution changed (357). However, even if the attitudes towards prostitution changed it would be likely that there would still be some prostitutes that experienced emotional problems. This is not to say that emotional problems are a unique phenomenon within prostitution though. People in many other forms of employment, such as social workers, experience emotional stress-related problems as a result of their work but these forms of work are not necessarily criticised or criminalised for causing emotional harm to the workers populating the industry. On the other hand there are also many women who do not experience emotional problems as a result of prostitution, even as it stands presently (357). Therefore, as Ericsson (357) states, to argue that prostitution as an industry should be done away with because it harms the people working within that industry is not necessarily a sound argument. If it were the case that prostitution should be eradicated on these grounds then other forms of employment, for example social
work and nursing, could also be eradicated on the grounds that they can be harmful to a person’s emotional well-being.

There are four main feminist arguments against prostitution, and it is these that Ericsson seeks to address in his final argument. According to some feminists, including Pateman and Laurie Shrage the prostitution contract is not a free contract but a contract of male domination and as such serves as a reflection of the inequalities between the sexes (Peterson-Iyer, 1998: 28). According to such feminists, women are already in a position of inferiority to men in society and contracts such as the prostitution contract further serve to cement the notion that women should be available to men and that men are women’s superiors. This meaning that already subjugated women become further subjugated to men within the prostitution contract. Women are therefore always in an inferior position to men within the contract. It could thus be argued that the prostitution contract cannot be considered valid or legitimate because it creates or entrenches a relationship of domination rather than being one between equals where both parties gain mutual benefit. This relates back to Cudd’s (2007) argument that contracts can go wrong if one of the parties to the contract is somehow forced or coerced to enter the contract. In this instance then it could be argued that the contract is not one between equals but one in which one party is dominated over by another, and the dominated party negotiates at a disadvantage.

For many feminists prostitution is seen as instrumental in the propagation of patriarchy and the subordination of women. Patriarchy is seen as creating circumstances in which women (in a weaker position) will agree to unfair terms within a contract and in so doing become further subordinated to men. Women agree to these unfair terms because they are already in an inferior position and see agreeing to unfair terms as the only way to receive some gain or benefit. For this reason prostitutes are often viewed in one of two ways. On the one hand they are viewed as “passive, naive victims of patriarchy who have been coerced or duped into fulfilling
its needs” (Diprose, 1994: 8) and on the other hand they are viewed as “active agents in the immoral reproduction of a system which exploits women” (8). These two views of prostitutes as either victims or immoral agents can also be related back to the view of conventional moralists who view prostitutes as being either naive, tricked victims or morally reprehensible. The main difference is that for conventional moralists prostitutes’ reprehensibility lies in being sexually deviant, while for feminists it lies in their apparent collusion with patriarchy. Because the prostitution industry is viewed by feminists as a patriarchal institution and one which systematically degrades and exploits women, it is often seen as an industry that cannot really be redeemed or altered to make it any less damaging to the women involved in it, as well as to women in general. Some feminists think that prostitution can and should be eradicated, and in order to do so it is necessary to criminalise all aspects related to prostitution, including both prostitutes and their clients.

The first feminist argument is that prostitution is a graphic form of the more general oppression and domination of women at the hands of men under patriarchal conditions (Peterson-Iyer, 1998: 28). Ericsson (1980: 354) understands oppression to mean that “if A oppresses B, B’s freedom of choice and action is severely reduced against his will, as a result of actions undertaken by A against B.” In this sense, the oppression of prostitutes means first of all that some women have been placed in a position where their freedom of choice is limited so much so that they have no other choice but to prostitute themselves as a result of the actions men have used against them. In other words, patriarchal social and economic circumstances and other forms of oppression force women into becoming prostitutes out of desperation. For Ericsson (354), if women do face oppression which forces them to enter the prostitution industry it is not necessarily the case that males are the oppressors. From Ericsson’s (354) point of view it is social conditions that lead women to become prostitutes and therefore it is these conditions that are the oppressors of women. In other words, from this perspective it is not men specifically that force women to become prostitutes, it is rather the economic and social conditions such as poverty they find themselves in that determine whether they become prostitutes or not. Ericsson (354) also claims that while some prostitute-client relationships might be characterised by the oppression of the prostitute this is not necessarily the case for
all prostitute-client relationships. Some prostitutes even “take pleasure in the sense that they are more powerful than their customers and that their sexual attractiveness affords them a measure of dominance and control over the client” (Peterson-Iyer: 1998: 40). Therefore, some prostitutes are not victim to any oppression from their clients; instead the prostitutes themselves are in control. Ericsson’s overall opinion is that within the prostitution industry it is not necessarily the case that women are dominated and controlled by men. In many instances prostitutes are in a position of domination over men, as they have the final say as to what takes place within the prostitution contract. In my opinion however, Ericsson does not present a strong enough argument against the problem of the domination and subjugation of women within prostitution. He provides generalisations and asserts that some prostitutes are not subjugated but that does not provide ‘comfort’ for those that do face domination or oppression.

The second and possibly most important feminist charge against prostitution which Ericsson discusses and dismisses is that sex and sexuality are intricately linked to one’s sense of self. As such prostitution is intimately linked to the body of the prostitute and her sense of identity (33). Therefore, when a man hires a prostitute he is not merely making use of her body he is also buying her sense of self and identity for the duration of the contract. While Ericsson (1980: 341) claims that it is necessary to satisfy sexual desires because they are a basic human need, he does not regard sex as something which is intrinsically tied up with emotions and the self. In Ericsson’s (341) view prostitutes do not sell their bodies, instead they contract out a sexual service. The idea that one can separate the sexual services they provide from their sense of self comes from the Lockean notion of property in the person. This notion implies that an individual can stand apart from their body, in a sense, and the individual can govern it as though the body is separate from the individual’s sense of self. The individual thus has rights over the body and the labour or services that their

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18 Ericsson does seem to contradict himself especially with regards to the claim that prostitutes are not exploited. He seems to say that prostitution can be a means of liberation but then also claims that there is oppression involved in prostitution. While there are these contradictions in this regard I still think Ericsson’s overall argument is strong and valid and provides support for many of the arguments presently raised in favour of legalising prostitution.
body can supply (See Locke, 2005: 398 and Diprose[^19], 1994: 3). Therefore, from Ericsson’s understanding a prostitute is able to separate her sense of self from her body in order to ensure that it is only her body that is involved in the prostitution act. If a prostitute did sell herself, Ericsson (1980: 341) asserts, this would amount to her being a sexual slave.

This contractarian view of prostitution as the selling of a service rather than the renting out of one’s body is supported by prostitutes themselves, as well as various prostitutes’ rights organisations. According to members of COYOTE[^20] “a profound misconception that people have about prostitution is that a prostitute is selling her body, in reality a prostitute is being paid for her time and skill” (Jenness, 1990: 405). In this sense a prostitute could be compared to anyone else who provides a service. Ericsson (1980: 353) argues that the feminist argument that prostitutes are turned into objects by their clients can apply to any professional who provides a service to a client. When a client visits a professional, for example a doctor, they are not interested in the professional as a person but rather in the service they can provide for them. In this case a doctor could also be said to be turned into an object for instrumental use by their patient. Ericsson (353) deduces from these examples that just because a client is not interested in the professional as a person but rather in the service they are providing it does not necessarily mean that the client is degrading them or dehumanising them in any way.

The third claim in relation to feminist arguments against prostitution is that prostitutes are turned into objects and are used as mere means for the end of satisfying the client’s sexual desires (353). However, Ericsson (353) assumes that it is not only the client that uses the prostitute as a mean, but that the prostitute also uses the client as a means for her own ends. The client uses the prostitute in order to gain sexual gratification whilst the prostitute uses the client in order to gain some kind of...
remuneration. In a sense then, the prostitute has just as little interest in her client as a person as the client has in her as a person, and such personal disinterest is in fact characteristic of contractual relations as such. Contractarians would argue that the prostitution contract is a reciprocal contract in which each party gains something and which can be viewed just as any other form of employment contract. The only difference, in Ericsson’s contractarian view, between the prostitution contract and other forms of employment contracts are the sexual taboos and cultural stigmas which determine the attitudes towards prostitution and the contempt for the services the prostitute sells (Ericsson, 1980: 353).

Ericsson (354) asserts that one of the goals of feminism is the liberation of women, which must start with liberation from the exploitation of their sex. This, according to Ericsson (354), implies that the primary goal of some feminist movements “is the abolition of the (ab)use of the female sex as a commodity.” Although Ericsson (355) supports this aim, he adds that it is necessary for both women and men to be liberated from the socially and culturally constructed and outdated notions of sexuality. As such both women and men need to be freed from the ideas that surround and confine their sexualities and the expression of their sexual desires, and he believes that a more open and tolerant social response to prostitution might play a role in this sexual liberation. Ericsson (355) promotes the notion that sex and sexual desire is as natural as the desire and necessity of food. In addition to this idea Ericsson (355) contends that people should embrace the idea that if sex cannot be obtained freely it can always be bought. In changing the attitudes surrounding sex and sexual relations Ericsson thinks that people will be able to disregard, or give less value to, the socially constructed ideals of sexuality and begin to be sexually liberated, and accept the validity of sex being available as a commodity, along with almost any other good.

The final major objection that some feminists have against prostitution is that prostitutes are mainly women and their clients are mainly men, thus they assume that the prostitution industry exists to serve men’s desires. Prostitutes themselves thus collaborate with their clients and patriarchy as such to sexually subject women
to male control in general. Ericsson disagrees with this claim. According to Ericsson (1980: 350) the reason that there are more male than female prostitutes is simply because women have been socially conditioned not to ask for sex. Therefore he says the best thing to do in relation to prostitution is not to eradicate it but rather to modify and extend it so that both women and men are able to make use of the services of prostitutes. Just as everybody needs food, so everybody needs sexual satisfaction, and this is just as true of women as of men. Because of male social and sexual domination, women may generally experience even less sexual satisfaction and may be more in need of paid sexual services than men. Susan Edwards (1997: 74) adds to this saying that “prostitution is primarily a matter of sex and of sexual liberation and of freedom.” If prostitution is viewed in this light then it can be seen as an industry in which the services provided are ideally as available to women as they are to men, and a means through which women can express their sexual desires and have them fulfilled. This contractarian argument entails that prostitution, if modified, can become a universal industry that caters equally to both sexes, and it need not therefore be in the service of patriarchy or male sexual domination. Building a prostitution industry aimed at female clients may play a revolutionary role in the liberation of women’s sexual agency and desire. What is necessary for this to occur is that the attitudes towards sexuality and prostitution need to change and be liberated so that women do not feel the need to deny their sexuality and sexual desires. Instead of viewing prostitution as an inherently patriarchal instrument, feminists should thus see the potential within the industry to help liberate women from a restricted view of their own sexuality and to help them cultivate a sense of sexual autonomy and legitimacy.

Possibly one of Ericsson’s strongest and most important contributions relates both to this feminist argument against prostitution, as well as to the paternalist argument against prostitution. Ericsson (1980: 352) reiterates that the biggest problem associated with prostitution is the negative attitudes held towards it. Because prostitution is condemned the women working within this industry often also face condemnation. By “deeming prostitute women as ‘bad’ it gives the impression that violence against them is in a way tolerated, which makes their working conditions more dangerous” (Adams, 1997: 93). Rather than attempting to minimise the risks
prostitutes face in their industry society reviles them and tries to abolish prostitution. It is these attitudes that, Ericsson (1980: 352) claims, “create prerequisites for sex-capitalist exploitation.” While prostitution is legal in some countries it is often still illegal to hire out rooms to prostitutes and often prostitutes are forced to work in brothels or within certain more underground areas. This legal and moral ambivalence towards prostitution and prostitutes themselves leads to further exploitation of prostitutes by those who wish to make a profit off of the prostitute. As Karen Green (1989: 525) states, criminalising prostitution causes some of the biggest problems for prostitutes, including police harassment, exploitation, and their lack of legal protection against violence and exploitation, all of which ultimately prompts close association between prostitutes and organised crime. Therefore, it is necessary to alter the conditions and regulations surrounding prostitution in order to diminish some of the factors which ultimately lead to the exploitation of prostitutes. If these conditions were diminished it would be likely that the working conditions for prostitutes would improve and the exploitation they face would decrease. With better, safer working conditions and proper legal protection, prostitution could also free itself from exploitation and criminal ties and eventually the status of the profession itself in the eyes of society will hopefully improve.

If prostitution were viewed in a more respectable light many of the hazards facing prostitutes would be done away with and the remaining dangers would not make prostitution seem undesirable to the rest of society and those who criticise the prostitution industry (Ericsson, 1980: 344). Ericsson attempts to show that what is necessary is the reformation of society’s attitudes towards prostitutes, rather than the reformation and rehabilitation of prostitutes themselves. It is because of the stigma attached to prostitution that prostitutes are exposed to exploitation and in danger of mental and physical problems, as per Ericsson’s (344) argument. Instead of condemning prostitutes, society should come to view prostitution in a more positive light. If society considered prostitutes to be moral agents with the capacity to make decisions for themselves regarding their own sexuality and as morally worthy of the same rights and protection as other members of society the social stigma attached to prostitution may be decreased. In addition to this if prostitutes were seen as
providing a valuable social service within society the way prostitutes are viewed and treated would be improved.

In my mind prostitution is undeniably a dangerous industry, as it currently stands. Prostitutes are exposed to physical and emotional abuse, they are reliant on organised crime for protection and face social stigmatisation because of the way society views them (SALRC, 2009:19). Therefore, it would be in the best interests of prostitutes and society\(^ {21}\) if the view of prostitution was altered and the risks involved in prostitution minimised, rather than trying to reform prostitutes and abolish the prostitution industry, according to Ericsson (1980: 344). If prostitution were viewed as a valuable social service and not considered an immoral industry that should be abolished it could come to be seen as a form of legitimate labour. In order for this to happen women also need to be seen as having the autonomy to make the rational decision to enter into the prostitution industry and so should not be seen as victims or moral degenerates. These altered perceptions about prostitution will significantly aid in the decreasing of the dangers within the industry and improve the lives of the women working within the industry, as well as having positive consequences for society as a whole. My own position, as will become clear, is that this is indeed a part of the answer, but more needs to be done.

Overview of contractarian ideas relating to prostitution

The seven arguments that Ericsson attempts to refute have all been discussed in the previous section. However, I will now discuss the main arguments Ericsson *himself* presents with regards to prostitution in order to give an overview of Ericsson’s point of view. There are four main claims that can be distilled from the contractarian defence of the morality of prostitution: *firstly*, that the prostitution contract is a legitimate form of employment contract and should be acknowledged and enforced as such; *secondly*, that prostitutes contract out a service and not themselves; *thirdly*,
that prostitution is potentially or ideally a universal occupation, meaning that it is possible for anyone to enter into the prostitution industry and for anyone to benefit from it as a client; and finally that prostitution is a natural feature of human society. I will now briefly discuss each of these claims in order to elucidate Ericsson’s arguments.

Firstly, this specific contractarian view sees prostitution in the same light as the employment contract. According to the contractarian defence argument a prostitute is a free agent that sells a service for a certain amount of time (Green, 1989: 525) and in this sense the prostitute is the same as any labourer working within the capitalist market in that she provides a service in return for a wage. Ericsson (1980: 338) argues that prostitution is a form of free contract entered into by two consenting adults and that prostitution can act as a means through which women’s sexuality can be liberated, both in her role as prostitute and in her role as client. In other words, prostitution allows people the opportunity to make the decision to enter into a sexual contract from which both parties will benefit and so the ideal of freedom contained within the notion of contract can be fulfilled. The prostitution contract is in other words a concrete manifestation of women’s right to use their sexuality to their own advantage, and thus a victory for liberal feminists. It is a victory for liberal feminists because one of the goals of liberal feminism is to improve the way women’s sexuality is viewed and to empower women’s sexuality against dominant male sexuality.

Ericsson does not see the prostitution contract as being necessarily immersed in power relations or relationships of domination and subjection. The problems that are currently related to prostitution are, in Ericsson’s view, not caused by patriarchy or capitalism; they are rather a result of the moral ambivalence that society holds with regards to prostitution, which leads to their treatment as second-class citizens or inferior human beings. The problem with prostitution that Ericsson (352) sees is on the side of those who condemn or stigmatise the practice, i.e. that it involves hypocritical, prudish and outdated attitudes. His contractarian position is that prostitution is still viewed in an archaic manner rather than as a modern form of freedom and benefit. The judgmental attitudes some people (including some
feminists) adopt towards prostitution is based on a deep-seated bias against women’s assertion of their own sexual freedom within the public and economic spheres.

A second aspect of contract theory relating to prostitution is the notion that prostitutes do not hire out themselves, they instead merely hire out the use of a sexual service. Contractarians claim that prostitutes own property in themselves which they contract out, therefore they are not selling themselves but rather contracting out a sexual service (Edward, 1997: 54). The prostitute is able to separate her sexual services from the rest of herself so that it is only these services that are available in the capitalist market, and not her (sense of) self. This means, from a contractarian point of view, that the prostitute need not suffer any detriment to her self as her personhood is not involved in the contract between herself and the client. If a client were in fact to hire the prostitute temporarily in her entirety the prostitute would actually be a sexual slave, according to Ericsson (1980: 341). The point that Ericsson is trying to make is that if a client were in fact to buy or even hire a prostitute in her entirety (her body, self and services) she would no longer be a free person, she would become a possession of the client and subject to his will entirely, as a slave is subject to his master. Because the prostitute only temporarily hires out a service which is essentially separate from the rest of herself, as nursing service is separate from the person of the nurse and cleaning services logically separate from the bodies of the cleaners, she is still a free human being and only in the sexual service of the client for a specific time, at her own free will, and under circumscribed conditions.

The third argument within the contractarian defence of prostitution is that prostitution is a universal industry. According to this argument prostitution is an industry both sexes can equally enter (350) and so anyone that wants to be a prostitute or client is afforded the opportunity in principle. This argument moreover suggests that anyone who is unable to attain sex in any other way than through a prostitute, or anyone who desires the company of a prostitute, is able to do so (360). In essence then the prostitution industry is one in which discrimination is not inherent and anyone either
wanting to be a prostitute or wanting to make use of the services of a prostitute has the same, equal opportunity. Ericsson (1980: 342) views prostitution as a type of social work in that the prostitute will take care of the clients’ intimate needs and ensure they receive the service they need and / or desire. The basic assumption of this claim is that men and women will ideally have the exact same opportunity to buy and sell sex within the market (360). The contractarian claim assumes that if a woman desires to hire a male prostitute to provide her with a sexual service, she should have the same opportunity as a man wishing to hire a female prostitute. This claim also assumes that the reason there are more female prostitutes than male prostitutes is not of moral importance, since it does not constitute an injustice, because it is just a natural occurrence (ostensibly because of men’s greater sexual need), or an accident of historical circumstances, which taught women to suppress their sexual needs more than men. This contractarian view does not think the prevalence of women in the prostitution industry has anything to do with systematically unequal gender relations or the subjection of women.

The final argument in this contractarian defence is that prostitution occurs naturally within human societies (353). This suggests that prostitution exists because people need a means through which they can fulfill their natural sexual desires. Prostitution is therefore not wrong or immoral; it is rather an industry supplying services which are necessary to normal human functioning. This means that men are not using prostitutes to exert domination over women or as a patriarchal tool of subjection. Men (or women) are merely entering into contracts with prostitutes so that they have an outlet through which they can engage in sexual activity and gain the fulfillment they desire. It is about sex, not power, and so it does not matter that the prostitute distances her self from the sexual services she is hiring out, because the client is not interested in the prostitute as a whole person. He is merely interested in the service she is providing in fulfilling his sexual desires. Therefore, the prostitution contract is one of mutual benefit through which the client is able to have his desires fulfilled and the prostitute is able to earn an income. The transaction which takes place between the prostitute and client, in this contractarian view, is not one in which women
become subjected and subordinated, rather it is a means through which women are able to empower themselves by employing their rightful sexual property in the person to gain financial remuneration, and in some cases even have some fun or the opportunity to express themselves sexually in the commercial service relationship with the client.

Contractarian suggestions with regards to prostitution policies

Thus far in the chapter the arguments Ericsson puts forth in relation to claims against prostitution have been discussed. In this section I am going to look at some of the suggestions that Ericsson makes with regards to how the prostitution industry can be reformed and improved. Ericsson, arguing from a contractarian point of view, has pointed out what he considers to be flaws within many of the moral arguments against prostitution and in the arguments for the legal abolition of prostitution. However, he does concede that while there are flaws in these arguments it is not necessarily the case that prostitution is the most desirable form of employment to enter into (Ericsson, 1980: 366). The existence of prostitution is dependant on imperfections within human societies, including economic deprivation and exploitation (358). But even if prostitution is an essentially undesirable form of employment it does not warrant the fact that it should be abolished (358). One could argue that there are other forms of employment that are not necessarily desirable, however they provide those who do those jobs with some form of economic benefit and a certain degree of independence. Economic factors do play a major role in the prostitution industry in that they influence the existence of prostitution, the rate and demand of the services of prostitutes, the number of prostitutes in a particular society, individuals’ entrance into prostitution and individuals’ demands for bought sex (358). However, even in societies where there is greater equality between men and women and there is greater economic equality there are still prostitutes.
While economic factors do influence the prostitution industry, these factors alone cannot explain the complexities involved in prostitution (Ericsson, 1980: 358). Ericsson (358) claims that there are two instances in which prostitution could be eradicated in theory. Firstly, if the supply of prostitutes was suppressed or the demand for prostitution services was suppressed or a combination of both; and secondly, prostitution could be eradicated in a society in which no one has the need to use methods like prostitution, in order to gain sexual gratification (358). However, to think of a society in which the demand for prostitution is non-existent and in which every citizen is able to gain sexual gratification through some form of personal bond is unrealistic. As Ericsson (358) states, all attempts throughout history to suppress prostitution have failed. Ericsson (358) explains that to try to suppress prostitution usually forces prostitution underground, rather than eradicating it and has devastating consequences for prostitutes themselves. One example of an attempt to suppress prostitution can be seen in the prostitution policies adopted by Sweden, where attempts are being made to decrease the demand for prostitution by criminalising the clients. While it seems that the number of prostitutes is declining it is more likely the case that the prostitutes are being forced further underground where they possibly experience more exploitation and have to work under poorer conditions (Kilvington, et al., 2001: 85).

Ericsson (1980: 359) further asserts that possibly the only way to eradicate prostitution would be under complete totalitarianism. If societies wish to avoid adopting a totalitarian system in order to abolish prostitution then, Ericsson (359) claims, the demand for prostitution must be completely eliminated. In order to achieve this, sex must become an activity which is participated in for no reason other than pleasure. This, according to Ericsson (359) involves two criteria: firstly, there must be no institutional control of sexual expression and secondly, all sexual desire must be mutually complementary. What the first criterion implies is that the institution of marriage should be done away with as this limits people’s sexual urges and also influences people’s sexual expression based on non-sexual factors (359). Within marriages people sometimes express sexual desire based on feelings of love, out of a desire to please their partner, or even for procreative purposes rather than based purely on the desire to satisfy their own sexual urges. There can also, in Ericsson’s
view, not be factors such as jealousy or divorce within societies because these also suppress and limit peoples’ sexual urges and the expression of peoples’ sexual desires. In fact, any factors which are likely to inhibit the satisfaction of an individual’s sexual urges cannot be present within a society which aims to eradicate prostitution. As far as the second criterion is concerned, no individual within a society can be attracted to another individual unless that attraction is completely mutual (359). If an individual is attracted to another person and that attraction is not mutual it can lead to frustration, force, the use of violence over the person or the use of money to coerce co-operation from the un-attracted party (359). These criteria seem completely unrealisable as it is more than likely that the conditions necessary for them can never be achieved. People also want variety and there are some sexual desires that they do not want to share with certain people. In these instances prostitutes are a means through which people can attain the sexual gratification they desire. Therefore, because these criteria cannot be achieved and because it is unlikely that a society could exist in which sex without love did not exist, Ericsson (359) claims that there is not really any way that prostitution could be eradicated.

Because prostitution cannot be eradicated it is necessary for certain urgent reforms to be put in place, argues Ericsson (362). One of the most important reforms necessary is that of the negative attitudes towards prostitution. Ericsson (364) attempts to convince people that the contempt of prostitution is closely related to the contempt of women per se. Women suffer from the devaluation of their sex and sexuality. Ericsson (364) points out the fact that philosophers, such as Aristotle and Freud, thought of women as a kind of deformed male and as such inferior to males. These ideas have become cemented within societies’ view of women and as such women are often seen as inferior to men. Sexuality has also been devalued in that the ancient hierarchical dichotomy between the body and soul has established that the soul is of greater importance than the body (364). Therefore functions relating to the body have been regarded as of lesser value, especially sexuality, as it is regarded as the antithesis of rationality (364). As such women working as prostitutes are especially devalued on the basis that they are firstly women and secondly they earn a living from selling sex, a bodily function. These antiquated ideas regarding sexuality and the female sex still have some influence in contemporary society.
Therefore, it is of utmost importance that these ideas be addressed so that the attitudes towards women in general and prostitutes in particular, can be changed. It is possible in Ericsson’s (1980: 362) mind to change the attitudes towards prostitution; attitudes are slowly starting to change however there is still a long way to go. Until these attitudes change there are many prostitutes who still suffer as a consequence of them and therefore it is important that other reforms also be set in place.

One of these necessary reforms is the decriminalisation\textsuperscript{23} of prostitution (362). The view that prostitution should be decriminalised is held by many theorists. Graham Scambler (1997: 187), Peterson-Iyer (1998; 43) and Jenness (1990: 404), to name but a few, all argue that the decriminalisation of prostitution would serve the best interests of prostitutes in that it would give them access to the same rights other workers are afforded, would help to reduce the stigma attached to prostitution and would aid in improving their working conditions. By decriminalising prostitution the laws related to the activities involved in prostitution would be done away with and prostitution would be treated in the same way as other forms of enterprise. Scambler (1997: 187) insists that “the decriminalisation of adult sex work freely entered into would not put sex workers beyond the law, but it would eliminate the anomaly of an essentially sexist body of law exclusive to a particular area of work.” Because prostitution is seen as an illegal activity in some countries, such as South Africa, or regulated in other countries, such as the United Kingdom, women working as prostitutes are not protected under the law in the same way that other women or other workers are. By decriminalising prostitution the same laws that apply to all women and to all workers would also apply to prostitutes and so afford them more protection, thereby aiding in the improvement of their working conditions and their social standing. In relation to the decriminalisation of prostitution Ericsson (1980: 362) argues that improved housing situations should be available to prostitutes. This means that prostitutes should have the right to rent suitable property \textit{as prostitutes}, that prostitutes cannot be denied property or evicted on the grounds that they are prostitutes and that landlords should not be convicted of running a brothel on the
basis that they are renting property to a prostitute. This, according to Ericsson (1980: 363) will have the positive consequences of reducing the economic exploitation of prostitutes at the hands of landlords, will diminish some of the occupational hazards related to prostitution and weaken the association between prostitution and organised crime.

If these reforms are set in place and the attitudes towards prostitution are changed it could lead to a more ‘sound’ form of prostitution. A ‘sound’ form of prostitution, in terms of Ericsson’s (366) outlook, would be free from emotional prejudice, would be voluntarily entered into, would afford prostitutes the same rights as other workers, would be equally available to both men and women and would be viewed as socially valuable as a necessary service provided. While this form of prostitution is not easily realisable to it also not unrealistic to aspire to the formation of this type of prostitution, according to Ericsson (366), as some sexual liberation and liberation of prostitutes has already begun.

Conclusion

From a contractarian point of view, the relationships and agreements formed through contracts form the very basis of modern civil society itself. From this viewpoint all individuals are free and equal and as such have the liberty to enter into contracts at will as long as these contracts do not harm another. It is only through contracts that people are able to give up some of their rights to another party for some kind of benefit or protection, or allow the use of the services they can supply, again in order to gain mutual benefit. Contractarians are of the view that individuals are best suited to decide what will benefit themselves most and are therefore capable of making decisions regarding themselves and their lives with little interference from authoritative or paternalistic powers. This liberal view relates to all contracts that take place within a society including prostitution contracts. Contractarian defenders view prostitution as a contract that can be entered into by two consenting adults with little
or no harm to the prostitute or the client. Understanding prostitution from a contractarian point of view means that a prostitute is seen as selling a service rather than her body, that the prostitution contract is akin to any other form of employment contract, that prostitution is a universal industry and that it occurs naturally within human societies as a means of sexual gratification. Generally prostitutes and prostitute rights organisations adopt this contractarian view when arguing for the rights of prostitutes. For some women prostitution is seen as a means through which they can gain some independence both personally and economically (SALRC, 2009: 167).

Because this particular contractarian viewpoint regards prostitution as a free choice, as not being immoral and as a way of promoting the interests of women, it argues for the decriminalisation of prostitution. This argument is based on the notion that through decriminalising prostitutes and their activities the women working within the industry will be afforded more rights and equal protection under the law, which they are not afforded when prostitution is criminalised. Decriminalising prostitution alone will not improve the plight of prostitutes enough I will argue; however, it is a good way to begin the attempt to improve the working conditions of prostitutes and their position within society. Related to improving the position of prostitutes within society is the strong contractarian claim that the typical social attitudes towards prostitution need to be reformed in order for the lives of prostitutes to improve. Ericsson asserts that contempt for prostitution is closely linked to the contempt for women in general. Therefore, by changing the attitudes held towards sexuality and the female sex the position of both women and prostitutes within society could be bettered.

However, this contractarian understanding of prostitution goes against many other theories which claim prostitution is immoral and / or a form of male domination. It could be argued that the contractarian understanding of prostitution overlooks some of the deeper underlying issues relating to the causes and continuation of prostitution. Contractarian defenders do attempt to address some of these underlying issues, however, it could be said that they do not pay these issues enough attention or dismiss them too easily. Pateman, for example, argues that prostitution is a form
of domination of women and is a tool in the patriarchal subordination of women. Whilst contractarians do make quite a strong case against anti-prostitution arguments there are strong claims against the contractarian view of prostitution. In the next chapter Pateman’s argument against this contractarian view of prostitution and against the institution of prostitution as such will be looked at.
Chapter Two: A feminist critique of prostitution as a legitimate contract

Introduction

So far in this dissertation I have discussed prostitution from a contractarian point of view with a specific focus on Ericsson’s argument for prostitution. Contract theory is widely used in pro-prostitution arguments because it addresses many of the concerns that are raised by prostitutes themselves. This is the case because contract theory views prostitution as an industry that is beneficial to women and one which women should be able to enter freely. It also echoes points made by theorists defending prostitution, such as that the prostitution contract is a legitimate contract and that prostitution can aid in the liberation of female sexuality. Contract theory, as the discussion of Ericsson (1980: 353) in the previous chapter has shown, can be employed to defend the view that prostitution is a legitimate type of employment contract that is entered into between a prostitute and her client. In this sense the client and prostitute are substantially each other’s equals at the time of negotiating the terms of the contract, and can therefore come to an understanding of the conditions of the contract and enforce these conditions in order to create a successful ‘working relationship.’ The reader will furthermore recall that contract theorists such as Ericsson (341) claim that a prostitute does not hire out herself; she instead contracts out a service for a specific amount of time. In this, she would be comparable with any worker who sells her labour power. In such a view the prostitute is able to separate the service she is providing from the rest of her body so that in essence only her body is involved in the prostitution act and her sense of self is not necessarily placed at risk when she contracts out her sexual services.

However, some feminist theorists find serious flaws within the contractarian view of prostitution and its key assumptions, and this is the kind of objection I wish to explore in this second chapter. Carole Pateman (2006: 64), arguing from this anti-prostitution perspective, strongly rejects two specific elements of the contractarian view of
prostitution; *firstly* that prostitution can be viewed as an employment contract and *secondly* that the prostitution contract can be entered into without any detriment to the prostitute or her sense of self. Pateman’s (2006: 63–65) view specifically entails that any form of contract is embroiled in relations of domination and subjection, and thus the contract theory of relations with its assumptions about general equality is fundamentally distorted. She claims that there is an inherent injustice within the very contractual nature of the prostitution industry that cannot be eliminated through alteration or reformation. Prostitution, on Pateman’s view, always places prostitutes in a detrimental position and therefore cannot be redeemed or altered in any way that will make it less discriminatory or abusive. Or put differently: an asymmetrical, exploitative relation is inherent within practices of prostitution, with the implication that these practices cannot, and possibly should not be redeemed through any kind of reformation.

Moreover, in the supposed contract between the prostitute and client, there is a particular perniciousness because of the fact that this contract almost always takes place between a man and a woman. Within patriarchal society, Pateman (1983: 561) argues, women are placed in a constant position of subordination and are subject to the control of men, especially in terms of sexual relations. Through various means men have gained a dominant place within society and have been assigned the role of women’s sexual masters, meaning that men have created the notion that they should be afforded access to women’s bodies whenever they desire. Taking this into consideration it can be seen that when a man and a woman enter a prostitution contract the woman is always already in an inferior position in terms of her socially sanctioned power over her own sexuality, and thus generally subject to the sexual will of the man. As such the prostitution contract is not a fair and equal contract: the contract is neither negotiated between equals, nor can its conditions be successfully enforced in favour of the woman.

As discussed by Cudd (2007) in the previous chapter, if a contract is not entered into by equals the contract cannot be considered a legitimate contract (Cudd, 2007). Also, if there is not a fair or impartial starting point to which the parties can return if
the conditions of the contract are not met the contract can also not be considered legitimate. Within the prostitution contract the terms and conditions set out between the prostitute and her client are not concrete in the sense that there is usually no formal, obligating (written) contract that must be adhered to. There are no terms and conditions that can be returned to at a later stage if the contract does not benefit both parties as it was intended to. Therefore the prostitution contract cannot be considered fair or equal according to this view. Nor can the prostitution contract be considered a normal employment contract because an employment contract is one entered into for mutual benefit whereas within the prostitution contract the prostitute receives little or no benefit because she is dominated and subordinated in a way that other labourers are not, according to Pateman. The prostitution contract is therefore apparently an employment contract negotiated between equals, but really a situation in which a man has socially sanctioned sexual control over a woman and it is thus a means through which the logic of patriarchy is perpetuated.

When a client hires a prostitute he is not making use of a service or hiring an empty, lifeless body; he is rather hiring the use of a woman’s entire body and sense of self (Pateman, 2006: 65). This is because the body, sense of self and sexual services are all interconnected and cannot possibly be separated, according to Pateman. Therefore, when a prostitute hires out a service she is ultimately hiring out herself in her entirety. It is for this reason that the prostitution contract is crucially different from the employment contract. Sexuality is intimately linked to and formative of one’s sense of self and therefore cannot be contracted out in the same way that other forms of labour power can be contracted out (69). Pateman (69) argues for this by saying that “identity is inseparable from the sexual construction of the self.” By this she means that an individual cannot create their own identity or sense of self without incorporating their sexuality or sexual identity. In addition to this the prostitution contract is on Pateman’s view not entered into as a means for the male client to fulfil his natural sexual desire as Ericsson sees it; it is rather entered into in order to control a woman and for the man to claim his place as her sexual master. According to Pateman (66) the real reason men enter the sexual contract is in order to exert
sexual control over women and place them in a subordinated position. Men can satisfy natural urges through other means, including self-satisfaction. However they choose to make use of prostitutes instead, as this allows them to display their masculinity and superiority over a woman, the prostitute, who in that sense comes to represent women generally (Pateman, 2006: 62). The prostitution contract, in terms of Pateman’s argument, exists in order for men to fully assert their role as women’s masters and continue the legacy of men’s supposedly natural right of access to women’s bodies. Within the prostitution contract, Pateman (70) argues that the prostitute is always at a disadvantage and there is an inherent injustice within the prostitution contract – an injustice both propped up by the wider social injustice of patriarchy and in turn serving to maintain it.

In this chapter I further tease out Pateman’s argument against contract theory in some detail, as well as her argument against the view that the prostitution contract can and should be viewed as a form of employment contract. In order to do this I am going to first discuss Pateman’s critical view of how the sexual contract serves as the basis for modern society, including how the original contract came into existence and the conditions which arose through the formation of the original contract. Her view of prostitution cannot be properly understood without knowledge of this background theory, in particular her critique of what she calls the sexual contract associated with western modernity. Secondly, I will examine the view that Pateman holds towards contracts between unequals, this including a discussion of the employment contract within capitalist conditions and the marriage contract within patriarchal conditions. Thirdly and finally, Pateman’s ideas relating specifically to the prostitution contract and the problems found within the prostitution contract will be discussed.
The sexual contract as the basis of modern societies

According to Pateman a fundamental element of civil society is the formation of contracts. Contracts are seen as one of the most defining characteristics of modern patriarchal society. Within such a society, contracts are crucial in the creation of social relationships, while at the same time contracts also serve as a form of social law (Pateman, 1988: 5). Thus far she agrees with Ericsson’s view and with the traditional view of contract. However, Pateman goes further and argues that through contracts certain social sanctions and systematic inequalities come into being and are sustained, such as that an employee becomes subordinate to an employer and a wife becomes subordinate to her husband. The general idea asserted by contract theory is that through contracts men and women will gain freedom from arbitrary control as everyone will be able to enter into any and only those contracts which are mutually beneficial to both parties or aid them in some way. According to contract theory everyone is born free and equal within a society, therefore when people enter into contracts they do so as equals and freely agree to terms that are mutually beneficial. If contract is understood in these terms it is clear why it could be seen as a form of universal freedom. Along with this idea is the idea that there could be no justification for subordination if everyone was born free and equal. The only way to justify subordination would be that subordination was voluntary and formed through free agreement (40).

This type of notion regarding contracts is the type found within philosophical stories of the original social contract. Pateman discusses this understanding of modern civil society based on notions of an original contract as set out by Hobbes, Locke and Jean-Jacques Rousseau. The idea of the original contract originates from the notion that “free social relations take a contractual form” (1). As such the “legitimacy of modern civil government” (1) is based on the notion that this form of society arose and is maintained through contract. To this generally benign view of modern contract, Pateman brings a critical note; according to her, the hypothetical original contract was the means through which modern patriarchal capitalism was instituted,
as well as one of the ways in which modern forms of control and domination developed. Through contracts people were able to give up some power or control to another party in return for some form of benefit and so it created conditions in which one party was able to dominate and control another. The original contract is in particular also a sexual-social contract in which free social relations take the form of contracts (Pateman, 1988: 1). The original contract is for Pateman a sexual contract in the sense that men created contracts amongst themselves (to which women were not party) that allowed them to gain and retain sexual control over women.

Therefore, the original contract consisted of terms and agreements that enabled men to attain a dominant sexual position within society. Pateman (1) argues that the sexual contract is the way through which men’s sexual control and domination over women is legitimised in modern contractual society. Through the sexual contract political right comes to be seen as patriarchal right or sex-right, in other words, “the power that men exercise over women” (1). Therefore, the social original contract with its covert sexual dimension was one of the ways through which men were able to gain legitimate rights over women and attain a position of both social and sexual superiority within modern society. The creation of the original contract put in place hierarchical social structures, in which men in general became dominant over women in general. Pateman’s understanding of the original contract deviates from that of classic social contract theorists, such as Hobbes and Locke, in that these theorists do not acknowledge the sexual side of the supposedly neutral social contract. In doing so, these theorists disregard the part of the original contract which established male control and domination, and essentially allowed for the formation of patriarchy.

It can be seen that the original contract involved both social and sexual contracts and relations. Whilst only the one half of the original contract story relating to the social aspects is explicitly told, Pateman (1) argues that the other half which relates to the sexual contract is ideologically ignored and omitted in the retelling of the story – a story which is used to legitimate the contractual foundation of modern western societies. Pateman (1) further suggests that the “missing half of the story tells how a
specifically modern form of patriarchy is established”. As such it is necessary to
know the sexual contract half of the original contract story in order to understand
how it is that modern patriarchy came into existence and how relations of sexual
domination and subjection were formed and are continued in modern society through
the ostensibly neutral and universal employment of contract. The underlying and
hidden sexual contract at the foundation of the modern state however severely
undermines women’s capacity for contracting, because they are always already
sexually subjugated.

One of the cornerstones of social contract theory is the story of how civil freedom
was gained through the overthrowing of paternal rule in exchange for a civil
government of equals (Locke, 2005: 415). As such it seems that the original contract
tells a story in which both men and women gain freedom from control and create a
society in which everyone is equal. Whilst it may seem that contract is opposed to
patriarchy and hierarchies of any kind, and is a means through which all people can
be equal, it is in fact through contract that modern patriarchy was formed and is
sustained. By forming and entering contracts men were able to create a society in
which they assigned themselves power and superiority while relegating women to
the private sphere and placing them in a position of inferiority. Men formed contracts
amongst themselves that provided them with public-political freedom, as well as
freedom within the private sphere; while at the same time subjugating women and
subjecting them to the will and desires of men. From Pateman’s argument I can
conclude that these tacit contracts are still in existence and so still serve to maintain
patriarchy and the dominant position of men. For example, the marriage contract is
one of the contracts through which men ensure that they have sexual access to a
woman and keep a woman in subordination (Pateman, 1988: 123). Under the
traditional marriage contract women remained perpetual minors without contracting
powers. Hence, civil freedom is not universal – through social contract men gain
freedom, while through sexual contract women are subjected (2). When only half the
story of the original contract is told the story of how men, as a whole, became the
dominant force within society and how the sexual-political subjection of women
occurred is overlooked. It seems that this is perhaps one of the ways in which men
try to divert attention away from the constraints of patriarchy in order for patriarchal rule to continue.

Pateman claims that there are at least two ways in which the sexual half the story of the original contract could be ignored or repressed. The first way is by interpreting patriarchy as paternal rule, however this is not actually the case; modern patriarchy is fraternal rather than paternal (1988: 3). This means that patriarchal society is not ruled by men as fathers but rather by men as men. The second reason is that, according to Pateman (4), men do not want to highlight the fact that the original contract served to divide society into a public sphere and a private sphere, with only the public sphere being considered of any political importance. Men do not want this fact highlighted because women are restricted to the private sphere within patriarchal society and so ideologically women are not considered of political importance. I will now discuss each of these in turn and in some detail. Pateman explains the first way of repressing the sexual half of the story by stating that modern civil society is not ruled paternally: “paternal right is only one and not the original dimension of paternal power” (3). Pateman argues that before there can be paternal right there must be a right that secures men’s dominance over women. This right is the sex-right or conjugal right and it “sees women subordinated to men as men, rather than to men as fathers” (3). It is after the political defeat of the father that the original contract is created and that modern fraternal patriarchy is established. To understand this form of modern patriarchy it is necessary to examine how societal rule changed from being paternal to fraternal. Pateman asserts that the original contract was not made by fathers, but was in fact made by men as brothers (78).

Before fraternal rule came into being fathers were seen to be the dominant force within the household and thus were in control. However, men wanted to form relations that would transcend blood ties and would see the creation of a civil society based on contract rather than familial relations. In order to do this, sons had to break free from their fathers’ rule and become the ruling authorities (79). In so doing men formed a fraternity in which civil society was governed by laws common to all men and the bonds formed were chosen freely thus creating a free union of male
dominated public relationships. Pateman (1988: 80) asserts that the advantage, for men, of creating this fraternity is that it creates a universal bond, not just one that relates to members within one’s own society but that relates to all men throughout the world. However, universal fraternity is quite an abstract concept and can cause men to feel disconnected and lost, so men also create fraternities which are smaller associations in which “fellowships are close and ‘brothers’ know and can assist one another as though they were families” (81). The place of women within both the larger fraternity and within the smaller fraternities is limited if not non-existent, and herein lies part of the problem with modern patriarchy, from this understanding.

The formation of a fraternity and fraternities also led to the notion of the law of male sex-right. After the overthrow of the father and the creation of modern patriarchal rule it was necessary to instate laws which would uphold the sense of order that had prevailed under paternalistic patriarchy. One such law was the law of male sex-right. This law essentially claimed that all men were to have sexual access to women at all times. However, Pateman (109) explains that, if all men claimed rights to all women it would create disharmony and chaos so men had to form a sexual contract amongst themselves that would allow them access to women and at the same time maintain the order and harmony that had been created. This law thus creates the notion that men have sexual-right over women and “ensures that there is orderly access by each man to a woman” (109). From this it can be inferred that the sexual contract is thus reliant on the *fraternal* nature of the social contract. It is a contract amongst men which lays down the rules for how they will distribute their control over women’s bodies and sexuality. Women, therefore, do not constitute one of the parties of the contract; they are instead the object of the contract.

Against this background Pateman reads the marriage and prostitution contracts as instruments for stabilising and reinforcing male sex right. According to Pateman (111) the right that “men have to sexual access of women is present in both the public market (prostitution) and in the private sphere (marriage).” Through prostitution it is ensured that women are available to men at all times and it ensures that there is no man who does not have access to a woman. Prostitution is one of
the ways through which men ensure that they are able to sexually dominate and subjugate women, thereby keeping women in a position of inferiority. From this argument it can be deduced that the marriage contract and prostitution contract (which both relate to the original sexual contract) are not contracts of mutual benefit, but are rather contracts formed in order for men to dominate over women and retain their position of superiority within society. This is because they are essentially contracts formed amongst men, and women are not strictly speaking party to the contracts. The sexual contract half of the original contract story is thus not mentioned in retellings of the original contract so as not to bring to attention the notion that certain contracts are in place merely as a means for men to gain access to women's bodies and exert some form of dominance over women. It is important to note that Pateman sees the sexual contract as a form of political control in that it keeps women within the private sphere thereby reinforcing the notion that women are politically insignificant.

The second reason that half of the original contract story is left out, according to Pateman (1988: 4), is because men do not want to draw attention to the fact that of the two spheres that society was divided into by the original contract the one considered of the most importance is the public sphere. The creation of patriarchal civil society led to the separation of civil society into two spheres – the public sphere and the private sphere. The public sphere is the domain of men, whilst the private sphere is the domain of women and considered politically insignificant (3). According to theorists such as Rousseau and Freud there are very good reasons why women should be confined to the private sphere and not be allowed to enter the public sphere. The argument that Rousseau (1911: 394) uses to support the claim that women must remain in the private sphere is that women are not able to control their sexual desires and as such are a detriment to organised civil society. Because women cannot control these desires they are not able to develop a sense of morality or justice. Men on the other hand are able to control their sexual desires by using reason and are therefore capable of maintaining the political society. Women according to Pateman's (1980: 22) understanding of Rousseau are a “source of disorder because their being, or their nature, is such that it necessarily leads them to exert a disruptive influence in social and political life”. The job of a woman within
society is that of merely upholding the family (Rousseau, 1911: 371). Rousseau (369) further adds that men become good citizens by being good husbands and good fathers and therefore it is important that the women uphold the family so that men can fulfil their civic role. Women cannot enter civil or political life because their ‘disorder’ is said to create chaos and as Pateman (1988: 99) understands Rousseau’s argument, if men are corrupted it is the women’s fault. Women are seen as the antithesis to public order and a force for the corrupting of men. That is why, Rousseau claims, women must stay in their ‘natural’ position of caring for the household and not interfere in political life.

Freud is in agreement with Rousseau’s claim that women are not fit to enter civil or political life. Whilst Rousseau claimed that the reason for this was women’s uncontrollable sexual desires, Freud (1985: 334-337) makes the related claim that the problem is that women do not possess a well developed super-ego, which is necessary for political life. Freud asserts that women’s realm is the family and sex and that politics are too difficult for women to undertake. The super-ego is the distinguishing factor between men and women and the super-ego is the essential characteristic that makes it possible for a sense of justice and morality to be developed. The super-ego is necessary for civil and political life because it is the internal (psychic) representative of moral and political law (334-337). Pateman understands Freud to mean that because women do not possess this super-ego they are a threat to civil life and show “less sense of justice than men” (Pateman, 1988: 100). Without the super-ego women cannot develop a sense of morality or justice so they must be confined to the private sphere so as not to put civil order in jeopardy.

The reasons for confining women to the private sphere that Rousseau and Freud suggest are slightly different, however they have in common the idea that women, by their very nature, are opposed to civil law and they represent what must be mastered, overcome, transcended and forever controlled within patriarchal society (102). In Pateman’s (1980: 22) words “women exemplify one of the ways in which nature and society stand opposed to each other”; women are connected to both family life and nature. Whilst women create a sense of order and try to develop
morality within families they also “face nature” (Pateman, 1980: 30) because of their natural life giving capacities. It is therefore argued that women are tainted by their closer contact with nature; women are more inclined to rely on emotions, such as love, than reason. I understand this to mean that love and justice are said to stand in opposition to one another and as is the ‘natural order’ of things, private interests must be subordinate to public interests; love subordinate to justice (24). It is therefore the duty of men to take control of women and their natural tendencies in order to create a society that is ordered, controlled and ruled by reason.

The sexual contract relates to women in that it is the contract through which men are able to make certain that they have access to women’s bodies. The marriage contract is also one contract that women are able to enter, in terms of classic contract theory. The notion that women can be party to the marriage contract seems to contradict the earlier notions that women do not possess the capacities necessary to enter into contracts. However, as Pateman (1988: 112) understands classic contract theory, in order to maintain the facade that contracts are a source of freedom there must be at least one contract that all members of society can enter into. The marriage contract is that part of the social contract which limits women’s agency to the private sphere. Therefore, since women are relegated to the private sphere the marriage contract is one which they are able to enter (11-12). In other words, women can be party to the marriage contract as it is a contract within the private sphere; it is in a sense the contract that creates and sustains the existence of a separate private sphere, however women cannot be party to contracts that take place within the public sphere. Contracts which take place within the private sphere are not considered to be politically significant for the very reason that they take place privately and do not have significant bearing on political matters. Because part of the role of the original contract is to uphold patriarchy, the sexual contract is assigned to the private sphere and ignored within stories told about the original contract. In so doing men inhibit the fundamental claim of women for a place within political life.

According to Pateman the public and private spheres are at the same time both separate and inseparable and patriarchy is present in both (4). Women are confined
to the private sphere while men are able to move freely between both, as they participate in both family and political life. The employment, prostitution and marriage contracts should be read together, and can be said to uphold men’s rights by proclaiming men as women’s masters and as such men’s civil freedom is reliant on patriarchy. Within modern patriarchy it is contracts that are seen to represent the archetype of freedom, however, in Pateman’s view, the most basic social contracts (including the sexual contract) are the negotiated institutionalisation of women’s sexual un-freedom, so that women become effectively excluded from the public-political freedom available through the logic of contract at the basis of civil society.

As can be seen then, the idea that contracts serve as a form of universal freedom is an idealised notion of contract as all contracts, in Pateman’s mind, are relationships in which one party is subject to another, this will be discussed in more depth in the next section. Contracts relating to the sexual contract are especially problematic because they involve the systematic subjugation of women by men. According to contract theory, women are essentially excluded from entering into contracts; they can merely be subject to contracts (Pateman, 1988: 5). This means that women are not active participants within the contract, they are merely tools that men use within contracts to achieve their own desires of power and domination. Classic contract theorists hold the tacit or unacknowledged belief that while men are born free and equal women are born as men’s natural subordinates (42). Therefore, men can agree to become subordinate to other men through contract but women never have this same chance, they are always already subordinate to men, by virtue of the covert but presupposed sexual dimension of the social contract. Finally, for seminal contract theorists like Rousseau only men have the capacities necessary to enter into public contracts and as such only men are considered to be ‘individuals’ and gain benefits from entering into contracts (6).

In order for people to be able to enter into contracts they must be afforded the status of individual and it is because women are not afforded this status that they cannot enter contracts, from the classic social contract theory view. The most defining characteristic of a person that is needed in order for that person to be considered an
individual is property in the person (Pateman, 1988: 6). Property in the person can be, for example, a skill, a talent or a capacity. According to Locke (2005: 398) “every man has a property in his own person...everyone owns the property in their capacities and attributes.” Property in the person is a concept that relates to something which a person owns within themselves. According to contract theory property in the person is in a sense the same as material property; one can contract out part of the property without detriment to oneself. Only the owner of this property can make decisions or judgements about what to do with the property. By contracting out property in the person the owner usually benefits (Pateman, 2002: 26), because lack of benefit, or harm, would ostensibly lead to a refusal to contract such property out: “The owner of the property has the right to decide whether or not the property will be available and whether or not the terms of the contract are acceptable” (29).

Pateman disagrees with this fundamental contractarian notion of the ability to separate property in the person from the person. Pateman divides property in the person into two categories. The first category of property in the person is alienable from the person, and this category includes things such as sperm and organs which can be completely detached from the owner without detriment. The second category relates to skills, abilities, talents and so forth. Pateman states that it is impossible to separate the elements found within the second category from the person as such (27); they are thus inalienable. It is impossible for a person to separate a capacity from the rest of their body or their sense of self. Pateman argues that property in the person is a political myth, but one with a powerful political force (21). By this Pateman (27) means that while it is impossible for property in the person to be separated from the person the myth that it can be separated without detriment still exists and influences contracts and contract thinking. From my understanding property in the person is a very important concept when it comes to contracts, regardless of whether it is merely a myth or not. Many contracts are formed on the assumption that a person can detach their services or skills from themselves. For
example, it could be thought that people involved in professional sports are able to separate their sporting skills and abilities from the rest of themselves.

From Pateman’s argument I understand that contracts that are based on the assumption that property in the person can be separated from the person themselves usually become relationships of domination and subjection. It is because property in the person cannot be detached from one’s self that domination and subjection arise. When a person enters a contract in which property in the person is involved their skills, talents and capacities essentially become the property of the other party to the contract for the duration of the contract. The other party to the contract therefore has the power to determine how the property in the person will be used, in other words how a person will use their skills, talents and capacities. In so doing one party to the contract becomes subject to the will of the other party to the contract and so domination by the superior party arises. A capitalist, for example, will hire the services of a labourer based on the premise that it is just the services being made use of and not the labourer himself. However, from Pateman’s understanding the capitalist is in fact hiring the labourer himself including his body, skills, personality and so on. The capitalist does not want the use of a machine-like person; he wants the use of human characteristics, such as personality, judgement and skills that have been acquired over time. This is where domination and subjection come in. Whilst it may seem like the contract was entered into by two equals, the capitalist is the stronger party and once he has hired the labourer he has complete say over what the labourer does with his capacities (Pateman, 1988: 40). The labourer becomes subject to the power and will of the capitalist. Thus the contract has been entered into by a weaker party who is now under the control of the stronger party. I will now discuss in greater detail Pateman’s notion of contracts between unequals, including the employment contract and the marriage contract.
Contracts between unequals

Pateman is of the opinion that whilst contracts are an integral part of modern society they do serve to create relationships of domination and subjection. The domination and subjection found within contracts is partly the result of the male patriarchal power that arose as a result of the social-sexual original contract. In addition to this there is also domination and subjection which is a result of the power a capitalist has over a wage labourer created by economic and social inequalities. In fact, there are very few, if any, contracts that are entered into in which both parties are of an equal status and in which one party is not dominant over the other. Pateman insists that generally all contracts arise when a weaker party turns to a stronger party for protection in exchange for obedience (Pateman, 1988: 7). Hobbes (2005: 141) agrees with this view when he suggests that the preservation of life is one major reason that a man would subject himself to another. All contracts, as viewed by Pateman, are entered into by one weaker party and one stronger party. I understand this to mean that most often contracts are entered into because the weaker party is in need of protection of some sort and the stronger party is able to supply this to them. If one thinks of this within capitalist society it could be said that often poorer members of society enter into contracts with richer members of society in order to be provided with a wage which serves as a form of economic protection. However, once this contract has been formed the weaker party essentially comes to be at the mercy of the stronger party and has to obey the lawful ‘owner’ of the property in his person in order to receive the protection he needs.

Social contract “creates a society in which individuals can make contracts secure in the knowledge that their actions are regulated by civil law, and that if necessary the state will enforce their agreements” (Pateman, 1988: 6). In order to gain civil freedom one must quite paradoxically become obedient in exchange for protection. It may, thus, at least on the surface, seem that these types of contracts are in a sense mutually beneficial, especially if everyone in any given society has to enter this basic trade-off. However, the fundamental problem for Pateman rests on the fact that the
object of the contract is the property in the person. For Pateman (2006: 65) all contracts involve some form of property in the person, however, there seems to be varying degrees as to the amount of exploitation experienced in relation to the kind of work being done. For example, property in the person relating to wage labour is not as subjugating as property in the person when it relates to sexuality. This is because the capitalist is interested in the commodities or profits as a result of the labour, whereas when property in the person relates to sexuality, as it does in the prostitution contract, the client is not interested in the commodities produced but rather in the prostitute’s sexuality (or property in the person) itself (Pateman, 2005: 65). Because the object of the contract is property in the person “exploitation is possible because contracts about property in the person place the right of command in the hands of one party of the contract” (Pateman, 1988: 8). The weaker party is always at a disadvantage to the stronger party and so will often agree to terms which are disadvantageous, for the sake of achieving the minimal benefits on offer (such as a living wage or physical protection against injury or death). Contracts are therefore not entered into by free and equal individuals, they are rather entered into by individuals in differing hierarchical positions in which one has control over the other and so relationships of, to use Pateman’s (40) words, civil mastery and civil subordination arise. Contracts concerning inalienable property in the person are thus institutionalised and legitimised forms of domination within a supposedly ‘free and equal’ political dispensation.

There are various types of contract that can be entered into; the most notable from Pateman’s point of view are the employment contract and the marriage contract. Both of these contracts take place between social unequals and serve to place one party in a subordinate position to another party (59-60). The employment contract is a contract drawn up between two consenting individuals in which the employee agrees to obey the employer within certain limits (59). From Pateman’s argument I deduce that the initial contract between the employer and labourer is formed and is generally not altered or reviewed over time. Therefore, the terms of the initial contract remain the same for the duration of the contract. This initial contract determines the relationship between the employer and the labourer and states the limits of the power the employer has over the labourer (59). This contract serves to
create a relationship of subordination in which the employer has right to power over the employee (Pateman, 1988: 59). Pateman (61) asserts that because some individuals are naturally stronger and because individuals are always self-interested, “social contracts which create equal civil individuals or citizens, governed by impartial laws are impossible,” (61) and thus, in effect, a society of masters and slaves is actually created (61).

Pateman attempts to distinguish between a slave and a civil subordinate, as she terms it. Pateman (66) claims that the employer becomes master over the labourer because the employer has the power to direct the labourer in the use of his capacities and labour power. Therefore, the labourer is not technically a slave but a civil subordinate, because (a) the employer does not have absolute power over him, (b) the employer does not have right over his person but only over his services, (c) the contract is for a short specific time and (d) the labourer is paid wages in return for providing the service. Despite the fact that the worker may not technically be a slave “any relationship that resembles slavery is illegitimate and no contract that creates a relationship of subordination is valid” (76). This brings into question the validity of contracts within modern society in that “an incentive is always available in conditions of substantial social inequality that will ensure that the weak enter into contracts” (62). When people are in a disadvantaged position they will often agree to terms that will not best serve their interests if they are offered some incentive. These contracts are often unjust or to the disadvantage of the weaker party and so it is debatable whether they can be considered valid contracts or not.

However, the question about the validity of contracts that are disadvantageous to one party does not seem to apply to the marriage or sexual contract where the subordination of women is seen as natural and legitimate. In this sense the marriage contract and the employment contract stand in contrast. The validity of the employment contract is taken into consideration based on the terms which lead to the formation of the contract. However, the validity of the marriage contract is never an issue regardless of what terms lead to the formation of that contract. In other words within the marriage contract the subjugation of women is seen as valid and
legitimate, whereas within the employment contract the subjugation of an employee is a contentious issue and one which can undermine the legitimacy of the contract.

The marriage contract is different from the employment contract firstly because it is entered into by a woman who is already in a subordinated position due to the fact that societal relations deem men to be superior to women (Pateman, 1988: 51). Secondly, this contract is more a type of exchange than a mutually beneficial contract, in which the “most precious category of goods: women” (60) is exchanged between men. The marriage contract also creates a relationship of subordination where the wife is subordinate to the husband. However, within this contract there are no definite terms; there are only socially constructed expectations. From my understanding these include expectations such as that the wife’s body is now the possession of the husband and he should be allowed sexual access to it at all times, as well as that the husband must provide protection and subsistence for the wife and in return she will obey him completely. Women “are deprived of an economic basis for independence by the separation of the workplace from the household and the consolidation of the patriarchal structure of capitalism” (90). This means that, because women are assigned to the private sphere they do not have the means to support themselves economically and therefore have to enter contracts that will provide them with subsistence and economic protection, in particular of course the marriage contract. Whilst women are not as confined to the private sphere today, and many do work within the public sphere, there is still a large proportion of women who cannot support themselves financially and have to enter into the marriage contract in order to gain financial assistance, in order to survive materially.

Pateman makes use of Kant in order to explain a general understanding of the marriage contract. According to Kant the marriage contract is a “contract of sexual use” (168) in which “husbands and wives contractually acquire for their exclusive use their partner’s sexual properties” (154). Pateman is critical of Kant’s notion of the marriage contract as one in which both the husband and wife are on equal terms and make sexual use of each other in an equal way. Pateman (2006: 67) instead sees the marriage contract merely as a means for a man to possess a woman and to have
complete access to her body sexually. Pateman goes so far as to compare housewives to slaves in that husbands have almost complete control over their wives who are technically contracted to them for life, like a slave to a master. Wives are not paid a wage; instead they are provided with subsistence in order to enable them to continue working for the husband, just as a slave master provides the slave with subsistence instead of a wage (Pateman, 1988: 148). Because women, under the modern fraternal contractual regime, are not considered to be individuals they are not able to enter civil contracts (apart from the marriage contract, which is only possible due to the fact that the marriage contract takes place within the private sphere) as men do, and so it is generally necessary for a woman to rely on a man to protect and sustain her.

As can be seen from Pateman's discussion of the employment and marriage contracts she believes very strongly that all contracts generally involve the subjection of one party to the advantage of the other party. However, contracts that involve property in the person are particularly tainted by relationships of domination and subjection. Contract is by contrast seen by its defenders, such as Ericsson in our context, as the paradigm of free agreement and through contract a person is able to decide how their body and capacities are going to be dispensed of within these relationships. Pateman (55) suggests that contract theory implies that it is “an individual's task to ensure that their property rights are not infringed upon”. By this Pateman means that it is each individual's task to ensure that they do not enter into contracts that infringe upon their rights or that cause detriment to the property in their person. To clarify Pateman's argument, it is claimed that through contract the problem of protecting oneself is solved, in that one may agree to terms that are beneficial to them and provide them with some form of protection. In addition, no one may use the capacities or services of another unless that person has agreed to it. In other words only once a person has consented to another party making use of their services or capacities can this take place. This in essence is supposed to ensure that no one is forced to provide a service or make use of their capacities unless they are willing to do so and have first given their consent. The problem for Pateman, however is that there are always instances in which a person will agree to the use of their capacities and services even if it may be to their own detriment, because they
need to avoid a greater evil such as starvation; this being due to unequal power relations and social inequalities. In these instances it is debatable whether the contracts entered into are legitimate or not. It is in other words the actual deep inequalities within society that render the contract theory presumption of free equals at the start of the contracting process null and void, thus undermining the most basic tenets of contractual theory.

Pateman is highly critical of Hobbes’ understanding that such contracts clearly are legitimate, because “when individuals contract with one another, their reasons for doing so make no difference to the validity of the contract; the fact the contract has been willed into being is sufficient” (Pateman, 1988: 62). Hobbes is essentially saying that it does not matter whether one chooses to enter a contract entirely of one’s own accord or whether one is forced, or pressured, for whatever reason (such as financial security, physical protection, or social status), into making the contract. Such force or pressure does not invalidate the contract in his view. Pateman rejects this by saying that often people are forced into contracts due to social inequalities and this raises questions as to what counts as voluntary entry into contracts and what contracts can on that basis actually be considered as valid and legitimate (62).

In Pateman’s view, it is also questionable how legitimate contracts are when they are entered into by a man and a woman, who are social unequals. Women, within notions of the original contract, are seen as not being individuals or possessing the capacities necessary to enter into contracts. They can however enter into the marriage and the sexual contract, and in modern society more women are working within the public sphere therefore also entering into employment contracts. But if women are by implication not regarded as full individuals then are these contracts that they enter into valid or are they merely a form of courtesy or a means to make women feel as though they have rights and power when in fact they are still subordinate to men? Pateman is arguing that modern patriarchal right still exists and that it keeps men in a dominant position. Aspects of the original contract are still theoretically in existence in modern society and help to shape the relations within society. Men are still seen as women’s sexual masters and as having the right to
access women’s bodies and have control over their lives. A very important comment that Pateman (1988: 17) makes is that the “most dramatic example of the public aspect of patriarchal right is that men demand that women’s bodies are for sale as commodities in the capitalist market; prostitution is a major capitalist market.”

The prostitution contract

Pateman is especially critical of the prostitution contract because typically a man and a woman are involved in contracting for the man’s use of sexual property in the woman’s body. Because a man and a woman are involved, the ‘naturally,’ physically stronger man is already seen to be the woman’s master to whom she must succumb. Because it is a contract between two social unequals under the sexual contract, about the use of sexual property in the body of the woman, the dominance of the man is further asserted. In Pateman’s (2006: 62) view there is no possible way that the prostitution contract could ever be fair or equal and the prostitution contract merely serves to reinforce the notion that women must be available to men and it is one of the ways – alongside the marriage contract – in which men are ensured access to women’s bodies. The prostitution contract is not formed because a man is in need of someone to provide a service for him. The prostitution contract rather exists in order for men to buy the use of a woman in order to exercise their right to dominate and control women. It is an expression of male sex-right in the public domain and in the market.

This of course stands in direct opposition to the argument made by Ericsson who claims that prostitution does not necessarily involve power relations between men and women and is a mutually beneficial contract through which men fulfil their sexual desires and women receive remuneration. The prostitution contract, from Pateman’s (1983: 563) perspective, is not one designed for a necessary function, such as the employment contract for example, rather it is a contract designed purely in order to keep women in a position of subordination and men in a position of superiority.
Pateman (2006: 66) further argues that “men who enter into the prostitution contract have only one interest; the prostitute and her body.” Therefore, when men enter the prostitution contract they do not enter it to fulfil sexual desires, but they do it in order to obtain the “unilateral right of direct sexual use of a woman’s body” (66). In other words, the only reason a man hires a prostitute is to claim his right to her body, dominate her and subject her to his will. Prostitution is thus an expression of male power and control, rather than an expression of normal human sexual desire, as Ericsson would have it.

From Pateman’s argument I surmise that the difference between the employment and marriage contracts on the one hand and the prostitution contract on the other amounts to necessity, in the sense that, whilst the employment contract occurs between unequals it is necessary in that it ensures that the employee receives certain rights and benefits, the employer makes a profit, and that certain socially necessary services are carried out. The marriage contract also occurs between unequals but there are certain benefits to this contract and it also provides certain rights and protection to both parties. The prostitution contract on the other hand is not necessary in the same way that the employment and marriage contracts are. Pateman (1983: 563) explicitly states that prostitution is not actually necessary within societies at all as “every person has the means to find sexual release at hand.” From this one can conclude that the prostitution contract is of no use other than for the purpose of men maintaining their dominant positions within society, expressed through their sex right. It could thus be said that for Pateman the prostitution contract has a symbolic and political function only, which is to the detriment of all women in society, and not just prostitutes. According to Pateman (564) “to be able to purchase a body in the market presupposes the existence of masters” and so prostitution reinforces the notion that men are “women’s sexual masters.”

Prostitution is currently an industry of domination and subjection; however Pateman suggests that prostitution has not always been submersed in the gendered power relations that it currently is. Pateman (2006: 58) argues that the prostitution industry has not always functioned or been controlled as it is in modern patriarchal society.
The gist of Pateman’s (2006: 58) historical claim regarding prostitution is that the advent of modern patriarchy has led to women working within the prostitution industry becoming more subjected and subordinated than they previously were. Historically, prostitution has not been as patriarchally controlled as it is in modern capitalist society. I understand this to mean that as patriarchy developed and proliferated the subordination and subjugation of women has increased, and so the domination of men by women has intensified. Pateman’s (58) historical analysis of prostitution explains that before the advent of modern patriarchal society prostitution was not seen as a natural feature of human societies. Nor were prostitutes seen “as a discrete group of wage labourers who specialise[d] in a particular line of work” (58) as they are in contemporary society. Pateman (58) argues that initially prostitutes were part of the casual labouring class and drifted in and out of the prostitution industry at will (58). Today prostitutes, in my opinion, are sometimes seen as a separate class of women or as separate from other workers within the labour industry, in that they are not classified in the same sense as other labourers nor are they treated or classified the same as other women within society. However this was not the case up until the advent of modern patriarchal society, according to Pateman. Various developments led to the way in which prostitution is viewed within society today.

One of these developments was the development of the Contagious Diseases Acts26 under which “women could be identified as ‘common prostitutes’ by plain-clothes policemen, compulsorily subjected to gynaecological examination for venereal disease and, if infected confined to a hospital” (58). These Acts were protested against, however, they were not repealed because it was said that the prostitutes were using sex for gain while the soldiers were merely satisfying a natural urge, and so the moral blame and legal accountability fell squarely on the prostitutes’ shoulders and did not touch their male ‘clients’ (59). In contemporary society such double standards are still found where the prostitute is seen as disreputable while much less, if any, moral condemnation is directed towards her clients. This is also evident with regards to the double standards applied to prostitutes and their clients in terms

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26 These Acts were in place in Britain between 1864 and 1869.
of the spread of HIV/AIDS. Generally the spread of HIV/AIDS is blamed on prostitutes when in actual fact prostitutes take more precautions than their clients do to prevent the spread of HIV/AIDS (SALRC, 2009: 74). By 1886, in Britain, “the character of prostitution was already changing and the trade was being professionalised” (Pateman, 2006: 59). Women working as prostitutes had to register on a list; once a woman was known to be a prostitute there was very little chance of her leaving the industry or finding work within other job sectors. Before the end of the 19th century in various countries, including Britain, Australia and America, prostitutes usually worked for themselves or worked in brothels that were run by women. However, these were shut down and soliciting became illegal. Women were, therefore, forced through criminalisation to turn to pimps for protection and so “prostitution shifted from being female-controlled to being male-controlled” (59).

From my understanding the reason for this shift could be due to the increased importance of contracts within society as well as the development of modern patriarchal capitalist societies. The result of this was that there were now third parties who had a vested interest in keeping the prostitution industry running as they earned an income from the subordinated position of the women. Whilst the way in which modern prostitution developed was not exactly the same for different parts of the world the results are all very similar. Women enter the prostitution industry as a way to earn a living but are reliant on men to protect them, both from their clients and the police, and in so doing become subject to abuse and prostitutes essentially become a means for men (male pimps, brothel owners, etc) to earn an income. From Pateman’s historical discussion it thus becomes clear that prostitution changed its nature in accordance with the gradual consolidation of patriarchal capitalism and eventually became the preferred way in which male sex-right was expressed in public. Prostitution as the exploitation of women’s sexual property in the body was now also firmly controlled by the socially dominant class, namely men.

Pateman’s main argument against the contractarian defence of prostitution thus entails that contract theory overlooks the network of power relations involved in the prostitution contract, these power relations being that women are subordinated to the
will of men, in the form of their pimps and clients (Pateman, 2006: 60). Also, prostitution is merely one manifestation of the pervasive sexual subordination of women in modern patriarchal society. Pateman clearly asserts that “prostitution is an integral part of patriarchal capitalism” (50). This is the case, not only because prostitution is a means through which men can profit financially as pimps, but also because prostitution puts women’s bodies up for sale in the capitalist market (1983: 562) and ensures that all men have access to women’s bodies. In response to the central claim made by contract theory, namely that the prostitution contract is a legitimate form of the employment contract, Pateman argues that there are several differences that distinguish these two types of contract. First, and probably most importantly, the prostitution contract is entered into by a man and a woman, not two men (Pateman, 2006: 64). Seeing that women are already in a position of inferiority, the prostitution contract cannot be a fair and mutually beneficial contract. The female prostitute will always be subordinated to her male client and because she is in a weaker position, she will be likely to agree to terms that are disadvantageous to her, such as the client not wearing a condom or engaging in objectifying or humiliating sexual acts (which he is likely to do if Pateman is right in saying that the assertion of power is the main aim for the male client).

Whilst it could be argued that all workers are in some form of subordination to their employer, the difference here is the broader framework of social domination already present because it is a relationship between a man and a woman. Pateman claims that “a prostitute’s body becomes a commodity for sale in the market for different reasons than labour power” (Pateman, 2007: 226). Pateman’s (2006: 65) argument rests on the notion that men do not hire a prostitute for the same reason that they might hire another form of labour; rather, the relationship between a prostitute and client is founded on unequal social and sexual relationships that have become deeply ingrained in society over time. Prostitutes face brutality and danger every day in their jobs and while it could be said that other jobs are also dangerous, the difference is that the injuries that occur within the prostitution industry are because prostitutes are women, a subordinated class (63). In other words prostitutes face violence and danger not because their line of work is generally dangerous but because as women they are particularly vulnerable to (particularly sexual) violence.
and abuse at the hands of men. Therefore, the danger a male miner, for example, might face is not the same as the danger a female prostitute will face because the miner is not subject to violence and danger based on his sex whereas the prostitute is. Overall, in relation to this I understand Pateman to mean that the domination of women and the danger and brutality that women face within the prostitution industry comes down to male sex-right and the entitlement that is associated with being a man within a patriarchal capitalist society. The sense of entitlement permeates the unequal space within which the prostitution contract is negotiated, and would, for example, come into play when it must be subjectively decided whether the prostitute has provided the service agreed upon adequately or not.

A further difference between the employment contract and the prostitution contract is that because prostitution relates directly to the sexual contract or assumes it, it is assigned to the private sphere and therefore is not as enforceable as contracts within the public sphere. Within the private sphere the terms of contracts are not set out in the open, and thus they are much more secretive or implicit. As with the marriage contract, the terms of the prostitution contract may not be set out explicitly, say for example, in written form. The prostitution contract is based more on assumptions and spoken word, with terms that a client may or may not agree to, either implicitly or explicitly. The “prostitution contract is a contract of specific performance, rather than open-ended like the employment contract...there are no objective criteria through which to judge whether the service has been satisfactorily performed” (Pateman, 2006: 70). In other words, there are no specific criteria which must be met within the prostitution contract as there might be in another form of employment contract. The terms of the prostitution contract are too subjective and there are likely to be varying interpretations as to whether the terms have been satisfactorily met or not. The prostitution contract is also very specific in that it is one particular service that is being judged rather than a performance that is judged over a period of time as is the employment contract. Therefore, if a prostitute provides a client with poor service she will only be judged on that particular service and not on

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27 The prostitution contract relates to the sexual contract because the sexual contract is a contract about the sharing of women amongst men and the sexual domination of women by men. The prostitution contract is therefore part of the sexual contract as it is one of the contracts men use in order to ensure that they have guaranteed sexual access to at least some women’s bodies and sexuality.
the services she provides in general. This means that there are few ways through which a prostitute can enforce the contract that has been established between the client and herself. This is because there is no real way that a prostitute can prove that she has met the demands of the contract or even if the client has adhered to the demands of the contract, it is purely based on the opinion and word of the client.

The client makes the ultimate decision as to whether he has received what he desired from the prostitute and whether the expectations of the services he hired were met. If a client feels that he did not receive satisfactory service he may choose not to pay the prostitute and there is no way to ensure that the client has to adhere to the terms of the contract (Pateman, 2006: 70). It is unlikely that external arbitration can be called in to resolve a dispute between the two parties to the contract, which makes of it a ‘private contract’ which is something of a contradiction in terms. In my opinion, this is especially true in countries where prostitution is illegal. In countries where prostitution is legalised or decriminalised it may be easier for a prostitute to enforce the terms of the contract because prostitution is considered a valid form of employment and prostitutes are afforded the right to prosecute those who break the terms of the contract. However, where prostitution is illegal prostitutes have no right to recourse if the terms of the contract are not adhered to because they are themselves engaging in an illegal activity. The fact remains, however, that the prostitution contract is always in a state of uncertainty and is never guaranteed to be adhered to due to the private nature of the contract and the subjective terms formed through this contract.

Pateman states that the “employment contract creates long-term relationships of subordination” whereas the prostitution contract is “of a short duration” (70). In the former case, the employer in the employment contract adheres to the terms of the contract in order to ensure that the employee provides the necessary labour power. In the latter case, however, the client of a prostitute is not concerned with the long-term output of the prostitute and so does not always feel the need to adhere to the contract in order to maintain the prostitute-client relationship. Unlike some other service providers, prostitutes are much more interchangeable, and unlike the
employment contract which has clear terms and agreements that must be adhered to if the parties involved do not want to face some form of repercussion, the prostitution contract is too loosely formed and too easily broken (Pateman, 2006: 70). It is difficult, if not at times impossible, for a prostitute to prove that the terms of the contract were broken because there is no way she can provide solid evidence, unless of course it involves some kind of abuse or assault, and even then this is not always easy to prove. One of the major problems with the prostitution contract, from my understanding of this argument, is that there is always the chance the client will break the contract, so the prostitute is always in an uncertain position and at a disadvantage.

The second contractarian claim that Pateman argues against is that prostitutes are able to separate the sexual services they provide from their bodies and selves. As mentioned, Pateman (1983: 562) is adamant that there is no possible way that the services, skills, talents or capacities that a person possesses can be separated from the rest of themselves. Within the prostitution contract the subject of the contract is the woman’s sexuate body (Pateman, 2006: 66). When men enter the prostitution contract they do not enter it merely because they want to make use of the services of the prostitute; they rather do so because they want access to a woman’s body. Contractarians argue that “too much weight is placed on the body...the self or person is not identical to the body” (66) and that therefore the prostitute can easily separate different parts of herself and only hire out the specific service that is required. Pateman rejects this notion completely, saying that “selves are inseparable from bodies” (68). Pateman (1983: 562) adds that “services and labour power are inseparably connected to the body and the body is, in turn, inseparably connected to the sense of self.” In addition to this it is argued by Pateman (2006: 69) that selves are either masculine or feminine; masculinity and femininity are sexual identities. Whilst “the self is not completely subsumed in its sexuality, identity is inseparable from the sexual construction of the self” (69). Therefore, sexuality, the self, identity and the body are all interconnected and one part cannot be meaningfully separated from another. Within the prostitution contract it is a specifically feminine self that is the subject of purchase. Therefore, when a woman enters the prostitution contract
she is not only contracting out her services but she is *instead* contracting out her whole and most intimate self, core aspects of her identity.

For Pateman (2006: 66) men “who enter into the prostitution contract have only one interest; the prostitute and her body.” As said, this means that men do not enter the prostitution contract because they want to fulfil a natural urge; they instead want to have control over a *woman and her body*. In this sense prostitutes can be related to women more generally in that men want to control and dominate women, and this is the urge satisfied through the prostitution industry. The difference between women generally and prostitutes is that prostitutes are more easily subjugated because their bodies are for sale on the capitalist market. Even if a man has other means to satisfy his natural urges he would pay to satisfy the need to demonstrate his masculinity by contracting the use of a woman’s body (62). Within contemporary society one of the ways in which men can prove their masculinity is through sex. Pateman (62) asserts that “the exemplary display of masculinity is to engage in the ‘sex act’...the institution of prostitution ensures that men can buy ‘the sex act’; and so exercise their patriarchal right.” Therefore the desire to fulfil a sexual urge is not the reason men make use of prostitutes; they rather make use of prostitutes to prove their masculinity to themselves and others. This goes against the contractarian argument that prostitution is just a way for men to satisfy natural, sexual desires.

In order to refute the contractarian claim, Pateman contrasts the need for food and the need for sex. Pateman argues that humans do have basic needs, one of these being food. Without food a person will starve and is very likely to die if they go without food for a long time. However, while sex may be something that most people desire, the fulfilment of this desire is not essential to the survival of humans. Pateman (2007: 226) emphasizes this point by saying that while a person will die from starvation “the need for sexual relations can go unmet for lengthy periods (even a lifetime) without the death of the individual concerned.” Therefore the reason that men make use of prostitutes is not because of a basic human need that has to be fulfilled, rather it is because men desire to control a woman and have access to her body. By engaging in sex with a prostitute a man is able to fulfil his role as her sexual
master and at the same time ensure that his masculinity is symbolically affirmed. A man could use other means to satisfy his sexual urges however he specifically chooses to make use of a woman’s body and self.

This also relates to Pateman’s claim that the sexual services that a prostitute hires out cannot be separated from the rest of her. Pateman (2006: 69) argues that male clients “contract to buy sexual use of a woman for a given period” (69). Therefore, men are specifically interested in making use of a woman’s embodied services and self. Pateman (69) claims that this offers an explanation for why men hire prostitutes for ‘hand relief’ when they could perform this action on their own. Often prostitutes try to distance their sexuality from their sexual services in an attempt to protect themselves emotionally. However, this sometimes leads to clients complaining of the women being emotionally cold and uninterested (69). Pateman (70) also suggests that “all men, except the most brutish, desire to have, not a forced slave but a willing one.” According to my understanding of Pateman, this goes to show that men are not using prostitutes to fulfil their sexual urges; if this was the case then it would not matter whether the prostitute was distant or cold as long as the sexual urges were satisfied. Men also want to feel as though women are affording them this mastery over their bodies, rather than feeling as though they are buying women’s compliance. It is for this reason that men are interested in hiring the services of women who engage their senses of self in the prostitution act.

From Pateman’s argument I gather that men hire prostitutes as a means to exercise sexual control and dominance over women. Men want to feel all powerful and realise their ‘natural right’ over women, and prostitution is one of the most accessible ways through which men can simply pay in order to achieve this goal. Herein lies one of the inherent problems with the prostitution contract, according to Pateman – there can never be any equality within the prostitution contract because it is entered into by one party who is also an already subordinated woman, and another party, the man, whose reason for entering the supposedly equal contract is to obtain mastery through that contract. So not only do prostitutes face the subjection that other labourers do, they also face subjection because they are men’s sexual inferiors. In
essence then the prostitution contract could be said to expose a woman to double the subjection that other contracts do and this contract serves to reinforce men’s dominant positions within society.

The notion that it is a specifically feminine self that is the subject of purchase also relates to Pateman’s third argument against the contractarian defence of prostitution. Contract theorists claim that prostitution is a universal industry in which women and men in principle have the same opportunity to buy sex. Pateman (2006: 54) regards this as a fallacy and says that there are various specific reasons which account for the prevalence of women within the prostitution industry, all of which relate to the way in which modern society is skewed in terms of the socio-sexual contract which places women in a position of inferiority. One of the reasons is that in general women are able to earn a lot more money by working as prostitutes than they might earn working within some other form of industry. According to Pateman (56), in “1980 empirical investigation showed that British prostitutes earned more than most other women workers, and were in the middle- to high-wage band compared to male workers.” The prostitution industry is also an easier industry to enter than other industries which may require training and qualifications. Apart from earning more, prostitution also offers much more flexible working hours (57). Prostitution offers women “a degree of independence and flexibility” (57) in choosing the hours they wish to work and prostitution work allows women time to look after their houses and take care of their children (57).

Therefore, for many women prostitution can appear as an appealing alternative to working in another industry in which they earn less money and have set hours that leaves them with little time for their children or housework. I would argue that within most capitalist societies women earn less than men and even when working, women may still have to rely on men financially because they cannot be financially independent based on the incomes they earn. Prostitution may therefore attract women as it offers them a way to make more money and perhaps be financially independent. Prostitution can serve as a means for women to become less dependant on the unequal marriage contract which they would usually enter in order
to secure financial freedom for themselves. In other words, women may enter the
prostitution contract as an alternative to entering the marriage contract in order to
become economically independent. However whilst women working as prostitutes
may be earning more money and only having to rely on themselves this relative
financial independence bought at a cost, is mainly the result of unjust background
conditions, if Pateman’s argument is to be believed.

The cost that prostitutes have to pay for their independence is becoming subject to,
and in essence the property of, a male master – also the paradigm or symbol of all
women’s sexual subordination. Pateman (2006: 68) maintains that when a woman
sells her sexual services to a male client she is essentially selling her entire being to
the client. The prostitute then becomes the property of the client for the duration of
the prostitution contract and she becomes subject to the will of the client. The client
is in control of her capabilities and skills and instructs her how these must be used. It
is especially important within the prostitution contract for the prostitute to respect the
desires of her client for fear that the client may not be satisfied with the services he
has received and refuse to provide remuneration for these services. However, while
the prostitute generally has to comply with the client’s demands, the client enters into
the prostitution contract for the sole purpose of exercising control over a woman.
Pateman (66) argues that there are other means through which men can fulfil their
sexual desires; but they choose to make use of prostitutes instead. Pateman (69)
suggests that the reason for this is that a man “[is] not interested in sexually
indifferent, disembodied services; he contracts to buy sexual use of a woman.” In so
doing the man is able to exercise his sexual mastery over a woman. I understand
Pateman to mean that the reason men hire prostitutes is for the sole purpose of
dominating and controlling women. Perhaps the core argument surrounding this
notion is that the subjugation of women and the exercising of “sexual mastery is the
major means through which men affirm their manhood” (69). In other words, men
confirm their dominant role within society and their place amongst other men in
society by controlling and dominating women through sexual acts and more
specifically the prostitution contract.
As already mentioned, according to the law of male sex-right women should be available to men and men have the right to exercise control over women, especially when it comes to sexual relationships. Many sexual relationships take place within the confines of the marriage contract. Although the marriage contract is one dimension of the sexual contract and therefore also suspect in Pateman’s view, at least within the marriage contract a husband and wife generally come to certain agreed upon terms, such as the wife’s bodily integrity and what is acceptable within their sexual relationship (Pateman, 1983: 564). This means that certain boundaries are set within the sexual contract between a husband and a wife, thus not allowing the husband to have full control over his wife or fulfil his role as her sexual master completely. However, the opportunity for men to buy a woman’s body in the capitalist market reaffirms for her men’s role as women’s sexual masters (Pateman, 2006: 70), against the limitation of male sex-right in the marriage contract. The prostitution contract reaffirms the notion of male sex-right contained within the original contract, whereby social and sexual contracts are formed that suggest that women’s bodies must be available to men to be controlled and owned. In a striking formulation, Pateman (1983: 564) summarises her position by saying that the prostitution industry “puts submission on sale as a commodity in the market”. I take this to mean that women in the prostitution industry are allowing their subservience to be bought and thus by implication they are put under control and at the mercy of their male clients.

Many prostitutes claim to enjoy their job and consent to the activities that take place within their line of work (cf. Trotter, 2008: 99-102). However, the problem with consent is that one cannot be sure if the consent given is actual consent or forced consent. As already discussed, classic contract theorists were of the opinion that women are not individuals and for this reason they cannot enter contracts and further they cannot consent. However, in terms of sexual relationships the consent of a woman is vital to the validity of the contract (Pateman, 1980: 154). If a woman does not consent within a sexual relationship it amounts to rape. Whilst this consent is vital it is assumed that this consent is always given, so even when a woman says
'no’ it is assumed that she is actually saying ‘yes’ (Pateman, 1980: 150). According to Rousseau (1911: 356) women must always pretend to show sexual restraint and modesty in order to retain their lady-like demeanour. As such he claims that women should not overtly appear to consent to sexual relations and therefore Pateman (2006: 100) suggests that it is almost impossible to determine if the consent is coerced or freely given. If her yes means nothing, then her no also is rendered meaningless, and vice versa.

It seems as though this idea still exists within modern society so that even if a woman is saying no it is assumed she is saying yes or her consent is deemed irrelevant and presupposed as having been given. Therefore, according to Pateman (1980: 155) the problem with women and consent is that the “apparent refusal of consent can never, in a woman, be taken at face value.” Pateman (150) further argues that “unless the refusal of consent or withdrawal of consent are real possibilities we can no longer speak of consent in any genuine sense.” Consent cannot be spoken of in relation to women unless it is first a possibility for women to say no to men and have this non-consent respected and for a woman to change her mind after she has consented and withdraw her consent. The issue of women’s consent can always be debated because even if she did not consent this non-consent could possibly have been (re)interpreted as consent (150).

In my opinion the problem of consent is one that affects all women; however, because prostitutes are in a position in which they have to give their consent to sexual relationships for their occupation, they are in a very difficult situation. Most women do not have to give their consent to sexual relationships within their workplaces; this consent is generally reserved for the private sphere. Prostitutes on the other hand have to face the problem of consent not only in the private sphere but also in their daily work situations. Because a prostitute sells her sexual services she is seen as having always already consented to all and any sexual activities even if she does not actually give her consent to them. It is for this reason that prostitutes are also in a subordinate position to men, and particularly vulnerable to rape, and another reason that Pateman sees prostitution as perpetuating patriarchy. Pateman
(1980: 164) claims that “the naturally superior, active and sexually aggressive male makes an initiative, or offers a contract, to which a ‘naturally’ subordinate, passive woman ‘consents’.” From Pateman’s argument I deduce that a prostitute’s consent is never taken seriously and so the prostitute will always be in a position where she becomes completely subject to the will of the man, since she cannot draw or enforce boundaries to the sexual activity she engages in. This helps men to retain their position in society as women’s sexual masters and the dominant sex.

Conclusion

Pateman thinks that there are inherent problems with all contracts because all contracts create relationships of subjection and domination. All contracts give one party the right and ability to control another party, as well as determining the way the capacities and skills of that party are to be used. Generally contracts are entered into by one stronger party and one weaker party. Within these contracts the weaker party may agree to terms which are disadvantageous in return for some form of protection from the stronger party.

Through the formation of the original contract and male sex-right women have been assigned to the private sphere and are not seen as individuals capable of entering into contracts. There are however two contracts which women must enter into, these being the marriage contract and the sexual contract. However, Pateman questions the validity of these contracts based on the problem that women are not considered as having the capabilities necessary to enter contracts. Women are deemed men’s natural subordinates and the law of male-sex right asserts that men are women’s sexual masters and that women’s bodies should be available to men at all times. The prostitution contract is seen by Pateman as one of the means through which men are able to keep a constant supply of women available to them. Prostitution, in Pateman’s view, is one of the means through which modern patriarchy is perpetuated. Whilst contractarians view prostitution as a form of employment through
which women can empower themselves by hiring out the use of their sexual services, Pateman sees the prostitution contract as one in which a woman becomes subjected to the will of a man and essentially the man comes to be in total control of the woman.

Whilst all contracts are based on relationships of subjection and domination the prostitution contract is especially contemptible according to Pateman because the sole purpose of the prostitution contract is the enabling of men to purchase a woman in the capitalist market for nothing more than the carrying out of his role as her sexual master. Men do not hire prostitutes as capitalists hire labour. Capitalists hire labour based on skill, competency and the ability to perform the tasks required of them, and thus, while subjection is involved in this contract it is not the sole purpose of the contract. Prostitutes, on the other hand, are generally not hired on the basis of their skill or competency levels. Men do not hire prostitutes to fulfil their sexual desires, the sole purpose for men hiring prostitutes is so that they are able to exert their dominance over the prostitute and confirm their masculinity and dominant place within society. Inferiorisation of the prostitute as a person is thus an inherent characteristic of the prostitution contract, and therefore deeply damaging to the prostitute. An implication of this view is that only truly desperate women will enter and/or remain in prostitution.

Pateman (2007: 227) does admit that prostitution can be reformed to make it more like other occupations but she insists that it would still remain a contract based entirely on the desire of men to be in control of women and a contract through which men are able to uphold the law of male sex-right and therefore remain women’s sexual masters. Therefore the inherent injustice associated with prostitution cannot be done away with no matter what reforms are made. Prostitution, in Pateman’s assumption, can never be reformed to become an industry through which women empower themselves or a legitimate form of work. Pateman does provide convincing arguments against the prostitution industry, for example it would be difficult to deny the fact that the prostitution contract is based on some degree of domination and subjection. However, it could also be argued that Pateman underplays the benefits
that prostitutes themselves profess to gain from entering into the prostitution contract. Even though the prostitution contract is embroiled in relations of domination and subjection, the fact that many women enjoy working as prostitutes and find a sense of empowerment from working in this industry cannot be denied (cf. Trotter, 2008: 25). The prostitution industry is changing with the various forms of legislation being instituted and as such perhaps necessary reforms are taking place which will diminish the amount of subordination and exploitation that prostitutes face. Again, it cannot be denied that many of Pateman’s arguments are valid. In the next chapter I am going to discuss arguments raised by Cornell which go beyond those within a contract framework, as discussed by Ericsson and Pateman.
Chapter Three: Prostitution and sexual agency

Introduction

Thus far two theories have been discussed in relation to prostitution. The first is a contractarian view of prostitution, which claims that prostitution is not morally wrong and can be seen as a legitimate form of employment. The second theory, correlated with the views of Pateman’s feminist critique of contract more generally, views prostitution as a form of domination and subjection in which women are subordinated by men through the same contractual format which contractarians find beneficial. Within this latter theory, prostitution is seen as one of the means through which patriarchy is perpetuated and through which men remain in a dominant position within society. These two views are clearly strongly opposed to one another and each makes strong arguments either in favour of (a more ‘sound’ or a reformed) prostitution industry or against prostitution. As we have seen, both these theories also postulate different reasons as to why people become prostitutes and why people make use of prostitutes. The role of contract within these theories is very different and serves different purposes, with one viewing contracts as a means through which prostitutes gain some form of liberation because the prostitution contract enables them to negotiate in their self-interest and to be liberated from oppression in the private sphere, and the other viewing the same contracts as a tool for subordination. However, in my mind to view prostitution from within the contract paradigm only is limiting. Contract theory addresses why prostitution should or should not be seen as a legitimate contract and what positive or negative consequences prostitution has for women. But I think it is necessary to look beyond this contract framework in order to take into consideration the link between prostitution and human sexuality and the formation of sexual identities.

I wish to develop a specifically feminist viewpoint with regards to prostitution. Therefore in this chapter I am going to be focussing on a different feminist
perspective with regards to prostitution. This position will be informed primarily by theories put forth by Drucilla Cornell, employing concepts such as the ‘imaginary domain’, ‘the minimum conditions of individuation’ and the limits of the law amongst others. I will then attempt to apply this more general feminist theory to prostitution specifically. Cornell, like Pateman, discusses prostitution from a feminist perspective. However, I find Pateman’s feminist perspective to be problematic in the sense that it does not take into consideration the role of prostitution in the formation of sexual identities or the empowerment of women. Pateman’s feminist perspective seems to entail a paternalistic perspective on prostitution, one which views prostitutes one-dimensionally as victims of patriarchal domination. This view of prostitutes is belied by prostitutes’ view of themselves. Cornell’s feminist perspective, in contrast with Pateman’s, takes into consideration how prostitution can be important in liberating female sexuality and play a role in the economic and psychological empowerment of women. Cornell is an influential feminist thinker and advocator of women’s rights especially within a sexual difference frame, meaning that Cornell pays particular attention to how sexual identities and images are formed and maintained. Cornell is a firm believer in unionisation and has worked for several unions herself. She makes a strong argument in favour of self-determination and viewing everyone as equivalent within society.

For Cornell being equal and being evaluated equivalently are not the same. Equivalency comes before equality in that it is only when individuals are considered of equivalent worth that they can be considered free and equal (Cornell, 1995: 19). For Cornell, equivalency is important because it values people based on their uniqueness rather than on their similarities to a particular norm. For example, women should be equivalently valued in society based on their femininity and unique female attributes and not based on their likeness to men (19). Equivalent evaluation thus embraces diversity, while equality too often uses a standard of sameness to measure individual worth. Therefore, individuals must be equivalently evaluated, irrespective of the sexuate lives they choose to live, if they are to be considered of equal worth to other individuals and are to be afforded the freedom to live out their lives as they choose. I have chosen to discuss Cornell’s theory as it relates well with many of the arguments put forth by women working as prostitutes, as well as
advocates of prostitutes’ rights. Like Ericsson, she articulates many of the sentiments expressed by prostitutes themselves, but as I will show, she does this in a more sophisticated and convincing way, which is why her approach is needed alongside the insights brought into the debate by Ericsson and Pateman.

A strong focus of Cornell’s work is on sexuality and sexual difference. By way of briefly introducing her thinking, one could say that Cornell believes that sex and sexuality are integral to the possibility of individuals becoming “persons”\textsuperscript{29}; she thus shares Pateman’s feminist conviction that sexuality is central to one’s personhood and cannot be meaningfully separated from it. In order for an individual to have the “possibility of becoming a fully individuated person” it is necessary for them to imagine and re-imagine themselves within the “psychic space of the imaginary domain” (Cornell, 1995: 8). It is also necessary that the ‘minimum conditions of individuation’, which include the ‘protection of bodily integrity,’ ‘access to symbolic forms sufficient to achieve linguistic skills permitting the differentiation of oneself from others’ and the ‘imaginary domain’, are protected (4). All of these concepts, and how they hang together, will be explained in more detail below. For now, suffice to say that Cornell asserts that if individuals are not granted the opportunity to imagine and re-imagine themselves, or if they have stereotypes imposed upon them, then they are not being treated as citizens of equivalent worth. Everyone’s right to imagine themselves as they desire and to live out their sexual lives as they desire should be respected and protected as long as these do not impede upon another individual’s imagination of themselves. For the sake of protecting the imaginary domain, it is necessary that both legal and political action be involved.

In this chapter I am going to give an overview of Cornell’s theories regarding the ‘imaginary domain’, ‘the sexual imago’ and the ‘minimum conditions of individuation’ in order to show how these are integral to the possibility of an individual becoming a person. I will also be discussing what Cornell views as the limits of the law and what

\textsuperscript{29} Cornell’s theory on the person and the possibility of becoming a person will be unpacked in much more detail further on in the chapter, in the sections relating to the ‘imaginary domain’ and the ‘sexual imago.’ The concepts of becoming an individuated person, the conditions for this becoming and the imaginary domain and so on will all be properly explained there.
else can aid in the protection of the minimum conditions of individuation, namely self-determination and unionisation. Cornell applies her general theory about the importance of the imaginary domain and the sexual imagination to more specific contexts, one such context being pornography. Whilst Cornell does not provide an in-depth discussion on prostitution\(^{30}\) her theories, especially those with regards to pornography\(^{31}\), can be meaningfully extended to prostitution and can serve as an argument for the decriminalisation of prostitution – an argument I will be constructing in the final section of this chapter.

The first part of this chapter will focus on Cornell’s theory in general: her theoretical framework will be explained through an analysis of her key concepts, namely the imaginary domain, the sexual imago, the degradation prohibition and the role of the law in the protection of the imaginary domain. I will then go on to give a brief discussion of Cornell’s view of pornography. Finally, I will construct an argument in favour of prostitution based on Cornell’s more general feminist theory. Within this final section I will discuss how viewing prostitutes as victims impinges upon their imaginary domains rendering a paternalistic condemnation of prostitution problematic, as well as how political and legal action are necessary for the protection of prostitutes’ minimum conditions of individuation. Finally, I will discuss why the decriminalisation of prostitution is important, along with what role civil rights should play within a decriminalised prostitution industry. However, it is necessary to first introduce Cornell’s more general ideas and to grasp these ideas if one is to comprehend Cornell’s arguments relating to pornography and how these can also relate to prostitution.
The imaginary domain

According to Cornell (1995: 4) “individuality and ‘the person’ are not a given but a project” and every human being should have an equivalent chance at developing into a person. Cornell takes this idea from Jacques Lacan who discusses how human infants experience jubilation at the sight of their mirror image. According to Cornell’s (39) understanding of Lacan this is the “mirror stage” where infants first come to perceive of themselves as whole. Cornell (39) further understands Lacan to mean that “the image functions both as a projection and an anticipation of what the infant might become but is not now.” Therefore, the mirror image serves to create an idea for the infant of what it might become in the future. The infant, however, is not able to provide him- or herself with a mirror image due to its lack of motor skills at that stage. Therefore the infant is completely dependent upon other people in order for them to be able to repeat the experience of recognising their own mirror-image and in turn having its “projected identity and bodily integrity confirmed” (39). In other words, the infant is reliant on its mirror-image or the image of itself provided by other people in order to create a sense of identity for itself and have its bodily integrity confirmed. By seeing a mirror-image of itself the infant is able to imagine a projected future for itself where it is whole and where both the mind and body are in-sync thus creating a unified body. According to Cornell (39) the “mirror stage” is never complete. As adults we still engage in this process of recognising ourselves and confirming our identity and bodily integrity through how others view us and respond to us. It is for this reason that this process is fragile; there is always the possibility that one will not be able to develop into their projected image of oneself due to other people’s misrecognition. An individual’s identity, according to this view, is thus based on the perception of oneself through the eyes of others. Therefore, one’s identity consists of one’s own perception of oneself as well as the perception of oneself as projected by others.

Getting back to Cornell’s theory (based on this Lacanian notion), a ‘person’ is not the same as an individual; rather ‘becoming a person’ is a process that each individual
has to continuously go through, whereby they develop an identity and become individuated. In other words individuals are not born as fully individuated ‘persons’; instead, they go through a continual process in order to try develop into the persons they see themselves to be, incorporating their own views of themselves as well as the views of society. However, this “individuation is an extremely fragile achievement, one made possible only by spinning out a meaning for and image of a coherent self from a pre-given web of social ties, symbolic relations and primordial identifications” (Cornell, 1995: 38). Because the process of becoming a person is such a difficult, continual process there are certain conditions that need to be protected in order to ensure that everyone has an equal opportunity of engaging in this process. For Cornell, there are three conditions that need to be protected if this process of becoming a person is to occur, and if these conditions are in any way infringed upon, an individual does not have an equivalent chance of developing into a person. The conditions which must be protected in order for this process to occur are what Cornell (3) calls, “the minimum conditions of individuation.” There are three conditions which fall under the minimum conditions of individuation: firstly, bodily integrity, secondly, access to symbolic forms sufficient to achieve linguistic skills permitting the differentiation of oneself from others, and finally, the protection of the imaginary domain (4)\(^{32}\). It is these very conditions that are necessary if individuals are to have an equivalent chance at transforming themselves into individuated beings who can participate in public and political life on equal terms (4). Precisely how they feature as such necessary conditions for becoming a person will be discussed in detail below. First, the concept of the imaginary domain needs to be illuminated.

It is through the imaginary domain that individuals can participate in the process of becoming a whole person as they see themselves. The imaginary domain is a psychic space in which individuals can create an image of themselves as a whole person and continually renew this image throughout their lives. The process of becoming a person is a life-long process and it is possible, even probable, that one may never succeed in becoming the person they imagine themselves to be.
However, even if one never quite becomes the person they imagine it is still essential that they be given the opportunity to create an idealised image of themselves without having a persona or image forced upon them (Cornell, 1995: 8). This is why the imaginary domain is such an integral part of the process of becoming a person, for Cornell. As Cornell (5) puts it “the imaginary domain is crucial to the very possibility of freedom” and its protection is vital for anyone to approach the ideal of autonomy. The imaginary domain is the mechanism that allows people to have the freedom to imagine and always re-imagine themselves as other than a stereotyped version of themselves and without being forced to take on a certain persona. From my understanding of Cornell, within the imaginary domain one does not escape societal views of oneself completely. Instead an individual takes those views and incorporates them into their own view of themselves to create an image that is both uniquely their own as well as based on societal views and perceptions. One can never completely escape certain perceptions imposed upon one by society; however it is through actively shaping and transforming these views and incorporating them into one’s own views that one comes to have a relatively coherent image of oneself as a complete person – an image indispensible for one’s capacity to act as an autonomous being living in society.

The sexual imago

A key aspect in the process of becoming ‘a whole person’ is the sexual self-image, also known as the “sexual imago” (7). Cornell (1998: 36) claims that the sexual imago is “the inner-‘sexed’ sense that is the basis of the unconscious assumed persona through which we represent ourselves.” In other words, the sexual imago is the basis of the image that individuals create of themselves as sexuate beings. Cornell (1995: 6), similar to Pateman, asserts that “sex is so basic to who we are that when we imagine ourselves, sex is always already in the picture;” in other words “we live as sexed beings” and sexual identity is always already a part of our self-conception. Sex and sexuality are one of the most fundamental and formative aspects of the human personality. According to Cornell (6) there are three different
dimensions to the term sex: *firstly*, individuals ‘have a sex’ which marks them as sexual creatures. *Secondly*, humans ‘have sex’ meaning that sex is an activity that humans engage in and *thirdly* sex can be understood as the persona imposed upon an individual by the gender divide (Cornell, 1995: 7), namely an individual is seen as more or less feminine or masculine, as female or male. Therefore, sex\textsuperscript{33} can be understood in a number of ways; it is the way people are simultaneously characterised by external agents, linguistic practices, etc. and actively form their own identities according to their gender, as well as an activity that humans engage in both for pleasure and for procreative purposes.

Because humans are sexual by their very nature they cannot form an identity for themselves without taking this sexual nature into account, irrespective of what form it might take. Therefore, I understand from Cornell that the imaginary domain and the sexual imago are intricately linked in that the sexual imago is the result of an activity which takes place within the imaginary domain. However, as with the imaginary domain, one’s sexual imagination is not merely one’s own idea of one’s sexuality, it is actually the case that one combines culturally encoded ideas about oneself and one’s sex and orientation with one’s own ideas in order to form one’s sexual imago or self-image (6). Society places such emphasis on the gender divide that individuals cannot see themselves apart from their sex and so their sex in all three dimensions as discussed always plays a crucial role in the formation of their persona.

Cornell discusses the imaginary domain and the sexual imago in a universal sense, in other words she indicates that the imaginary domain and sexual imago relate equally to both men and women. However, she (7) also focuses on the sexual imago of women in particular and argues that women face gender-specific challenges with regards to the formation of their sexual imagination. Women face greater challenges than men when it comes to merging their own ideas regarding their sexuality with the ideas imposed upon them by society. This is due to the fact that within society women have personae imposed upon them which mark them as their sex and
nothing beyond their sex, while men arguably do not encounter this problem to the extent that women do. In other words, in patriarchal societies, there is a tendency by society to reduce women’s identity to their sex, and this impinges on every girl and woman’s sexual imagination and her capacity to imagine herself as a full person. The particular challenge for women is to incorporate their sexual identity into their project of becoming a person against society’s imposition of an impoverished and over-sexualised image onto girls and women.

While Cornell does initially discuss the imaginary domain and sexual imago as universal terms I am going to focus on the role of these in relation to women because women (and in particular prostitutes) are often not equivalently valued due to their sexuality and their sexuate lives. One of the problems of patriarchy relating to the crucial importance of the sexual imago is that within this kind of society “for women the sexual imago is both encoded and symbolically enforced so as to split women off from themselves as sexual objects and to re-impose the persona we associate with conventional femininity” (Cornell, 1995: 7). This means that women are socially and symbolically defined as not being a person beyond their sex. Women are seen as being their sex and are not considered to be persons with power and creativity (7). Therefore, women cannot see themselves as anything beyond the personae that are imposed upon them; they cannot escape the stereotypes and personae that are imposed upon them because of their feminine sex. This imposing of personae upon women and the marking of women as nothing more than their sex is what Cornell (7) terms the “masquerade of femininity.” The masquerade of femininity, as per my understanding, is when we cannot understand or envisage femininity to be anything other than the personae imposed upon it by these “symbolic underpinnings” (7). In other words, the dominant notions of femininity have become so deeply entrenched in our minds by these social and symbolic codes that we cannot create another understanding of what it means to be a woman. Cornell agrees with Ericsson (1980: 364) that throughout history female sexuality has been devalued and suppressed. This has led to the negative views societies hold with regards to both women and their sexuality. I think that often female sexuality and femininity is devalued to the extent that it is considered insignificant or merely a tool for the satisfaction of male desires. This has led to
women not being given the freedom to express their sexuality or live out their sexuate lives without moral condemnation.

By encoding and enforcing the notion that women should adhere to conventional ideas of femininity, such as that women should refrain from autonomously expressing their sexuality, any woman who strays from these conventional ideas is socially condemned and at times ostracised. However, this enforced splitting off also “marks a woman as her ‘sex’ and thus rips her away from her identity of herself as a woman and as a person beyond the persona or masquerade of femininity” (Cornell, 1995: 7). Therefore, it becomes difficult, at times almost impossible, for women to see themselves as anything other or more than their socially constructed and enforced sex and this inevitably interferes with a woman’s ability to create an identity for herself beyond this imposed sexual persona. I think that whilst no one can imagine themselves completely separately from the personae imposed upon them by society the process of becoming a person differs for men and women. Women are treated as their sex and as nothing more than their sex. Often women are not given the freedom to imagine themselves as anything more than their sex because of the way in which society has deemed women to be nothing more than sexual objects.

Women face a challenge trying to create an identity for themselves that incorporates their own view of themselves as sexual subjects, desiring beings, and not just that which is imposed upon them by society. Men do not face this same challenge as they are not necessarily stereotyped or categorised by their sexual features. Men are generally given the freedom and space to incorporate their own views of themselves with those imposed upon them by society, instead of being forced to adopt such a limiting persona of themselves which society has created and determined. The notion that women should not have narrowly sexualised personae forced upon them relates specifically to prostitutes. Prostitutes are condemned and ostracised often based on the fact that they choose to go against the conventional views of femininity and openly own and give expression to their own sexuality. They are severely stigmatised as nothing more than their sex or the services they provide and so are not given an equal opportunity to create a persona for themselves or choose how to
live out their sexuate lives. We have earlier seen how some of these stigmatised images place prostitutes in the category of either moral and sexual degenerates or helpless victims. The difficulties related to women creating images of themselves apart from those imposed upon them by society also relates to the "wound of femininity" (Cornell, 1995: 7).

Cornell (7) borrows another term from Lacan namely the "wound of femininity" in order to further explain the masquerade of femininity. According to Cornell's understanding of Lacan the wound of femininity is the "ripping of one's sex and sexual persona away from any affirmation of oneself as a person with power and creativity" (7). By creating the image of women as nothing more than their sex, society impedes women's ability to see themselves as of any worth other than or beyond their sexual existence. Cornell (7) further adds that "these symbolic underpinnings shape our reality to the extent that we are unable to truly envision the feminine as anything other than this persona of femininity." In order for women to be considered as of equivalent worth within society they need to be given much greater freedom and opportunity to imagine themselves, sexually, by actively merging their own ideas and those imposed upon them by society to create and constantly recreate a persona consistent with their own image of themselves. This means that women need to gain much greater control over how they are going to live out their lives sexually and what meaning they give to their sex and sexual experiences. As Cornell (1998: 18) claims "[individuals] need to be recognised as the source of their own evaluations and representations of how they are to live out their sexuality." It should not be for society to decide how individuals should live out their sexual lives or the meaning they attribute to their sex; individuals should rather be the ones who give their own sex and sexuality meaning.

An individual's sexual identity is not a given, or a predetermined identity, just as personhood is never completed. Creating a sexual identity for oneself is a continual process that involves imagining oneself as a sexual being and actively and creatively shaping and reshaping this image. Cornell (1995: 8) insists that "to deny a person their life as a sexuate being, as they have imagined it through their own sexual
imago and lived it out as a person is to deny them a fundamental part of their identity”. Because our sexuality is so central to our personhood, lack of or diminished sexual autonomy translates directly into lack of or diminished personal autonomy. Cornell (1998: 16) further asserts that “our sexual difference should be equivalently evaluated so that no one’s sex can be dispositive of the denial of personhood.” This means that all individuals must be evaluated as worthy of personhood, despite their sex or sexuality. If an individual is valued as less than equivalent based on their sex or sexuality they are not being treated as free and equal (19). It is only when individuals are considered as of equivalent worth that one can say that they are free and equal, within society and before the law. What Cornell is saying is that because sexual imagination is so important and fundamental to the creation of an identity and the possibility of becoming a person, no one should be denied the opportunity to imagine themselves sexually or to carry out their sexual imaginations. In addition, no one’s sex should be seen as of less importance or less value than anyone else’s as this can lead to the denial of the opportunity for becoming a whole person.

However, while individuals should be treated equivalently in terms of their sex and sexuality and be given equal opportunities to freely live out their sexuate lives this can only be done if it does not impinge on another individual’s imaginary domain or their ability to imagine themselves as a (sexuate) person. It is this infringement on the imaginary domain and the imposition of one’s ideas upon another that Cornell (1995: 9) hopes to prevent through what she calls the “degradation prohibition.”

The degradation prohibition

The imaginary domain is a space in which individuals are afforded “the moral and psychic right to represent and articulate the meaning of [their] desire and [their] sexuality” as explained, but Cornell importantly adds that this right exists “within the ethical framework of respect for the dignity of all others” (Cornell, 2003: 144), and should be limited by this framework. In other words, within the imaginary domain individuals are given the opportunity to continually reinvent an image of themselves
based on their sex and sexuality and how they wish themselves to be(come). However, this imagining must take into consideration the dignity of others and may not intrude upon the dignity of others. Therefore, whilst an individual can imagine themselves in any form they desire, they cannot express this identity if it entails imposing a persona upon another individual or degrading another individual in the process. Self-respect is an integral part of the imaginary domain because it is a primary good necessary for the chance to develop into a person (Cornell, 1995: 184). Without self-respect it will be difficult, if not impossible, for an individual to create and re-create an image of themselves. This is because “the denial of the primary good of self-respect closets sexuality and, by so doing, cuts some of us off from the equivalent chance of becoming a person” (185).

By denying people self-respect for their sexuate being they are essentially forced to “hide” their sexuality and this impinges upon their ability to imagine themselves as whole persons. For this reason Cornell (8) argues that the imaginary domain “demands that no one be forced to have another’s imaginary imposed upon himself or herself in such a way as to rob him or her of respect for his or her sexuate being.” It is necessary for individuals to have respect for themselves as sexuate beings as well as for others as sexuate beings in their own right in order for the equal evaluation of each person’s project of becoming a person to be possible. Cornell, therefore, suggests that a degradation prohibition be set in place that will aid in the prevention of individuals having imposed personae thrust upon them or being seen as less than equal because of their sex and sexuality, or chosen sexual imago.

Cornell (9) defines degradation as the experience of being “grad[ed] down because of one’s sex or sexuality, thereby assuming that one is unworthy of personhood or a lesser form of being and less than a person worthy of happiness.” By ‘grading down’ Cornell means that people are not treated as being of equivalent worth to others and are demeaned because of their sex or sexuality. Thus degradation is when an individual is treated as less than equivalent, and because of the persona imposed upon them by others they are not able to create a persona for themselves and give expression to that creation. I understand this to mean that when an individual has a
persona imposed upon them they are being treated as unworthy of personhood in the sense that they are not being given the opportunity to develop into the person they wish to be. Within society there are hierarchical gradations in which some individuals are considered as less worthy than others (Cornell, 1995: 9). These gradations are generally based on the notion that there is a ‘normal’ sexuality that all humans should conform to. If an individual chooses to express their sexuality in ways other than this ‘normal’ sexuality they are seen as less worthy than those that do fit the norm. For example there is generally an “imposed demand that women be ‘lady-like’ particularly in public” (10). If a woman chooses not to adhere to this imposed demand she is labelled a ‘whore’ and degraded in the sense that she has this ‘whore’ persona imposed upon her.

I think that this ‘whore’ persona holds special relevance in terms of prostitution. Prostitutes go directly against the demand that women be lady-like in public and instead they express their sexuality and live out their sexual lives in public. They are thus regarded by society as ‘whores’ and have this ‘whore’ persona imposed upon them, at least in part because they defy the public-private distinction and the relegation of women and their sexuality to the private, as explained above in terms of Pateman’s theory. By imposing this persona upon prostitutes they are being degraded in the sense that they are being considered as less than worthy of personhood because their sexuality and sexual lives strike at the heart of the dominant social symbolic. They are not being afforded an equivalent chance to develop an image of themselves for themselves, maybe precisely because they claim this right through their lifestyle. By degrading prostitutes and considering them as not worthy of personhood based on their sexuate lives society is imposing a form of sexual shame upon them and demote them to the position of second-class citizens. According to Cornell (211) “sexual shame and its enforced imposition directly denies someone a sense of his or her value.” In the case of prostitution then, women who work as prostitutes are denied their sense of value and this directly impacts on their ability to engage in the process of developing into a whole person. They are clearly regarded as less than equivalent to other members of society.
To further clarify what Cornell (1995: 10) means by degradation: she says that “someone is degraded when they are reduced to stereotypes of their ‘sex’ or have imposed upon them objectified fantasies of their ‘sex’ so that they are viewed and treated as unworthy of citizenship.” Thus when women are seen as nothing more than sexual objects or are reduced to stereotypes such as ‘whores’ they are being treated as unequal and unworthy of citizenship. Their personal identity is thereby reduced and restricted to an imposed (negative or degraded) sexual objectification. In order to try and prevent this stereotyping and degradation, Cornell (11) insists that there be a degradation prohibition which sees all humans being treated as worthy of the right to pursue sexual happiness and all being treated as equal before the law, irrespective of how they choose to express their sexual identity. If everyone is allowed to pursue their own sexual happiness without infringement upon the sexual happiness or imaginary domain of others then all are being treated as of equivalent value and as worthy of personhood and citizenship. In other words, everyone should have the right to determine their own sex and sexuality and pursue and enjoy their own sexual happiness. As Cornell (1998: 22) says the “right to self-representation of [one’s] sexuate being should be a basic right” because to be denied this right to self-representation is to be excluded from the moral (and sometimes civic) community (59).

I think that it is because of this exclusion from the moral and civic community that women who choose to publicly express their sexuality, such as prostitutes, are exposed to so much violence. Prostitutes are arguably excluded from the moral and civic community, due how they choose to express their sexuality and live out their sexuate lives, and are therefore not afforded the same rights as other members of society. Often prostitutes are also considered as less than worthy of personhood which perhaps sends the message that it is acceptable to act violently towards them and treat them with disrespect. Because the prostitution contract is considered a private contract it is not regarded in the same light as contracts which take place within the public domain, as has been discussed in Pateman’s argument. This could
also add to the amount of violence prostitutes encounter because often violence against prostitutes and the non-compliance of the terms of the prostitution contract go unpunished. Again, the fact that violence can be perpetrated against prostitutes without any consequences sends the message that the prostitution contract does not need to be adhered to and prostitutes do not need to be treated with the same respect as do other members of society. It is clear then that a prohibition against the degradation of an individual based on their sex and sexuality needs to be set in place if all individuals are to be respected and treated as worthy of personhood irrespective of their how they choose to express their sexuality and live out their sexuate lives.

To reiterate, the degradation prohibition asserts that all must individuals be treated as worthy of citizenship and not be denied this opportunity because of their sex or sexuality. However, although everyone must be treated as equals and have their sex and sexuality evaluated equivalently this equality is not based on sameness or likeness (Cornell, 1993: 141). Therefore, everyone should be treated equally based on the fact that all humans are sexuate beings and all should have an equal chance to live out their sexual lives as they desire. Sexual equivalence is not based on women’s sameness or likeness to men (141) but on the fact that sexuality is a complex issue and there are many ways to express it and none of these should be regarded as morally less worthy of respect than others. In other words, women should not be regarded as of less worth because they are not men, and prostitutes should not be regarded as less worthy of respect than other persons. Women should thus be regarded as of equal worth because they are also sexuate beings in need of a coherent and respected sexual imago, and despite the fact that they are not men. By viewing all sexuality as of equivalent worth Cornell is attempting to alter the idea that male heterosexual sexuality is ‘normal’ or ‘right’ and that all other forms of sexuality are of less worth than this form of sexuality.

If the notion that all sexuality is of equal worth is embraced, individuals will not be degraded or denied their personhood based on the way that they express their sexuality or the sexual lives they choose for themselves, in Cornell’s opinion. It is not
our sexual equivalence that needs to be taken into consideration, rather it is “our sexual difference [that needs to] be equivalently evaluated so that no one’s sex can be dispositive of the denial of personhood” (Cornell, 1998: 16; emphasis added). Whilst individuals must be the ones to determine their own sexual imagos, Cornell (40) adds that “simply demanding that the state leave us alone inadequately protects what is at stake in the right to self-represent one’s sexuate being.” Therefore, the law does have a proactive role to play in the protection of individuals’ rights to self-representation and self-determination and to the freedom and agency of the imaginary domain. I will now discuss what the role of the law is in the protection of these.

The role of the law in the protection of the imaginary domain

Cornell does see a need for the law in the protection of the imaginary domain and the equivalent evaluation of different sexualities. Cornell claims that various aspects, such as “reasonableness” and “practical reason” must be incorporated into the law if people are to be evaluated equivalently. Cornell makes use of the Rawlsian concepts of practical reason and reasonableness to explicate what she thinks is necessary within a conception of the law. Cornell makes use of these concepts because they appeal to universal standards, and so correlate with her notion that all people should be regarded as equivalent irrespective of their sex or sexuality. Therefore, it is pertinent that I unpack Cornell’s understandings of “reasonableness” and “practical reason” before looking at the role of the law within society. I will then go on to consider the limits of the law in relation to protecting individuals’ imaginary domains and sexual imagos. Cornell (1995: 12) says that we can judge public law by the ‘as if’. What the ‘as if’ is, is a judgement of the rightfulness of the law based on the notion that “a rightful law is one that all citizens, regarded as free and equal, could have agreed to if they were in a position to actually consent within the general will” (12). What this means is that a rightful law is one that everyone would agree on and consider fair if they could have their opinions taken into consideration directly.

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35 Reasonableness and practical reason are terms that Cornell borrows from John Rawls.
36 The ‘as if’ is a term coined by Kant; however I will not discuss Kant in detail within this dissertation.
within civil society. Therefore, I understand that Cornell is saying that one can judge laws based on the idea that if everyone in society was free and equal to one another they would agree upon the same laws. The idea of the ‘as if’ is tied into the notion of reasonableness.

According to Cornell’s explanation of the Rawlsian notion there are two basic aspects related to reasonableness. The first aspect is that individuals must be willing “to propose fair terms of co-operation and abide by them provided others do” (Cornell, 1995: 13) and the second aspect is that individuals must be willing to “recognise the burdens of judgment and accept their consequences for the use of public reason in directing the legitimate exercise of political power in a constitutional regime” (13). Put differently, reasonableness entails that everyone should suggest conditions for co-operation and then adhere to those conditions as long as everyone else does. Individuals must also accept any consequences brought about by the judgements passed down by those who are in power, so long as this is not an abuse of power.

Reasonableness is what some would like justice systems to be based on; however Cornell claims that feminism (in general) is against the idea of reasonableness. The feminist claim against the criterion of reasonableness is that it is based on masculine standards and notions of reason and on how men perceive the world and is biased towards women and views feminine difference as an indication of irrationality (14). Therefore, the standard of reasonableness is not based on the equality of all people, in this feminist understanding. It is rather based on the presumed reasonableness of a certain type of people within society, namely white men. Anyone who does not conform to the ‘white man’ standard of reasonableness is considered irrational. Therefore, reasonableness is biased in favour of those who do conform to this ‘white man’ standard. For this reason, those against the notion of reasonableness as it currently stands suggest a move away from universal standards to more subjective standards (16). According to Cornell’s understanding of this view, universal standards “mask hierarchies and deny multiplicities” (16). Therefore, these feminists say, instead of basing law on a universal conception of reasonableness, which is
actually the reasonableness of white men, law should be based on the reasonableness of those involved, for example black woman reasonableness, gay man reasonableness and so on. However, Cornell suggests that there are flaws with this argument for more subjective standards within law.

According to Cornell (1995: 16) a move to more subjective standards is misdirected because “any normative standard of reasonableness can never adequately account for the unique particularity of a person” (16). Consequently, no general standard or rule can ever do full justice to the uniqueness of an individual, so even if the standards were more subjective they would still fall short of doing justice to the individual involved. Cornell (16) argues that “substituting subjective for universal does not make the law more just; if anything, it turns the law away from the struggle for justice by embroiling the law in a myriad of formal and doctrinal disputes about what a reasonable woman is, what a reasonable black woman is, etc.” For that reason, what is necessary, in Cornell’s mind, is not a move from universal to subjective but rather a conception of the law under which all people are considered equal regardless of their gender, race or sexual orientation. Cornell (17) further adds that society must “struggle to maintain the legal ideal of reasonableness, explicitly tailored by an appeal to the Kantian ‘as if,’ as the test for the rightfulness of the law with its explicit demand for the equivalent evaluation of us all as worthy of personhood.” Cornell thus wants to maintain the notion of reasonableness within the concept of the law, however, this reasonableness must incorporate the notion of the ‘as if’ in order to ensure that all people are considered as equal under the law. The “treatment of women as lesser beings fundamentally violates the demands of an egalitarian legal system” (35) and thus it is necessary to alter the conception of the law to ensure that it takes into consideration the equivalent worth of all people not just a select group of the population.

The second general principle Cornell refers to is that for the law to be of use practical reason must also be involved. Practical reason takes into account what one ought to do, or what would be best to do, considering the alternatives that are available. Within practical reason an individual will, from a personal perspective, assess
various alternative courses of action and decide which course of action is the most desirable (Wallace, 200837). Wallace (2008) further states that practical reason is more concerned with matters of value than matters of fact. In other words, the use of practical reason allows one to judge what action to take based on what is best for one to do, while taking into consideration other people. This is important because it means that one does not only look at what course of action has been taken or will be taken but also takes into consideration those actions that have not yet been performed and decides from those what would be best to do. There are two moral faculties necessary to engage in practical reason, these being: a sense of justice and a capacity for good (Cornell, 1995: 17). It is not the law itself that must engage in the use of practical reason but rather the citizens of a society. However, practical reason is not something that everyone can engage in, according to Cornell. In order to participate in practical reason individuals “must first be individuated enough to have the equivalent chance to become persons in the first place” (18). Unless individuals have the chance to engage in the process of becoming persons they will not necessarily be able to participate in practical reason. Therefore, the law must ensure that the minimum conditions of individuation are protected so that all people have an equivalent chance at engaging in practical reason and at being seen as equals before the law.

Feminine sexual difference, which is the notion that femininity should be equivalently evaluated irrespective of its differences to masculinity, relies on the use of practical reason. This is because practical reason “turns on the assumption that as equal citizens and, moreover, as sexuate beings we should all be equivalently evaluated as worthy of achieving the conditions of personhood” (19). Women should be given an equivalent chance to achieve the minimum conditions of individuation based on the fact that as sexuate beings all people are worthy of achieving their personhood. Cornell (1993: 5) takes the stance that “without affirmation of feminine sexual difference, we will unconsciously perpetuate the gender hierarchy under which the feminine is necessarily devalued.” Hence, the law must take into consideration the

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37 This quote is taken from an article within the Stanford Encyclopaedia of Philosophy. This article can be found online at www.plato.stanford.edu/entries/practical-reason. There are, however no page numbers for this entry.
fact that men and women are different but that they should be treated as equals and evaluated equivalently *despite* these differences. This means that the law should not be biased against women based on the fact that they are not men; instead the law should protect the minimum conditions of individuation as necessary for *all* individuals to have an equivalent chance at becoming ‘whole persons’ capable of practical reasoning.

For these reasons Cornell (1998: 67) asserts that we demand two things from the law: *firstly*, that everyone be included in the moral community of persons as a matter of right, including that everyone be given equal and maximum liberty to determine their sexual lives; and *secondly*, that as recognised persons everyone demand a scope of rights, resources and capabilities consistent with their treatment as equals. This is the role that the law must play in its safeguarding of the universal conditions for the process of developing into a person. The law should protect the minimum conditions of individuation and ensure that everyone in society is evaluated as equal and not denied this equivalent evaluation based on their sex or sexuality. Nevertheless, Cornell (1995: 13) claims that there are limits to the law because it is an arena of coercion.

Cornell (26) describes the limits of the law when she says that the “minimum conditions of individuation are proposed primarily to develop an adequate conception of a legal theory of equality for feminist purposes. But this account recognises the severe limits of any legal project, indeed of law in general, as a field of coercion, for the more far-reaching aspects of feminism, as these necessarily imply an endless process of contesting the imposed definitions of what it means to be a woman.” The law has limited capacity when it comes to ensuring that women are treated as equals within society. The law cannot change perceptions, stereotypes and attitudes held towards women in society. Discrimination and degradation are not easily overcome, especially when perceptions are as deeply entrenched as they are with gender stereotypes. In other words, while the law can work to uphold everyone’s minimum conditions of individuation within specific situations, it can do little to prevent society in general from systematically imposing a restricted feminine persona onto girls and
women. What Cornell (1995: 27) therefore suggests is a reliance on the law in combination with self-organisation and self-determination. This means that apart from legal action and reform along the lines Cornell suggests, there should also be political action in the struggle against gender hierarchies and discrimination. Political action should take the form of trade unions and organisations which stand up for the rights of those who cannot do so alone. Consequently, whilst there are limits to the law, Cornell believes that through political movements, self-organisation and self-determination the struggle to achieve equivalent evaluation in society will be more successful. Self-organisation and self-determination are amongst the most important movements that Cornell sees within the pornography and prostitution industries, which will now be discussed in relation to Cornell’s more general theory.

Cornell’s view of pornography

Pornography is quite a contentious issue, as is generally all sex work. Cornell’s view of pornography differs from that of some other feminists, such as Catherine MacKinnon. Feminists who adopt the same viewpoint as MacKinnon (in Cornell, 2000: 94) argue that pornography is abuse and reduces women completely to objects for men’s desire (Cornell, 1995: 23). This is similar to Pateman’s understanding of prostitution as a form of patriarchal domination and control. Cornell, on the other hand, does not view the sex industry in as harsh a light as do those such as MacKinnon and Pateman. While the latter also look at the sex industry from a feminist perspective this view is very different from Cornell’s feminist perspective. We could say that MacKinnon and Pateman adopt a conservative or paternalistic perspective towards the sex industry, whereas Cornell’s approach seems to be more of a liberal feminist perspective. While Cornell does take a more liberal approach and acknowledges that there are benefits for women working within the sex industry the fact that abuse does take place on pornography sets does not escape her attention. However, instead of seeing the women involved in pornography merely as victims, thereby imposing a victim persona onto their sense of self, Cornell (96) sees them as agents who have made the conscious decision to enter into the pornography
industry. She views them as autonomous sexual agents and in doing so works to protect their imaginary domains in which they develop their own sexual self-image.

Overall, Cornell's (1995: 98) claim is that women should be afforded the opportunity to engage in pornography as this may be one of the ways they choose to live out their sexuate lives. However, at the same time porn workers should not have personae or stereotypes imposed upon them by society as this goes against the degradation prohibition and thus does not afford these women an equal opportunity to develop into whole persons (103). From this perspective then, porn workers should be equivalently evaluated and regarded as individuals worthy of personhood despite the fact that they choose to live sexuate lives that go against what is generally considered the norm within society. In this section I will briefly look at Cornell's application of her general theory to the issue of pornography. However, this will not be an in-depth or exhaustive discussion of pornography as I merely want to highlight some of the notions regarding pornography which can be related to prostitution, which will be the focus of the next section.

One of the most fundamental problems that Cornell perceives with regards to pornography is the way that the women working within the pornography industry are viewed. Women in the pornography industry do face abuse, such as sexual violence and assault, generally on the pornography sets (102). Female porn workers are also generally reduced to their sex, in particular by the men who view and are involved in the production of pornography. Because these porn workers face violence and are reduced to their sex many feminist theorists and anti-pornography activists see porn workers as nothing more than victims who need to be saved from their situations (96). However, in general pornography workers do not see themselves as victims but rather see pornography as a way that they can earn quite a good income, as a way to express their sexuality, or even as a way that they can make men ‘pay’ for abuse they may have suffered at some time in their life (116). In
other words, these women working within pornography do not see themselves as in need of saving, it is rather the case that they are using pornography as a means of both economic and psychological empowerment as well as a means through which they choose to express and liberate their sexuality (Cornell, 1995: 99 & 116).

According to Cornell (117) “the objection that many porn activists have to a certain feminist mentality that insists that they are ‘victims’ is that these feminists represent a class elitism that refuses to take them seriously.” By attempting to eradicate or diminish pornography anti-pornography authors are not taking into consideration the imaginary domains or sexual imagos of those women who choose to work within the pornography industry and thus impede upon their autonomy. By this I mean that to deny women the opportunity to engage in the pornography industry if they choose to is to deny them an equal opportunity to develop their sexual imagos and create an image of themselves as whole persons. By trying to eradicate pornography these anti-porn activists are essentially insisting that women should not be allowed to express their sexuality through pornography or live out the sexuate lives they choose for themselves, thereby denying them their personhood.

Furthermore, Cornell (2000: 552) would argue that these particular feminists are not evaluating porn workers equivalently based on their sexuate lives and are therefore in a sense insinuating that porn workers are not individuated enough to make decisions regarding their own sexual lives. In essence then porn workers are not deemed of equivalent worth as those who choose to adhere to sexual norms dictated by society, such as that women should be demure and not express their sexuality in the public domain. In my mind, because porn workers choose to go against the social norms that dictate that women act demure feminists should rather support them. Porn workers are challenging current patriarchal principles regarding female sexuality and are thus engaged in the struggle for sexual liberation for all women. Therefore, instead of fighting against pornography feminists should be fighting for the proliferation of pornography and the liberation of female sexuality. In line with the argument for the support of pornography Cornell thinks that porn workers should be equivalently evaluated and afforded the opportunity to shape and live out their own
sexual lives; however she does see the need for some reform within the pornography industry in order to make it safer for women.

According to Cornell’s (1995: 106) definition “pornography is the explicit presentation and depiction of sexual organs and sexual acts with the aim of arousing sexual feeling through either (a) the portrayal of violence and coercion against women as the basis of heterosexual desire or (b) the graphic description of a woman’s body as dismembered by her being reduced to her sex and stripped completely of her personhood as she is portrayed in involvement in explicit sex acts.” As can be seen from this definition Cornell views pornography as violent, explicit acts in which women are completely reduced to their sex. However, this definition of pornography does not relate to all pornography, if I understand Cornell correctly. Instead this definition applies to current mainstream heterosexual pornography which is generally produced and viewed by men. This is one of the major problems that Cornell has with current pornography; pornography as it generally stands in the mainstream industry caters only or mostly to men and it does so by depicting violent or coercive sexual acts against women that tend to depersonalise them.

However, Cornell (115) does not feel this way about all pornography and she does see promise or merit in some forms of pornography, especially those that are being produced and directed by women, and for women audiences. Generally the pornography industry is run by men and it is on these sets that women often face abuse and discrimination. Cornell’s feminist viewpoint does not oppose porn on paternalistic grounds. In spite of her feminist critique of the contents of porn images, she respects porn workers’ imaginary domains, but she also sees the industry as in need of reform in a number of respects. These include that reform will aid in making the pornography industry safer for women, for example there will be the mandatory use of condoms (115-116). Another element within the porn industry that needs reform is that women who have been abused on pornography sets should be placed in a position where they could demand a ban on the distribution and circulation of the pornographic material depicting this abuse (102). Furthermore, the reformation of the prostitution industry will encourage the proliferation of images of female sexuality by
also producing pornography that is more accessible to or even aimed specifically at women viewers, in that it is pornography that women can also enjoy (Cornell, 1995: 138). Presently there is some transformation taking place within pornography in that women have broken away from the mainstream industry and are starting to run their own pornography sets, on which the conditions the workers face are generally very different from the mainstream (114). Part of what is necessary in order to aid in the protection of porn workers against violence and discrimination on porn sets is self-organisation and self-determination, rather than laws and regulations only, according to Cornell (96).

Cornell’s (2000: 552) point of view is that it is necessary within the pornography industry to distinguish between legal action and political action. While some legal action is necessary “political action should be the main mode of intervention in the production of pornography” (1995: 96). Instead of attempting to destroy the industry as a whole through criminalisation, the industry should rather be reformed from within through the political action of porn workers themselves. As discussed earlier, some legal regulations are necessary for the protection of the minimum conditions of individuation (Cornell, 2000: 554) and this is where the law must play a role in the pornography industry. However, there are limits to what the law can do, especially when it comes to changing perceptions and stereotypes. Therefore, whilst the law should ensure the protection of porn workers’ imaginary domains, something more is needed to ensure that these women are given the equivalent opportunity to engage in the process of becoming persons. Therefore, what is needed in conjunction with legal action is political action.

Cornell (1995: 97) argues that “unionisation” and self-representation must remain at the heart of a political programme to change working conditions in the production of
It is through unionisation and self-representation that women working within the pornography industry will ideally obtain certain rights and protection against violence and discrimination. For example, some pornography sets insist upon the mandatory use of condoms. This type of action is achieved through unionisation and self-determination (Cornell, 1995: 98). Unionisation and self-determination can however also go beyond the law in the sense that they will ideally change the perceptions held towards women working in the sex industry. Cornell (115) suggests that “changing the way in which porn workers are themselves seen and the way in which [ porn] sets are viewed, might also change the vision of the men who view pornography.” In other words, creating a better perception of pornography work and of the women who work in pornography might change societal perceptions. I understand this to mean if the way in which porn workers are viewed improves, society might begin to afford them full civil rights, as well as more respect and dignity and treat them as worthy of personhood rather than as social outcasts, as is often now the case.

Within the pornography debate, in order to ensure that everyone’s imaginary domain is protected, Cornell (103) suggests a legal form of regulation known as zoning. Cornell (148) claims that “it is the pervasiveness of porn, its public presentation, that inevitably renders me a forced viewer and in so doing denies me my imaginary domain.” Because pornography is such a pervasive force and one that not all women want to be confronted with Cornell suggests that the public display of pornography be regulated. Cornell (150) argues for zoning and display regulation not because pornography is obscene but because it can be detrimental to a woman’s imaginary domain if she is forced to see it. Pornographic images reduce women to their sex and show them as isolated body parts rather than as full persons with self-worth and dignity. When women, who do not work in pornography, are forced to confront images of women as sexual objects (as they are portrayed in porn) it can “interfere with the construction of their imaginary domains and the projection of themselves as persons” (149).
In other words, porn is potentially damaging to the imaginary domains of those who work within the porn industry, as well as women more generally. Porn may of course also play a role in creating a depersonalised image of women in the minds of men, the main consumers of porn. If the display of pornography is not regulated and a woman is forced to see pornographic images the degradation prohibition is being violated (Cornell, 1995: 103) in the sense that it is forcing a persona upon a woman that has a negative effect upon her imaginary domain. The zoning of pornography is one of the ways in which the law can better protect everybody’s imaginary domain (107). By insisting that pornography be kept in places that do not force people to confront it if they choose not to the law is protecting the imaginary domains of those that do not want to see pornographic images, without outlawing it completely, thereby aiding in the process of an individual’s projection of themselves as a person.

For some women seeing pornography does not have a negative effect on their imaginary domains, or they may even want to view pornography as an integral part of the formation and / or expression of their sexual imagination. Therefore Cornell is not arguing that pornography be made less accessible or made unavailable to the general public. She is rather saying that while pornography should be accessible it must also not be confrontational in the sense that an individual is forced to see it when she or he does not want to. Women have different sexual imaginations from men (for whom pornography is primarily produced at the moment) and these must be respected as part of the process of becoming a person (105). Women should be given the opportunity to freely explore and express their sexual desires. Therefore instead of focusing only on what effect pornography has on men, Cornell (105) argues that “feminism must continuously seek ways in which women can unleash their own imaginary from the constraints that have been imposed upon them through rigid definitions of femininity.” I take Cornell’s argument to mean that pornography should not be abolished just because it might have a negative effect on some men or women, rather pornography should be diversified and proliferated so that it affords women the opportunity to unleash their own sexual imaginations and desires (as producers, performers and viewers), while at the same time taking into consideration those women who do not want to see themselves as stripped down as women usually are in pornography.
Prostitution in relation to the imaginary domain and sexual imago

Cornell does not give an extensive argument in relation to prostitution. However, her arguments relating to pornography and her more general theory in relation to the imaginary domain, the sexual imago, the degradation prohibition and legal and political action can be applied to prostitution quite well. In this section of the chapter I am going to attempt to apply Cornell’s general theory and some of her notions relating to pornography to the arena of prostitution. Therefore, this section will be a discussion based on what I think Cornell would argue in defence of prostitution rather than what Cornell herself necessarily argues with regards to prostitution.

Recognition of individuation

Some feminists, such as MacKinnon, view prostitution as a form of sexual slavery. These feminists, according to Cornell (1998: 47) argue that “slavery must be prohibited, even if the woman chooses to ‘sell’ herself, because the institution violates her standing as a source of rights and this violation, even if self-imposed, is inconsistent with the recognition of her as a free and equal person.” In other words, according to this perspective even if the decision to enter into the prostitution industry is one that is freely chosen it should not actually be permitted because it is in essence allowing oneself to be harmed and dominated (Doezema, 2001: 26). Prostitutes are thus considered victims because, from this view, they have become sexual slaves and have no say over their own circumstances. While the women who argue against prostitution, in order to protect the women working in this industry from abuse and discrimination, seem well meaning, the women working as prostitutes view their feminist ‘saviours’ as race and class privileged (Cornell, 1998: 50). By paternalistically trying to enforce the criminalisation of prostitution it is said that these anti-prostitution activists are trying to impose their own notions of feminine sexuality (51) rather than allowing women to make conscious decisions about how they will act out their sexualities or what type of work they will do themselves. These anti-
prostitution activists are even accused of being anti-feminist in that they insinuate that women cannot make decisions for themselves (Vaughan, 2001: 1). By insisting on viewing prostitutes as victims those who are trying to ‘save’ them seem to be implying that these women are not capable of making decisions for themselves and therefore, they need other people to make decisions for them (Cornell, 1995: 96). In line with her position on pornography, Cornell would argue that despite the fact that many prostitutes do not engage in this kind of work for sexual gratification it does still involve the expression of their sexuality and the women themselves should be the ones who make the ultimate decision as to what they do with their bodies and their sexuality.

In addition to this, because prostitution involves sex and sexuality it is intricately linked to the ideas of the imaginary domain and the sexual imago. Cornell (1995: 8 & 1998: 18) strongly asserts that it is essential that individuals be afforded the opportunity to imagine themselves as they desire and to live out the sexuate lives that they imagine for themselves if they are to be able to engage in the process of becoming a whole person. Therefore, when anti-prostitution activists rally for the criminalisation of, or even eradication of, prostitution they are essentially denying women who choose to work as prostitutes the opportunity to make decisions for themselves about their own sexual lives and how they choose to represent their own sexuality. It could be argued that according to Cornell’s (1995: 8) theory, whether prostitutes are pitied as victims, or vilified as ‘whores,’ ‘sluts,’ etc, society is imposing sexual personae upon these women and denying them the opportunity to develop an image of themselves apart from these personae. Furthermore, while anti-prostitution feminists seem to mean well they are actually causing the same detriment to prostitutes as those who deem prostitutes ‘bad’ and immoral, because they reinforce a negative and limiting sexual imago in relation to those who choose to express their sexuality differently to those deemed ‘normal’ by society.

In other words these particular feminists, as well as most of society, are hampering the ability of women who work as prostitutes to develop into whole persons (because of their sexuality and sexuate lives) by imposing victim or whore personae upon
them. This also amounts to degradation as prostitutes are not equivalently evaluated because they choose to represent their sexuality and live sexuate lives in ways that are different from those which society has classified as ‘acceptable.’ Prostitutes are often seen as unworthy of personhood and ‘graded down’ because of their sexuality. In other words, prostitutes are considered to be of less than equivalent worth than other members of society because of how they choose to express their sexuality. This is what Cornell (1995: 9) argues against with the degradation prohibition. Prostitutes should be evaluated equivalently and considered as worthy of personhood for the mere fact that they are sexuate beings and despite the fact that they live sexual lives that deviate from societal norms. However, whilst Cornell would argue that prostitutes must be afforded the same opportunity to develop into whole persons, regardless of their sex and sexuality, and that prostitution must therefore by decriminalised, there are also problems and dangers involved in prostitution which Cornell would seek to address.

*The protection of the minimum conditions of individuation within the prostitution industry*

Because it is essential that individuals be afforded the opportunity to develop into whole persons it is necessary that their minimum conditions of individuation be protected. As discussed earlier, the law must play a role in protecting individuals’ imaginary domains, however, the law cannot always ensure that individuals are not stereotyped and degraded on the basis of their sexuality. Cornell offers two reasons why the law is not always best is that stereotypes of femininity as the basis of discrimination law must not become entrenched (99). What this means is that by creating laws that frame women as victims and protect them as such, cultural and social perceptions of women as helpless victims are being endorsed (99). Thus the law comes to further entrench stereotypical notions of
femininity (especially that of women being victims) rather than trying to empower the feminine and improve the place of women within society.

The second reason is that “law is, at least in part, a force for accommodation to current social norms, even if it also provides us with a critical edge in its normative concepts such as equality” (Cornell, 1995: 99). Cornell (99) adds that feminism tries to go beyond accommodation and break free of the deeply entrenched views of the feminine and the meanings that make women who they are. Feminism wants to create new meanings for what it means to be a woman. Therefore, the law, rather than aiding in the reduction of stereotypes is likely to further entrench them, for example it could further entrench the stereotype that 'promiscuous' women should be punished by punishing women, such as prostitutes, who choose to live out their sexuality in the public domain. I understand this to mean that the legal system is situated within current social contexts such as the public private divide and Pateman’s sexual contract, and as such is not able to remove itself completely from the stereotypical views that society holds towards genders, in so far as the law needs to uphold the existing social mores. Therefore, the law tends to perpetuate and re-iterate the very stereotypes and perceptions that feminism tries to move away from, such as relegating women and female sexuality to the private sphere. Feminism often constitutes a critique of law, which is relatively conservative, often even patriarchal.

In my opinion this inherent conservatism of the law serves as one of the strongest arguments for the decriminalisation of prostitution. Laws which criminalise prostitution are likely to serve to cement the notions that prostitutes are victims and need rescuing or that prostitutes are criminals who should be punished, for example. Thereby laws reinforce the notion that women who publicly express their sexuality are ‘bad’ and should be punished. Laws do not aid in the altering of the perceptions of society with regards to sex workers, they do the contrary: they often serve to reinforce the negative perceptions that society holds towards sex workers and women’s sexuality. This is also bad for all women, because it suppresses the expression and valuation of female sexuality more generally. While it is necessary
that some legal regulations be set in place with regards to prostitution, such as the protection of prostitutes’ minimum conditions of individuation, something more is needed to ensure that these women are given the equivalent opportunity to engage in the process of becoming persons. What is more important than legal action, for Cornell, is political action, as explained. Just as with pornography, political action within the prostitution industry should ideally take the form of unionisation and self-representation. Cornell (2000: 553) asserts that we need to “unleash the feminine imaginary, rather than constrain men.” In other words women need to be given the freedom to express their sexuality and live out their sexual lives as they desire. At present legal systems attempt to protect women by restraining men and regulating men’s behaviour, rather than looking at what can be done to improve the expression of women’s sexuality. Prostitution is a good example of this. The law criminalises prostitution in an attempt to constrain men’s sexual desires and protect women from abuse and violence, when in fact prostitution can act as a means for the liberation of female sexuality, similar to the promise Cornell finds for this in pornography. If prostitution were reformed and the industry were decriminalised women would be more freely able to express their sexuality and at the same time empower themselves against male domination and violence.

While laws can play an important role in the protection of the process of becoming a person of women they can also act as a barrier to women’s freedom and sexual expression. Political action, such as self-organisation and self-representation, on the other hand, can offer women working in the prostitution industry protection and support while at the same time giving them the opportunity to live out their sexual lives as they see fit (Cornell, 1995: 116). In other words, political action undertaken by the prostitutes themselves strengthens their autonomy and supports their attempt to define themselves and to form their own identities. It is for these reasons that Cornell emphasises the importance of unionisation in the struggle to become a whole person and be considered as worthy of personhood, especially for prostitutes. With the right kind of protection and empowerment, prostitutes can lead the revolution for women’s sexual autonomy, instead of attracting either pity or condemnation. Prostitutes’ status in society becomes symbolic or emblematic of women’s sexual agency and autonomy more generally, on this view.
If prostitution were to be considered a legitimate form of work and if prostitutes were considered as worthy of personhood perhaps society would not look upon prostitutes with such disdain. As Cornell (1995: 115) argues with regards to pornography; by changing the perception of prostitutes and prostitution, women working within the prostitution industry may also come to be more respected and treated as though they are worthy of personhood, thereby allowing them to engage in the process of becoming a person rather than merely having personae imposed upon them. I think that this is done by, firstly emphasising the notion that prostitution is a legitimate form of employment. This also conveys the notion that prostitutes are entitled to the same rights as any other employees. This also means that as a first step, prostitution should be legalised or decriminalised. Secondly, with the support of their unions, prostitutes can ensure that they are treated as though they are worthy of personhood by people in the industry, including clients, which in turn will help to advance this idea also within the rest of society. Unions empower prostitutes by helping ensure that they are afforded their basic human rights and unions fight for better working conditions for prostitutes. Unions do not judge or degrade prostitutes based on their choice of work; instead they respect and help prostitutes thereby encouraging the rest of society to evaluate prostitutes equivalently. Furthermore, and possibly most importantly unions attempt to improve the way female sexuality itself is viewed. They do this by respecting the decision some women have made to enter prostitution. By respecting this decision and by upholding the full array of human and civil rights for women who work as prostitutes, unions are sending the message that women should be free to decide how they are going to express their sexuality and live out their sexuate lives. This is extremely important for all women as it empowers women to make their own decisions regarding their sexuality and not be forced to live out sexuate lives that someone else has determined for them.

Through improving the working conditions of those in the sex industry and changing the negative stigmas attached to sex work, unions attempt to improve the way that prostitutes are perceived. In so doing unions address one of the most detrimental aspects related to sex work: the stigma. The way prostitutes are treated by society is sometimes more damaging than other abuses these workers face (cf. Fick, 2005: 21) or, at least, contributes significantly to that abuse. From my understanding the harm
caused by societal stigmas is so damaging because it directly affects the ability of prostitutes to create an image of themselves for themselves beyond those that society has created of them and imposed upon them. In other words, prostitutes tend to internalise the harmful and limiting stereotypes projected onto them, and thus tend to become victims or degenerates. Therefore, whilst physical harm is damaging it can generally be treated and healed whereas the psychological harm inflicted upon prostitutes by society can often not be remedied and so keeps prostitutes in a position where they are not free or equal because they are not regarded as being worthy of personhood.

Another important aspect related to unionisation and self-organisation is the solidarity and support (Cornell, 1995: 116) that can be offered to women who have been harmed as a result of their working within the prostitution industry. Through unions and self-organisation prostitutes are able to contest and protest against their working conditions. They are also able to state exactly what they are willing to do and not willing to do when it comes to the sexual acts they perform. Without the support and solidarity provided by unions and through self-organisation it would be very difficult for many of the women working within the prostitution industry to demand any rights for themselves, or have these rights protected or enforced. The isolation, social rejection and secrecy which results from criminalisation all contribute immensely to the vulnerable of the individual prostitute. Cornell (1998: 54) maintains that “self-representation and self-organisation are the best solutions for often poor working conditions some prostitutes, particularly street walkers, have to endure.” From my understanding many prostitutes work in very poor conditions (Gould & Fick, 2008: 22) but are not in the position to protest against these conditions as this could lead to them losing their only means of livelihood. However, with the help of unions and through organisations prostitutes may be able to take a stand against these conditions in order to improve their lives and to actively shape their working conditions so that these become more conducive to protecting the women’s minimum conditions for individuation.
In my opinion it is essential that the conditions that prostitutes work in are conducive to their minimum conditions of individuation being protected as without the protection of these it will not be possible for these women to engage in the process of becoming persons. To argue that prostitutes should be able to express their sexuality freely only makes sense if their minimum conditions of individuation are protected. Unions can therefore play an important role in ensuring that prostitutes work in conditions that are not detrimental to their minimum conditions of individuation, imaginary domains or sexual imagos. In this sense it can be seen how unions can work in conjunction with the law in order to ensure that women who work within the prostitution industry have their imaginary domains and sexual imagos protected in order to have an equivalent chance of developing into whole persons.

With regards to helping women who have been abused as a result of prostitution unions and organisations are imperative. According to Cornell (1995: 121) lawsuits can entail a long and arduous process which puts a lot of strain on the victims. Therefore, I think that it would be very difficult for prostitutes to prosecute those that have abused them because of the difficult and expensive nature of lawsuits and the fact that prostitutes’ claims of violence and abuse are often not taken seriously (Fick, 2005: 55). However, with the support and solidarity provided through organisations this process can be a lot less difficult. Because prostitutes are engaged in sex work their claims of abuse and violence are often not taken seriously. According to Nicole Fick (55-56) “those who attack sex workers are seldom successfully prosecuted and when they are, the sentences handed down are lenient.” Fick (52) further adds that some of the prostitutes she interviewed in South Africa were laughed at by the police when they tried to report sexual violence against them. This shows the lack of seriousness associated with violence against prostitutes and the difficulty prostitutes face if they do try to prosecute those who have abused them. Therefore, prostitutes can be put through an extremely difficult process if they attempt to prosecute those that have abused them.

Cornell (1995: 121) upholds the claim that group support and solidarity can help prevent “psychologically crippling effects” that many prostitutes experience when
trying to stand up against their abusers. This process can be especially difficult because prostitution is illegal in many countries. Being engaged in illegal sex work does not afford prostitutes many opportunities to successfully accuse anyone of abuse. But with the help of organisations, for example SWEAT; prostitutes have more chance of seeing their abusers prosecuted than if they were to attempt to prosecute them on their own. Unions and organisations play an integral role in the attempt to protect sex workers against violence and abuse. Fick (2005: 24) says that prostitutes who are able to speak to organisations about their difficulties find it very useful and receive the understanding they need; understanding that they may not receive elsewhere because of their choice of occupation. Because of the nature of prostitution many prostitutes try not to reveal the type of work they do and have no one to talk to about any difficulties they face in the workplace. Through unions and organisations prostitutes are able to discuss their difficulties and this can have an important effect on their mental well-being, as well as aiding in practically improving their working conditions. Again, this directly impacts on the ability of prostitutes to develop an image of themselves that goes beyond that of society’s view of them.

Being able to prosecute one’s abusers is, in my mind, very important if one is to regain their sense of self-worth and have the opportunity to view themselves as other than the victim persona. When someone has been harmed in some way often they have a victim persona imposed upon them, thus impinging upon their ability to imagine themselves as anything other than victims. I also think that the prosecution of one’s abuser can act as a kind of therapy in the sense that it allows one to deal with what has been done and move beyond that harm. Through dealing with the abuse or violation an individual may then be able to re-imagine themselves and develop a new image of themselves. Therefore, the law plays a role in ensuring that those who have committed violations or abuses are prosecuted while unions and organisations aid those who have been harmed, during the process of prosecuting

SWEAT is a sex workers organisation based in Cape Town. SWEAT is an acronym for Sex Workers Education and Advocacy Taskforce. SWEAT assists prostitutes by offering them support and advice if they are arrested. They also provide assistance to any prostitutes that have been abused in any way, by offering them counselling and taking legal action against the perpetrators on prostitutes’ behalves. Recently, they also developed a programme which offers prostitutes courses, such as beauty therapy courses, so that they have skills to enter other forms of work if they want to leave the prostitution industry (Fick, 2005: 6).
the abusers. Both legal action and political action are thus vital if an individual that has been harmed in any way is to be able to move beyond that harm and create an image of themselves as full persons with sexual agency, for example.

This could be especially pertinent for women such as prostitutes who may have to return to the site of the abuse and encounter their abusers after the abuse has taken place. When a prostitute has to return to the place where the violation took place she might relive that moment over and over again. In so doing she will not be able to move beyond that violence or beyond the image of herself as a victim. However, if she is able to successfully prosecute the perpetrator of the violence it is more likely that she will be able to move beyond the violence. Therefore, instead of being reminded about the violence she faced at the site where it took place the prostitute might instead be reminded of her empowerment by prosecuting the perpetrator and so be able to develop beyond the victim persona. Prostitutes need to be able to prosecute anyone that has harmed them if they are to be regarded as worthy of personhood and equivalently evaluated. If the law does not protect them due to their sexuality and their occupation within the sex industry then they are being treated as less worthy than other people and denied the right to personhood based solely on how they choose to live out their sexual lives. Often because of the nature of prostitution, especially where it is illegal, prostitutes do not have the opportunity to prosecute their abusers based on their profession and this is where it is important that unions and organisations actively commit themselves to ensuring that prostitutes are afforded their rights and treated as worthy of personhood.

Cornell does however also acknowledge that there are some problems involved with self-organisation. Cornell (1995: 118) identifies two main difficulties with self-organisation; the first is that there is a high turn-over rate within the sex industry. Many workers leave the industry after a short period of time, which hampers the effectiveness of self-organisation. The second reason is that self-organisation works against the fantasy of how women are viewed by the sex industries (118). The fantasy cultivated within sex industries is that women are subservient to men and are willing to succumb to every male whim or desire, Cornell’s point here echoing clearly
Pateman’s understanding of what prostitution is for. Therefore, the empowerment of women within sex industries is undesirable for the industry as it negates or undermines this fantasy and diminishes the amount of pleasure or dominance men can gain from these industries. Generally within prostitution men are pimps and clients while women are the workers. Therefore, it is usually the case that women are kept in a position of inferiority while men are in control of the sex industries and have a vested interest in keeping the women in this position of inferiority rather than allowing them to become empowered. The self organisation of prostitution is, according to Cornell (1995: 119) particularly difficult. This is due to the fact that prostitutes are dispersed and often work under very different conditions in different places (119), for example some work in brothels while others work on the street. The amount of prostitution abuse is also difficult to control because it takes place in more private settings and prostitution is of course even more difficult to organise in places where prostitution is criminalised41 (119). However, despite these difficulties Cornell (119) claims that sex workers need to build solidarity through self-organisation as this would cultivate respect for these women’s projects of becoming persons.

Regulation and the role of civil rights within the prostitution industry

As I mentioned earlier, Cornell (104) suggests that pornography should be subject to zoning in order to protect the imaginary domains of those who do not wish to encounter it. In relation to prostitution it could be argued that some kind of zoning is also necessary in order to protect the imaginary domains of those who do not wish be confronted by the sight of a woman engaging in sex work. The difference, in my mind, between pornography and prostitution is that women who work on the street as prostitutes are not necessarily as stripped of their self-hood and broken up into parts as are the images of women in pornography. In my opinion, an individual walking past a prostitute may have no idea that that woman is a prostitute, and if s/he does know, that knowledge cannot be considered damaging to her or his imaginary domain. However, the difficulty comes in with solicitation. A woman may
not want to be confronted by the sight of a woman soliciting as this could be damaging to her imaginary domain and projection of herself as a person. In this instance then, perhaps zoning for prostitution is necessary to ensure that people who do not want to see prostitutes at work are not forced to.

However, zoning in terms of prostitution seems a more difficult task to undertake than the zoning of pornography. Zoning prostitution also forces prostitutes to work from certain areas which will become known as prostitution areas, such as the Red Light District in Amsterdam. Often these areas are more dangerous for prostitutes as they face more potential abuse at the hands of pimps and clients (SALRC, 2009: 212). According to Shaver (1998: 497) legalised brothels and designated prostitution areas only serve to marginalise and stigmatise prostitutes more. Therefore, in terms of prostitution zoning might not be the best option. It is, of course, necessary to insist that the actual sexual activity between a prostitute and her client does not take place in public as this could have a very detrimental effect on many people’s imaginary domains. However, to restrict the areas in which prostitutes may legally work can lead to worse working conditions for the prostitutes and further abuse. Rather than the zoning of prostitution, what Cornell, prostitution activists and prostitutes themselves call for is the decriminalisation of prostitution. I agree with this stance, I think the most important step to improving the lives of prostitutes and allowing them the freedom to express their sexuality as they choose is the decriminalisation of prostitution.

Before changes can be made to the prostitution industry and before unionisation and self-organisation can effectively take place it is essential that the decriminalisation of prostitution take place. Cornell (1998: 50) says that the “argument for the deregulation and decriminalisation of prostitution is based on everyone’s right to express her sexuality as she sees fit, even if it involves danger to herself and others, as long as it stops with non-consensual violence.” Cornell (1995: 34) insists that it is “only on the basis of some account of women’s lesser worth that one could allow the state to regulate our bodies.” In instances where the state says that a woman may not be a prostitute, for whatever reasons (such as social morality or paternalism),
they are treating women as less than worthy of regulating their own bodies and deciding for themselves how they are going to live their lives. Through decriminalising prostitution the state will diminish the perception that women are incapable of making decisions for themselves about their own sexuality and that they need others to make decisions for them. By denying women the right to determine how they will live their lives the state is essentially denying them the right to their personhood. In Cornell’s (1998: 56) view “if prostitutes are not recognised as persons, they are stripped of their civil rights and cannot sue for violation of their persons.” It is essential that women be respected in their sexuality and the right to choose how they live their lives. I take this to mean that before prostitutes can have any rights as people of worth and as equal to the rest of society they need to be viewed as capable of making their own decisions and assigning their own meaning to the decisions they make. The law needs to recognise their worth as equal citizens and assign them rights that protect them as prostitutes.

Before any other reformation of the prostitution industry it is imperative, from my understanding of Cornell, that prostitution be decriminalised. Through decriminalising prostitution the women who work within this industry will have more chance of being evaluated equivalently and be recognised as worthy of personhood. The criminalisation of prostitution essentially denies women the opportunity to live out their sexual lives as they desire, thereby degrading them and not affording them the chance to become the fully individuated persons they imagine themselves to be. Within a criminalised or even partially criminalised prostitution industry prostitutes are marked as their sex and nothing more because of their profession. Therefore, it could be argued that prostitutes are not considered to be persons beyond the fact that they sell sex. It is this that Cornell would want to see altered, a woman should not be judged or evaluated by her sexuality or sexual life, she should rather be considered as of equal worth merely for the fact that she is a human being. As I understand Cornell, decriminalising prostitution is the first step that should be taken in the struggle for women working within the prostitution industry to be considered of equal worth and individuated enough to make their own decisions as to how they will live out their sexual lives.
Conclusion

Cornell discusses the imaginary domain, minimum conditions of individuation and the sexual imago in relation to the process of becoming a ‘whole’ person. The process necessary to become a person is a life-long one and one that in all likelihood will never be achieved; because with different situations and circumstances throughout an individual’s life their image of themselves as a person changes. If an individual has a persona imposed upon them they are being denied their equivalent status within society and their chance at becoming the person they imagine themselves to be. Therefore, Cornell suggests the notion of the degradation prohibition. The degradation prohibition means that individuals are free to live out their lives as sexual beings as long as they do not infringe upon another’s imaginary domain by imposing a particular persona upon that individual. For Cornell the right to determine one’s own sex and sexuality is of utmost importance. Because the sexual imagination is such an integral part of the formation of the personality, being denied the chance to determine the way in which one expresses their sexuality and the meaning they give to these decisions, can be detrimental to the process of becoming a person.

Cornell applies this notion to pornography when she asserts that women must be the ones to decide what they do with their bodies and how they use their sexualities. While there are negative factors relating to pornography such as abuse and discrimination Cornell thinks that the pornography industry can be reformed so as to make the conditions better for those who work within the industry. By reforming and proliferating the industry as it currently stands pornography can also become more inviting for female viewers and act as a means through which women can express their sexuality and women’s sexual desire may be unleashed. What is vital for Cornell is that political action, such as unionisation and self-organisation, be put into place in conjunction with legal action. Political action can help pornography workers by providing them with support and solidarity and by treating them as people with self-worth and a right to personhood. Through political action and civil rights which
treat pornography workers as individuals of equivalent worth the perceptions and attitudes towards pornography workers can be altered so as to make them more accepted within society. I have argued in the final section of this chapter that very much the same arguments are applicable to prostitution.

The acceptance of porn workers and prostitutes in society and the unleashing of the feminine sexual imaginary through pornography and prostitution could assist towards the sexual liberation of all women in society. This will not only serve to aid in the process of women’s projections of personhood but also with the way men view and treat women with regards to their sexuality. By viewing women as individuals with their own sexual aspirations and desires men may come to see women less as sexual objects that they can use to satisfy their own desires and more as sexual subjects in their own right. Both stereotypes associated with prostitutes (victim and moral degenerate) undermine women’s sexual agency and their right to sexual self-determination. The empowerment and equivalent evaluation of prostitution challenge these stereotypes.

The theories and ideas that Cornell raises in relation to pornography tie into the arena of prostitution quite well, as I have shown. Before any of the suggestions Cornell makes with regards to unionisation and civil rights can be thought of with regards to prostitution the prostitution industry needs to be decriminalised. By decriminalising prostitution the state will afford prostitutes the same rights that are afforded to other women in society. Women who want to work as prostitutes should be given the freedom to do so, if only due to the fact that women should ultimately decide for themselves how they are going to use their bodies and sexuality. However, as I have explained using Cornell’s theory, legal change is necessary, but not sufficient for reaching the goal of altering the way prostitutes are viewed and reducing the stigma that is attached to prostitution. Perhaps by changing the way in which society views prostitution, the women working within the prostitution industry will come to be treated with more respect. And perhaps by affording women the opportunity to liberate their sexuality through prostitution all women within society could be benefited. It is possible that through the acceptance of sex work as
legitimate work and by giving women the opportunity to express themselves sexually as they desire all women in society will become empowered to express their sexuality, thus making society a safer place for women.
Chapter Four: Evaluation and Critique of the Theories

Introduction

From the theories I have discussed thus far it is clear that there are strong arguments both for and against the prostitution industry. Pateman and Ericsson, for example seem to stand diametrically opposed to one another with regards to their views of prostitution, especially with regards to the role of contract within prostitution. Cornell, on the other hand, focuses more on sexual agency and the sexual autonomy of women which Pateman and Ericsson do not. Cornell addresses some of the main concerns, such as how political action is needed in conjunction with legal action and how prostitutes should be equivalently evaluated in order to improve the lives of prostitutes and the conditions in which they work. While Pateman and Ericsson both discuss prostitution from within a contract framework Cornell moves beyond the contract framework. Cornell’s theory allows one to take into consideration the needs of prostitutes and how, through certain reforms, their lives can be improved. Instead of only focussing on the negative aspects related to prostitution Cornell gives a feminist defence of prostitution focussing on feminist values such as how prostitution can be used as a tool for the sexual liberation and empowerment of prostitutes specifically and all women more generally. In spite of their differences concerning the contract frame, there are also similarities to be found in the thinking of the two defenders of prostitution, Ericsson and Cornell.

What I think is the overriding feminist principle within these varying theories is the notion that women should have the opportunity to develop their sexual agency and express their sexuality however they choose to. I will argue for this notion within this chapter. Furthermore, prostitutes should be considered as worthy of personhood and have their rights protected within the prostitution industry. As Cornell rightly asserts prostitutes should not be denied the opportunity to create images of themselves based on their sexuality nor should they be denied the opportunity to live out their
sexual lives as they choose. While Pateman provides some sound reasons as to why prostitution is not favourable, such as that it can be harmful to women and damaging to their senses of self, I think overall Ericsson’s and Cornell’s arguments are stronger because they take into consideration the fact that women need to be able to express their sexuality and form an identity for themselves based on their sexuality. In this chapter I am going to develop my position with regards to prostitution based on the three theories that have been discussed thus far. Firstly, I will be looking at the arguments for or against prostitution within a contract framework with the focus being on the legitimacy of the prostitution contract, prostitution as a form of sexual liberation, the victim persona as degrading and certain conclusions I have drawn from the arguments within this framework. I will then go on to look at the arguments which go beyond contract. In this section I will discuss prostitutes as more than victims, sexuality within a decriminalised framework and what I find lacking within this argument. Overall my main argument is that the reformation of the prostitution industry and the proliferation of women’s sexual desires are of overriding importance and therefore prostitution should be decriminalised so as to allow for the equivalent evaluation of prostitutes and the treatment of prostitutes as worthy of personhood.

The debate within a contract framework

The legitimacy of the prostitution contract

I think one of the most important aspects that should be addressed in order for prostitutes to be considered autonomous sexual agents and worthy of rights and personhood is the legitimacy of the prostitution contract. As discussed in chapter 1, for Ericsson (1980: 338) the prostitution contract can be equated to the employment contract, and thus a legitimate contract, in that it is a contract entered into for a service rendered in exchange for remuneration. In this sense prostitutes should be treated as are employees of any other occupation and should have set terms and
conditions to which they adhere and to which the other party of the contract adheres. I think that it is necessary to treat the prostitution contract as a valid employment contract if prostitutes are to be afforded at least the same rights as are other employees and to have sufficient legal protection when they enter into contracts with clients. As it currently stands in some societies, especially where prostitution is criminalized, it is difficult for prostitutes to set rules and boundaries because society does not think of prostitution as a ‘real’ form of employment (Fick, 2005: 29). This leaves prostitutes vulnerable to a lot of abuse and exploitation at the hands of clients, pimps and brothel owners, which means that prostitution ‘contracts’ in these contexts become effectively empty, or alternatively remain contracts between client and pimp, over the use of the prostitute’s body. Therefore a prostitute’s autonomy and formal equality, which are cornerstones of contractual thinking, are severely undermined. I further think that because of the way in which prostitutes are often viewed (as less than worthy of personhood or as unworthy of basic rights) prostitution contracts are disrespected and their terms ignored.

It could be argued that this is due to the fact that those who have power over prostitutes (such as pimps, clients and brothel owners) do not think that they need to afford prostitutes any respect and can treat them in any manner they desire. Pateman is therefore correct in her claim that the prostitution contract as it currently stands (and especially in criminalised contexts) is instrumental in creating for the prostitute a situation of domination and exploitation. Prostitutes are dominated and exploited, firstly because female sexuality is viewed as inferior to male sexuality and therefore in sexual contracts males dominate women. And secondly, especially where prostitution is criminalised prostitutes are reliant on third parties such as pimps and brothel owners for protection from the law and at times from clients. Prostitutes are thus rarely in control of their own sexuate lives and are disrespected due to the way society conceives of female sexuality. In order for the sexuality and autonomy of prostitutes to be respected society needs to evaluate prostitutes equivalently and consider them worthy of personhood as Cornell suggests. Prostitutes need to be given the freedom to express their sexuality thus empowering them against the stereotypical notions of female sexuality. The equivalent evaluation of female sexuality will not only benefit prostitutes themselves but will also benefit all...
other women in any given society. As a first step, then, it is crucial that the prostitution contract be legitimised so as to make it a more public and enforceable contract. This is necessary to protect prostitutes against the domination, exploitation and abuse which is currently typical of the prostitution scene.

In my opinion, if the prostitution contract were thought of and implemented as a proper and legally binding employment contract, prostitutes would possibly not have to rely on pimps and brothel owners as they would not need the protection that they currently require. This could be an important step in the liberation of prostitutes from domination and exploitation as often these come at the hand of pimps and brothel owners. In an ideal situation the prostitution contract would take place only between the prostitute and the client and no third parties would be involved as this further complicates the contract or adds to the relative vulnerability of the prostitute vis-à-vis the client. The only third party involved should be the force of the law which will be indirectly present to enforce the terms and conditions of the contract if these are not voluntarily adhered to by either party. It is especially necessary that prostitution contracts are seen as legally binding contracts because such recognition is a prerequisite to ensuring that prostitutes are afforded the same rights as other workers and citizens, and are afforded similar protection against abuse and exploitation. Political action is also needed to help ensure that prostitutes are respected in their choice to become prostitutes, as well as assisting in the positive reformation of the prostitution industry, as discussed previously. This may aid in reinforcing the notion that women are capable of making their own decision to enter into the prostitution industry and so should be afforded the same rights as people in other forms of employment (Jenness, 1990: 406).

However, due to the often secretive and thus private nature of the prostitution contract it is usually much more difficult to enforce than other types of employment contracts, thus leaving prostitutes in a vulnerable position. The private nature of the prostitution contract is of course one of the major problems related to the enforceability of the prostitution contract. Related to its privacy, is the fact that the prostitution contract is usually verbal and informal, and possibly not explicit enough
in laying down the terms and conditions under which the prostitute is willing to perform the service she is paid for. We have seen how the prostitute’s need for proper negotiation and sexual agency within the situation of creating the contract militates against the client’s fantasies and apparent need to control the sexual encounter. Because of this tension, and because clients may approach a prostitute with desires and fantasies about total sexual control over her, it becomes doubly important that prostitutes be protected by a strong legal structure such as a properly negotiated and enforceable contract. In relation to the problem of the private nature of prostitution one could argue that contracts per definition take place within the public sphere and can be entered into by any willing parties. The prostitution contract however, is relegated to the private sphere due to the sexual nature of the contract. Because of the private nature of the prostitution contract it is considered politically insignificant and some people, such as Ericsson (1980: 359), argue that the law should not become involved in private, sexual contracts.

However, I think that in order for the prostitution contract to be removed from the ‘shadows’ and to play its role of protecting the prostitute in a vulnerable situation it needs to become a public contract. This will increase the visibility of prostitution within society and hopefully make it a more socially accepted and legitimate contract. By making the prostitution contract public it will become politically significant and so will be regarded in the same light as other contracts made within the public domain, and become subject to public scrutiny and be integrated into the larger landscape of labour law issues. The decriminalisation and legitimisation of the prostitution contract are necessary if prostitution is to become a public contract. By considering the prostitution contract a public contract the legitimacy of the contract will be affirmed thereby helping to ensure that prostitutes are afforded the same rights as other workers. This could also aid in seeing prostitution as a valid form of employment and prostitutes as workers who should be treated with dignity and considered as worthy of personhood. Keeping the prostitution contract within the private sphere seems to only have the effect of retaining the criminal elements related to criminalised prostitution and the exploitation and abuse of prostitutes as is currently found in the prostitution industry.
The second problem with the prostitution contract related to enforceability is the verbal, informal nature of the contract. This is a problem which I do not think that either Ericsson or Pateman addresses adequately. Generally, employment contracts are drawn up and signed by the parties involved thus making them binding and enforceable. Prostitution contracts, are however often, if not always, verbal contracts and contracts of which the terms and conditions are open-ended and vulnerable to non-compliance. Pateman (2006: 70) points out that prostitution contracts are usually based on assumption and spoken word and are therefore not easily enforceable. A prostitute and her client might seemingly agree to certain terms before they enter into a sexual exchange, however, it is often difficult for the prostitute to ensure that the client adheres to the terms she has set out. The open-endedness and subjective nature of the prostitution contract can often lead to prostitutes being abused and sexually violated because clients interpret the terms of the contract as they want to or in some instances ignore the terms the prostitute has set out. Because of the private nature of the sexual contract and because of the often vulnerable position of prostitutes, it is difficult for prostitutes to set specific rules and conditions to which the client must adhere. It is also difficult, almost impossible, for prostitutes to claim they have been abused, raped or violated by a client because there is not really a definitive way to determine what conditions a prostitute and her client agreed to.

Therefore, in conjunction with bringing the prostitution contract into the public sphere it is also necessary to make prostitution contracts formal and legally enforceable. I do admit that making the prostitution contract a formal (written) and legally enforceable contract does seem idealistic. This is due to the fact that often prostitutes themselves do not want to enter into formal, written contracts as it affects their anonymity and restricts their mobility within the industry (SALRC, 2009: 21). However, I think that improving the way prostitutes are viewed and treated is one of the major steps necessary in order to ensure that the terms of the contract are adhered to. It is here that legal and political action also play an important role. Prostitutes must be afforded the same legal protection as other women in society. In other words, when a prostitute claims that she has been sexually assaulted or raped those claims must be taken as seriously as they would be for women generally. The
law must ensure that the clients of prostitutes realise that there will be repercussions
if they do not adhere to the terms agreed to within the prostitution contract. Currently,
in South Africa's criminalised prostitution environment, the police and the clients of
prostitutes do not take the prostitution contract seriously and do not consider the
violation of prostitutes or their negotiated contracts with clients as serious offences
(Fick, 2005: 3). Political action can also ensure that prostitutes work in decent
conditions and if prostitutes are abused or violated in any way it is also the
responsibility of unions to ensure that justice is carried out for the prostitutes.

Whilst both Ericsson and Pateman raise pertinent points relating to the prostitution
contract both seem to overlook other important issues in relation to this contract.
Ericsson aptly suggests that the prostitution contract should be viewed as an
employment contract. However, Ericsson seems to overlook or ignore the fact that
the prostitution contract is an open-ended, subjective contract that is not as easily
enforceable as the employment contracts found within other forms of occupation. He
also tends to overlook the vulnerability of the prostitute within the prostitution
contract. Contracts are supposed to counter vulnerability in that they set out basic
rules and criteria. However, within the prostitution contract the adherence to rules
and criteria are not easily enforced or monitored due to the private nature of the
contract. Therefore it is difficult to determine to what extent prostitution contracts
can, at present, be considered legitimate contracts. Ericsson focuses more on the
positive aspects related to the prostitution contract being viewed as an employment
contract without addressing the problems that are associated with the enforcement
of the prostitution contract. Conversely, Pateman focuses exclusively on the negative
aspects related to the prostitution contract and its enforcement without considering
the positive consequences that could arise if the prostitution contract was in fact
viewed and implemented as a form of employment contract. For Pateman the
prostitution contract is one which always and of necessity leaves women (prostitutes)
in a disadvantaged, vulnerable position because there are no set or imposed criteria
to which the other party must adhere. Neither of these approaches seems to resolve
the issue of the vulnerability of the prostitute within the prostitution contract or the
subjective nature of the prostitution contract.
In my opinion if the prostitution contract is considered a legitimate form of employment contract it could have positive consequences for the women working within the prostitution industry as it could afford them some of the rights and protection that are afforded to other employees. It could also acknowledge that these women have made the conscious decision to enter into the prostitution industry and therefore should be respected in their right to use their sexuality however they choose (Jenness, 1990: 405). However, it is also necessary to address the inherent problems with the prostitution contract such as enforceability. Perhaps what is necessary within the prostitution industry is a move away from verbal, informal contracts towards written, formal contracts that must be adhered to by all the parties involved. These contracts should be between clients and prostitutes and this could be one of the ways in which the open-endedness of the prostitution contract could be diminished while at the same time allowing prostitutes to gain the benefits of the normal employment contract. As I mentioned, the law and political action, such as unions, should also play a role in ensuring that the contracts are enforceable and the agreed upon terms are adhered to within the contract. The creation of more formal, legitimate prostitution contracts could give prostitutes themselves more control within the contract and thus possibly create a sense of empowerment. In so doing this form of prostitution contract could symbolise the acceptance of prostitution as a legitimate occupation and prostitutes as autonomous sexual agents thereby affording them the opportunity to give their own meaning to their sexuality and sexual lives. Legitimising the prostitution contract may also aid in prostitutes being afforded rights and protection which in itself can also help ensure that prostitutes have the opportunity to create an image of themselves as whole persons.

Prostitution as a form of sexual liberation

In order for prostitutes to be considered the creators of their own sexual identities and for them to be able to assign their own meaning to their sexuality I think that
prostitution should not be considered, ultimately, as a form of oppression or subjugation but should rather be seen as potentially a form of liberation. For Pateman (2006: 50), prostitution is nothing more than a means through which men dominate and subjugate women in an effort to maintain a patriarchal society. However, for many women prostitution is a means through which they can liberate their sexuality as well as a means through which they can escape economic oppression (English Collective of Prostitutes, 1997: 83). I believe that prostitutes are often subjugated and dominated because of the way in which female sexuality is conceived. It is generally thought that women should not express their sexuality and those women that do express their sexuality are considered deviant and immoral. Therefore prostitutes are often disrespected and treated as less than worthy of personhood because they express their sexuality publicly and outside of the marriage contract. Therefore, I think that often prostitutes are dominated and subjugated because society deems them as immoral and as unworthy of rights and personhood.

However, if prostitution came to be seen as more socially acceptable it could be an important role-player in the liberation of female sexuality and feminine sexual agency more generally. Ericsson (1980: 355) asserts that women need to be freed from the ideas that surround and confine their sexualities and the expression of their sexual desires. Through prostitution some women are able to express their sexuality as they desire and are able to use their sexuality as a means of liberation from both male and economic domination. In this sense some prostitutes feel empowered in that they are able to determine how they will use their own sexuality to their benefit and through prostitution they are able to liberate themselves from some forms of male control (Scambler, 1997: 118-119). This is important for women to be able to create their own sexual identities and not have personae imposed upon them.

In addition to sexual liberation some prostitutes feel liberated by working in the prostitution industry because they are earning a living and are able to escape financial oppression (English Collective of Prostitutes, 1997: 83). In this case if they
do face oppression within the prostitution industry it may be less than the oppression they would face in a situation where they earned no income and had to rely completely on a man for financial security. While this may seem like it is just the lesser of two evils, it could be argued that prostitutes often would rather be financially independent and encounter some oppression in their occupation than the oppression they would encounter if they had to rely completely on a man for economic support. At present it could be said that prostitutes are willing to face some oppression for financial liberation, however this situation is not acceptable. Currently financial liberation could be a motivating factor for many women who enter into prostitution because women are, in general, in poorer economic circumstances than men and often have to rely on men for economic stability. In my opinion however, women should not have to face one form of oppression in order to escape another form of oppression. In other words, women should not have to make the decision to be oppressed within the prostitution industry merely to escape financial oppression. This is why it is so vital that the prostitution industry be reformed. Women should not have to make the decision to enter an industry in which they face oppression in order to overcome other difficult situations. Therefore, a reformed prostitution industry, one which is free of, or at least has a greatly reduced amount of, oppression and domination can act as a means for financial liberation without putting women in another oppressed situation.

Prostitution can be seen as one of the ways through which women can liberate themselves from oppression rather than just as a means through which men oppress and dominate women. Apart from the kind of liberation that comes from being financially independent or even prosperous (which prostitution seems to offer some women) prostitution may also be psychologically liberating. Prostitutes can use their sexuality, through prostitution, to overcome male oppression by putting themselves in a situation where they have control over men. According to Peterson-Iyer (1998: 40) in some cases “prostitutes seem to take pleasure in the sense that they are more powerful than their customers, that their sexual attractiveness affords them a measure of dominance and control over the other.” From my understanding these women feel as though they have power over men because their sexuality allows
them some dominance over men and these women make the decisions and have the ultimate say as to what is allowed and what is not allowed within the prostitution contract. The expression of female sexuality by prostitutes may thus also be construed as aiding in the sexual liberation of women more generally. When prostitutes are able to express their sexuality and have sexual agency and autonomy, and are seen by society to be doing so, it is freeing up a space for all women to be able to express their sexuality freely and autonomously. Prostitution affords at least some women the opportunity to express their sexuality as they choose and to live out the sexuate lives they choose which in itself can be empowering. I think that by using their sexuality as a means of empowerment prostitutes are using the one attribute that is meant to keep them in a position of inferiority to liberate themselves and gain some control over men. Granted, not all prostitutes feel liberated and empowered through prostitution but one cannot ignore the opinions of those who do.

Many prostitutes are oppressed and subordinated, however, and here I agree with Ericsson, it is often social conditions and the attitudes held towards prostitutes that are the underlying cause of this oppression (Spector, 2006: 9). For example, in a society where prostitution is criminalised, such as South Africa, prostitutes might be more vulnerable to subjugation and domination than in a society, such as New Zealand, that tolerates or legitimises prostitution (SALRC, 2009: 19). To say that all women within the prostitution industry are oppressed and subjugated is to overlook the nuances and intricacies involved in this industry. As well as to deny the fact that there are factors other than patriarchy, such as stigmatisation and victimisation, that leads to the oppression of women working as prostitutes. If the prejudice held towards prostitutes were eradicated, social conditions, such as poverty and patriarchy would remain as the main causes of the oppression and subordination of prostitutes.

Some feminists, such as Pateman and MacKinnon, claim that it is patriarchy which has led to the domination and subjugation of women and prostitutes especially. In
addition to this they would argue that the stigmatisation, victimisation and prejudice experienced by prostitutes are all results of the hostile attitudes created towards female sexuality by patriarchy. However, it can be seen that even feminists who are critical of patriarchy, such as Pateman and MacKinnon are guilty of holding prejudiced attitudes towards prostitutes, for example when the impose the victim persona upon prostitutes. Women, even those who crusade against patriarchy, are often as guilty as men of holding prejudiced attitudes towards prostitution. Therefore it could be argued that the eradication of patriarchy will not lead to the eradication of the prejudiced attitudes and stigmas related to prostitution. Perhaps this is due to the fact that this stigmatisation and prejudice are so deeply ingrained in societal thinking. Whatever the reason for these attitudes it is necessary to understand prostitution in this nuanced fashion if the lives of prostitutes are to be improved. There is no single underlying cause for the domination and oppression of prostitutes, therefore all of the causes need to be examined and addressed if prostitution is to be reformed. Furthermore, to say that all prostitutes are oppressed also seems to negate the fact that many women in the prostitution industry have made the conscious decision to enter the industry and to stay there (Jenness, 1990: 405).

*The victim persona as degrading*

Some feminists, such as Pateman and MacKinnon tend to think of prostitutes per se as victims, which in my opinion, goes against the notion that women should be free to determine how they express their sexuality and what sexual identity they create for themselves. As discussed in chapter 3, if a prostitute has a victim persona imposed upon her it makes it difficult, if not impossible, for her to create an image of herself as anything other than a victim. This undermines her sexual agency and her right to be considered as worthy of personhood. Ericsson (1980: 337) also has a problem with the view that prostitutes are victims. Many prostitutes and some other feminists are strongly opposed to this view (Doezema, 2001: 17) as they claim that prostitutes are not victims but rather have made the conscious and self-interested decision to enter the prostitution industry. While working as a prostitute might not be
the most desirable occupation for most women because of the dangers currently associated with prostitution, many women still choose prostitution as the best option out of those that are available to them (Gould & Fick, 2008: 61). Reasons for this may include that prostitution can offer women a form of employment where they earn better than they could in other positions, such as domestic or factory work, and it offers them flexible working hours, which is especially useful if they are single mothers. Prostitutes may also choose to enter the prostitution industry as it is through prostitution that they choose to express their sexuality and live out their sexual lives. Therefore, many prostitutes have decided to enter prostitution of their own accord and that decision should be respected.

I think this is one of the most crucial problems with Pateman’s argument against prostitution. While Pateman claims that she is arguing against the prostitution industry as a whole and not against prostitutes themselves, she still implies that prostitutes are always or necessarily victims; she thus denies and even undermines prostitutes’ agency. From Pateman’s argument it seems as though prostitutes have in a sense been ‘tricked’ into prostitution by men to serve men’s needs. However, when women enter the prostitution industry they are not entering it to serve men’s needs they are entering it to serve their own needs. Throughout Pateman’s argument it appears that prostitutes are helpless to this plight that has been forced upon them by patriarchy. This seems to overlook the fact that for most women the choice to work in the prostitution industry is one they have made themselves and one which is benefitting them enough to make their decision a reasonable one. To conceive of prostitutes as victims gives the impression that these women do not possess the capacity or rationality necessary to make decisions for themselves, maybe especially regarding their sexuality. In this sense it could be argued that Pateman colludes in oppressing women in the sense that she does not want to afford women the opportunity to enter into the prostitution industry or allow them the decision to become prostitutes. This also affects the ability of prostitutes to create a sexual identity for themselves and to be considered as autonomous sexual agents. In other words, it could be argued that Pateman is in a way imposing her own sexual
ideas upon prostitutes thereby undermining their ability to engage in the process of creating their own sexual identities and personae.

Ericsson, on the other hand, does not only not think of prostitutes as being victims; he even goes so far as to say that prostitutes perform a kind of social welfare service within society. Ericsson (1980: 341) believes that prostitutes fulfil an important social function within society in that they fulfil people’s sexual desires. Perhaps it could even be argued that prostitution is important for the creation of other people’s sexual identities as this may be how they choose to express their sexual desires. To criticise the institution of prostitution is one thing because it is presently flawed and in many countries, like South Africa, is desperately in need of reform. But to prosecute and penalise those within the prostitution industry does nothing to help improve their situations, instead it further penalises people who are already in a vulnerable or disadvantaged position due to varying circumstances. Therefore, I agree with Ericsson that it is necessary to think of prostitutes as autonomous sexual agents and to consider prostitution as a legitimate form of occupation as a first step towards improving the situations of women working within the prostitution industry. An improved, reformed, legitimate prostitution industry is also necessary if the women who work within the industry are to be afforded their full rights as citizens of a society and are to be considered of equal worth and worthy of their right to determine and give meaning to their own sexuality.

Conclusions from the contract framework

From discussing the arguments within the contract framework I can gather one strong conclusion in relation to the sexual autonomy of prostitutes. This conclusion is that instead of abolishing or trying to abolish the prostitution industry what is needed is the reformation of the prostitution industry (362). As Ericsson (525) claims, the most fundamental problem with the prostitution industry is the outdated, archaic views that are held towards prostitution and women’s sexuality. The archaic views
Ericsson speaks of relate to moral objections to prostitution. These arguments assert that sexual promiscuity amongst women *in general* is immoral thus the selling of sex is seen as morally reprehensible. In my opinion, these notions, whether people realise it or not, have become deeply entrenched within social and cultural ideologies. The negative stigma attached to prostitution is one of the most detrimental factors that women within the prostitution industry face. These women are socially condemned and ostracised and are often placed in much more vulnerable and dangerous situations than necessary because of the way society treats them (Spector, 2006: 9).

If people have freely and autonomously decided to enter into a prostitution contract, it cannot easily be condemned within a liberal framework. And if a woman autonomously decides to work as a prostitute what gives other people the right to judge or condemn her choice or lifestyle or try to make it illegal? Seen from a liberal, contractual perspective, people’s autonomy for choosing their lifestyles and occupations freely should be maximised, and to morally condemn or legally prohibit certain lifestyles just because they entail the selling of sex, should be rejected as untenable. To do so degrades certain people and denies them rights based on their sexuality and how they have chosen to live their sexual lives. An individual’s sex and sexuality should never be criteria for the denial of rights and the chance to develop into a fully individuated person. Therefore, the choice to enter prostitution should be respected and those working within the industry should be afforded the same rights and respect as the rest of society.

The recognition of the prostitution contract as a legitimate, formal contract is one of the first steps necessary in order to improve the prostitution industry; however on its own this step is not enough. Before the prostitution contract can be considered it a legitimate contract the prostitution industry needs to be decriminalised; this is the first and most important step in reforming prostitution. After decriminalisation the prostitution contract can start to be rehabilitated and then treated as a legitimate, public, formal and enforceable contract. The third step necessary to improve prostitution is political action in the form of unions and self-organisation. However, to
reiterate, it is only once prostitution has been decriminalised that the legitimacy of the prostitution contract and political action can truly be addressed. It is here that I think Cornell’s theory becomes important because she offers suggestions as to how to reform the prostitution industry, such as through political action and the recognition of female sexual agency. Cornell does not only look at how to reform the prostitution industry in order to make it safer for the women within the industry she also looks at what can be done within the prostitution industry in order for the unleashing of women’s sexual desires to take place, as well as what role prostitution itself plays in the creation of sexual identities for women and the unleashing of female sexual desire. As I said earlier, I think that the proliferation and liberation of female sexual desire and the recognition of women as autonomous sexual agents is very important and I think it is these issues that Cornell addresses in a more comprehensive manner than the other theories do.

Beyond contract

Cornell both agrees with and goes beyond some of the ideas suggested by Ericsson and Pateman. Cornell seems to look at prostitution from a practical point of view and while she does criticise some aspects related to prostitution she also offers suggestions as to how to reform the industry. Going beyond the arguments of both Ericsson and Pateman, Cornell looks at how the industry can be reformed and what role prostitution can play in the lives of those engaged in it. Instead of only focussing on the role of the law in the prostitution industry Cornell also looks beyond the law at how important political action is within prostitution. She does this with the view to empower women who work as prostitutes and create circumstances in which the enforcing of legal prostitution contracts is possible. Cornell’s theory is especially important due to the fact that she focuses on how important the expression of one’s sexuality and sexual desires is in the creation of an identity for oneself. Cornell, therefore, discusses how prostitution can have an effect on the imaginary domains and sexual imagos of women and how prostitution can allow women the opportunity to express their sexuality as they desire.
Beyond victims

Like Ericsson Cornell does not view prostitutes as victims. Instead Cornell (1995: 116) argues that through prostitution women are able to earn an income as well as being able to, figuratively, make men pay for abuses these women may have suffered in their pasts. By using prostitution to earn a living and to find psychological and sexual satisfaction these women are empowering themselves and overcoming certain conditions or situations that may have oppressed them. The reality is that prostitution is complex and it cannot simply be stated that it is either just domination or just liberation. Even when prostitution acts as a means of liberation there is always the chance that some domination or exploitation may be involved, and even where prostitutes work in rather desperate circumstances, might they derive some pleasure and liberation from their work. And thus, contrary to Pateman, Cornell does not see prostitution only as a way for men to dominate and oppress women, even though this is prevalent in the current industry. It could rather also be a way for women to overcome oppression, and so Cornell could be said to focus on the promise contained in a reformed industry. Cornell aims to promote the notion that a reformed sex industry could possibly be instrumental in female sexual liberation and empowerment. Prostitution can be an important factor when it comes to women creating sexual identities for themselves as it allows them to see themselves as other than victims of abuse and oppression. If prostitution is seen as a means through which women can empower themselves as well as a means through which women’s sexuality can be liberated and unleashed the way prostitutes are treated and the conditions in which they work might begin to be improved, which will have a direct effect on their ability to create an image of themselves as whole persons.

Despite the arguments in favour of prostitution as a legitimate occupation and the liberation of female sexual desire I think it is important to acknowledge the fact that one cannot separate one’s sense of self from the rest of one’s body. As explained in chapter one, Ericsson (1980: 341) believes that prostitutes do not sell their bodies but instead contract out a service. Therefore the prostitute is only hired for a certain amount of time and for a certain service or skill that she has to offer. Prostitutes are
thus able to separate the service they provide from the rest of their body so that it is only their body on offer and not their sense of self (Ericsson, 1980: 341). From this it can be concluded that a prostitute can completely distance her sense of self from the rest of her body so that her sense of self comes into no harm during the prostitution transaction. While this seems like something that would protect a prostitute from emotional or psychological harm it also unfortunately seems like an idealised notion. Against Ericsson, I agree with Pateman (2002: 27) and Cornell (1995: 7-8) who argue that it is impossible for a person to separate their sense of self from the rest of their body. Therefore when a prostitute is engaged with a client it is her whole self that is involved not just her body. This seems a much more realistic notion than that asserted by Ericsson. A woman might be able to distance herself from the sex act to some extent but it would be impossible for her to remove her psychological and emotional self from the act entirely. There is always the danger that a woman’s emotional and psychological well-being may become damaged within prostitution. The damaging of a woman’s emotional and psychological well-being can definitely have an effect on her ability to imagine herself as a whole.

While I agree that a prostitute does not sell herself but rather provides a service, Ericsson fails to address some of the potential psychological and emotional harm involved in the prostitution industry. However, he does rightly assert that it is not only in the prostitution industry that women face psychological and emotional harm associated with sexual violation. People in all forms of employment are vulnerable to the possibility of psychological and emotional harm. But, as Pateman argues, the difference between prostitution and other forms of employment rests on the fact that it is a woman’s sex and sexuality that is on offer in prostitution. Because sex and sexuality are so fundamental to the formation of an individual’s identity it is important that these are not damaged or harmed in any way. Therefore, the danger within prostitution is that there is the possibility that a women’s sense of self may be damaged through the use of her sex and sexuality. However, once again it could be conversely argued that a woman might choose to develop an identity for herself based on how she expresses her sex and sexuality through prostitution. And so in denying her the opportunity to engage in prostitution her sense of self and identity...
formation could be hampered. If a woman chooses to become a prostitute it should be a decision that enables her to create an image of herself as she chooses and it should also be one that promotes her sexual agency and autonomy; instead of something that impinges upon her imaginary domain and degrades her based on her sexuality.

*Sexuality within a decriminalised framework*

I agree with Cornell (1980: 50) when she asserts that the decriminalisation of prostitution is necessary if prostitutes are to be treated as worthy of personhood and assigned their rights as members of society. Decriminalising prostitution should also aid in significantly improving the conditions surrounding prostitution and the lives of those working within the prostitution industry. By decriminalising prostitution the women working within the industry will be recognised as being of equal worth and within a decriminalised framework these women can be assigned rights as prostitutes. Decriminalising prostitution can aid in the transformation of the perceptions and stereotypes held with regards to prostitution, which can also aid in ensuring that prostitutes are not degraded based on their sexuality and the sexual lives they have chosen to live. In countries where prostitution is criminalised prostitutes are not afforded the same rights as the general population and are devalued as human beings (Edwards, 1997: 75). Therefore, decriminalisation seems the best legal framework from which to advance the rights of prostitutes and to ensure that those rights are met and protected. In the next chapter I will be focussing on the positive aspects related to the decriminalisation of prostitution. These include that decriminalising prostitution respects the choice of women to become prostitutes by not penalising them for this choice, the negative factors associated with prostitution such as organised crime are diminished and prostitutes are afforded their full basic rights as employees and are treated as worthy of personhood.

But as Cornell (2000: 553) so rightly says there is only so much the law can do and that is why political action is needed in conjunction with legal action. Legal action,
such as the decriminalisation of prostitution can serve to ensure that the minimum conditions of individuation are protected, whereas political action can serve to alter perceptions and attitudes held towards prostitution and ensure that prostitutes are afforded their rights. In my mind this is one of the most important points that Cornell makes in relation to prostitution. Cornell (2000: 553) further adds that women need to be given the freedom to unleash their sexuality. Ericsson (1980: 355), in agreement with Cornell, also argues that women should be given the opportunity to express their sexuality and live out their sexual lives as they desire. I agree with Cornell and Ericsson when they say that the unleashing of feminine sexuality is necessary. Women should be given the opportunity to express their sexuality and determine their sexuality for themselves. As Cornell (1995: 8) asserts, if women are not afforded the opportunity to express their sexuality as they conceive of it and as they wish to express it, they are being treated as unworthy of personhood and ultimately denied the chance to engage in the process of developing into a whole person.

Unions and self-organisation enable prostitutes to gain some rights and protection. Even within a decriminalised framework prostitutes still live in an imperfect, patriarchal world, and their trade does render them vulnerable to exploitation. Therefore self-organised political action is crucial to empower them and ensure that they are afforded their rights. Unions and prostitutes rights organisations aim to help prostitutes prosecute those who might have committed a crime against them, as well as attempting to aid in the reformation and improvement of the prostitution industry. By discussing the necessity of political action Cornell touches on one of the most important aspects related to prostitution.

**What is lacking?**

While Cornell’s argument in favour of prostitution is convincing and does address how prostitution can assist in the liberation of sexual desires and the creation of an image of oneself as a whole person there are one or two minor flaws with her
argument. The first flaw I find in relation to Cornell’s argument is that she, unlike Pateman, does not tend to address the underlying causes of prostitution. Cornell does mention some of the reasons that women enter the prostitution industry, such as the higher income they can earn, but she does not look at the social conditions that have resulted in the inferior position of women within society. Also, she does not really consider the motivations of prostitutes’ clients as do both Ericsson and Pateman. However, while Cornell does not address these issues in detail I do not find this to be a major problem with her argument. In fact it is quite refreshing to read an argument that moves beyond the underlying causes and issues relating to prostitution and instead rather focuses on how the lives of prostitutes can be improved and how prostitution can act as a tool for the sexual liberation of women.

The second flaw in relation to Cornell’s argument is that she does not suggest ways or means through which women can gain help to leave prostitution if they want to. Cornell discusses how women working within the prostitution industry can gain assistance from unions and organisation but does not discuss what is necessary if these women decide that they want to leave prostitution. Ericsson suggests ways to aid women in leaving the prostitution industry and I think that this could be an aspect which could strengthen Cornell’s argument, if included. Despite these two aspects Cornell’s argument, as far as I am concerned surpasses those of both Pateman and Ericsson in that it looks beyond the causes and reasons for prostitution and focuses on the women within the prostitution industry and what is necessary to improve the conditions in which they work and how female sexuality can be unleashed and liberated from current social conceptions of what female sexuality means.

Conclusion

All three of the theorists present strong arguments in relation to prostitution. Of the three theories I am least convinced by Pateman’s argument even though she does address the issue of separating one’s sense of self from the rest of one’s body. The
reason I find Pateman’s argument the least convincing is because of her unwillingness to see prostitution as something more than a mechanism used by men to dominate and control women. In so doing I think Pateman overlooks the role that prostitution can play in the empowerment of women, the liberating of female sexuality and the fight against patriarchal domination. Ericsson and Cornell thus seem to present stronger arguments in that they realise that prostitution is a reality, that it can play a liberating role for women, and that it is in need of reform rather than eradication. The prostitution industry as it currently stands in many countries is not ideal due to the fact that women are exploited and harmed. However, with some reformation the prostitution industry could become a viable occupation for many women. Therefore, to condemn the prostitution industry and argue for its eradication seems impractical when what would be more beneficial to women are the improvement of the industry and the protection of their rights within that industry. Cornell and Ericsson address these issues especially when they insist that political action is necessary and of the most use to women in the industry. Through unions and organisations the rights of women can be protected and the perceptions held in regards to prostitutes can be challenged and improved. These changes will have a positive effect on prostitutes and the way in which they are treated by the rest of society.

To deny women the right to enter the prostitution industry is to deny them the right to determine how they will use their bodies. It seems irrational to me to condemn the prostitution industry when it is one of the ways that women can earn a living and improve their economic position within society. I also find it perplexing that some feminists argue for the eradication of prostitution when it is generally the case that attempting to eradicate prostitution sends prostitutes further underground and creates worse working conditions for them. Surely then, feminists should suggest ways to improve the industry and the working conditions for prostitutes so that these women face less harm and detriment. The liberation of female sexual desire and the alteration of the way in which female sexuality is viewed are not only important for prostitutes but also for women as a whole. Through liberating female sexuality from its current constrained position in society women can become empowered and this can, in turn, create a safer society for women. In the next section of this dissertation
the role of criminalisation and decriminalisation in terms of prostitution will be discussed with the aim of showing that decriminalising prostitution is the most suitable legal framework from which to improve the lives of prostitutes and address the negative factors associated with prostitution.
Introduction

From what I have discussed in the previous chapters it should be clear that what is most important to my mind is that prostitutes be regarded as worthy of personhood and be afforded the opportunity to express their sexuality as they choose. The current trend, especially in countries like South Africa where prostitution is criminalised, is to treat prostitutes as either criminals or victims, but in any case as social outcasts and second class citizens whose rights (whether employee rights, rights to the protection of bodily and sexual integrity and so on) are not taken seriously. The main reason for this, as I have argued throughout, seems to be the stigmas attached to female sexuality generally and the sale of sex through prostitution specifically. In order for the lives of prostitutes to be improved it is important that the attitudes held towards female sexuality and prostitution are altered. Prostitution can actually serve as a means for the liberation of female sexuality. When prostitutes are considered as worthy of personhood and they are given the opportunity to express their sexuality freely and without condemnation it is a step in the direction of liberation for all women’s sexuality. Obviously at present there are problems associated with prostitution such as abuse and exploitation, however through the reformation of the prostitution industry and the recognition of the equivalent worth of female sexuality this abuse and exploitation could be diminished and hopefully eradicated. This will not be an easy task, however through certain reformations, such as the decriminalisation of prostitution and the establishment of unions and organisations the process of the transformation of the prostitution industry can begin. In this process, the most important step in the empowerment of prostitutes is the decriminalisation of prostitution as this will help ensure that prostitutes are afforded their rights as workers and that they are treated as of equivalent worth and worthy of full personhood and citizenship.
In this chapter I critically analyse the discussion paper (0001/2009, Project 107, available at www.doj.gov.za/salrc/dpapers.htm) on Sexual Offenses: Adult Prostitution, published by the South African Law Reform Commission (SALRC). The aim of this document is to provide a proposal or recommendations as to how current South African legislation relating to prostitution should be changed. The overall argument of this document is that the criminalisation of prostitution is not the most beneficial form of legislation with regards to prostitution and the main recommendation is that the South African prostitution industry should be reformed in order to make it safer for the women working as prostitutes (SALRC, 2009: 226-229).

Along the same lines as I have argued above, using especially Cornell’s insights, the SALRC (226-229) also suggests that prostitution should be reformed in order for prostitutes to be afforded basic human rights and dignity. In order to substantiate the claim that prostitution should be decriminalised the SALRC has examined and discussed the different forms of adult prostitution legislation and how they have been adopted in different countries. It also discusses the positive and negative aspects relating to the various forms of legislation with regards to prostitutes themselves and the community at large. Within this document there is also a discussion regarding the link between prostitution on the one hand and organised crime and human trafficking on the other, and which form or forms of legislation work best to combat these clearly undesirable factors associated with prostitution.

I will be focussing on the effects that the current criminalisation in South Africa has on prostitutes and how criminalising prostitution does not achieve the outcomes intended. I will then look at the decriminalisation of prostitution with the aim of showing that it is the most effective legislation in terms of improving the lives of prostitutes and minimising the negative factors associated with prostitution. I will also relate the ideas contained within the SALRC document to the arguments I have already discussed in the preceding four chapters. For example, some of the arguments put forth by the SALRC in defence of the decriminalisation of prostitution relate well to the arguments put forth by Cornell. My main concern is how the lives of...
women working within the prostitution industry can be improved, especially in terms of their sexual agency and autonomy. As I have already discussed, the ability to express one’s sexuality and live out one’s own chosen sexual life is crucial if one is to be equivalently evaluated. Decriminalisation is the most beneficial form of legislation in terms of allowing women to express their sexuality and be respected in their decision to live out their sexual lives through prostitution. In other words, decriminalisation respects the decision of women to work as prostitutes while at the same time affording them rights and protection and regarding them as worthy of personhood. In this chapter I aim to show that countries such as South Africa, in which prostitution is criminalised, need to reform their approach to prostitution and the legislation regarding prostitution if they are to better the lives of prostitutes and minimise the harm that these women face. I will do this by firstly discussing criminalisation and the negative effects related to the criminalisation of prostitution. I will then go on to discuss the decriminalisation and how it is a more effective form of legislation in terms of respecting women’s sexual autonomy and affording prostitutes rights and protection as members of society.

Criminalisation

Of the different types of prostitution legislation criminalisation is the strictest and most restrictive. When prostitution is criminalised it means that all persons involved within the prostitution industry are punishable under the law, including prostitutes, their clients and any third parties that may be involved such as pimps or brothel owners (SALRC, 2009: 12). In addition to this all prostitution and all or most of the aspects related to prostitution are considered illegal and unacceptable. The countries in which prostitution is criminalised include the United States of America, Thailand, South Africa and all the other countries on the African Continent (13). Generally in these countries criminalisation is adopted with the view to prevent the harm, dehumanisation and exploitation of women and children (174).
Prostitution, in these instances, is generally seen as morally wrong because it is harmful to women and society at large and is seen as something that should be eradicated from society. By adopting criminalisation against prostitution these countries hope to reduce and ultimately stop both the supply and demand of prostitution through strict laws and so do away with the prostitution industry. The general idea is that by implementing strict laws against prostitution women will be discouraged from becoming prostitutes and men will avoid making use of prostitutes for fear of the repercussions. However, it is clear that the strict laws implemented in these countries do little, if anything, to prevent women becoming prostitutes and men making use of prostitutes. As I have argued, these strict laws do no more than create worse situations for the women who work within the prostitution industry and place them in a more vulnerable position than they were in to begin with. I will now discuss the current legislative stance against prostitution within South Africa and the effect that criminalisation has on the prostitution industry and the women working within this industry.

*Prostitution within South Africa*

Within current South African legislation prostitution and all its related activities are illegal. As well as prostitution and its related activities being illegal the hiring of a prostitute is illegal. The main laws relating to prostitution are the Sexual Offences Act 23 of 1957\(^{44}\) and the Criminal Law (Sexual Offences and other related matters) Amendment Act 32 of 2007\(^{45}\) (SALRC, 2009: 250). Aside from these two pieces of legislation there are also other laws that relate to prostitution in a marginal way. Municipal by-laws also play a role in determining regulations regarding prostitution. These by-laws are either general laws that can be related to prostitution, such as loitering, or they are specifically related to prostitution. All these laws, in conjunction, serve to enforce penalties against those who practise prostitution, those who make use of prostitutes and those who are in some way related to prostitution or have some control over prostitutes themselves. It is claimed that the reason prostitution is
criminalised in South Africa is based on moral grounds that attempt to “prevent social ills such as child prostitution, trafficking in women and children, public nuisance, public health and other associated crimes” (SALRC, 2009: 174). Therefore, through these pieces of legislation all acts relating to prostitution and its activities are prosecuted in an attempt to prevent harm against women and children and to reduce the crime associated with prostitution.

South African legislation asserts that it is illegal to work as a prostitute, keep a brothel, to recruit women to work as prostitutes, to solicit and to live off the earnings of a prostitute (251). In addition to these it is also illegal to rent premises out to someone if it is known that they will be using the premises as a brothel or as private premises for prostitution to take place. Under the various legislations it is also illegal to traffic women and children for the purpose of prostitution. Currently, South Africa does not have any legislation which relates directly to trafficking as an offence on its own. All legislation regarding trafficking falls under other laws, including prostitution legislation. It is partly for this reason that the South African legislature is wary of repealing the laws against prostitution as it would diminish the ability to prosecute those involved in trafficking. However, legislation targeting trafficking itself is being formulated and discussed and hopefully implemented in the near future. If this legislation is implemented then part of the argument for the maintenance of the current legislation against prostitution would be diminished. The criminalisation of prostitution has many consequences for prostitutes themselves as well as for the criminal activities associated with prostitution.

Effects of criminalisation

A country will generally determine which legislation it adopts on the basis of what the purpose of adopting that legislation is. Therefore, when deciding on legislation, lawmakers take into consideration things like: socio-economic factors, moral and religious view-points, human rights, the nature of harm to women, culture and tradition and human trafficking (173). These considerations amongst others
determine how and what laws a society will enforce with regards to prostitution. However, these laws and regulations also in turn affect the way prostitution is perceived, how prostitutes are treated and the way prostitutes perceive themselves. Therefore, when implementing legislation law-makers should also take into consideration what consequences might arise as a result of the laws they approve and implement. It seems that within countries that criminalise prostitution the consequences of this form of legislation are not necessarily being considered. As it would appear that rather than diminishing harm against women and reducing the negative factors associated with prostitution (the professed aim of the legislation) criminalisation rather increases the harm faced by prostitutes and creates a climate in which the negative factors associated with prostitution, such as organised crime, can flourish (SALRC, 2009: 57).

As far as I can tell there are very few, if any positive consequences, associated with the criminalisation of prostitution. Generally criminalising prostitution leads to increased abuse against prostitutes, greater exploitation of prostitutes and worse conditions in which prostitutes must work (19-22). One of the most fundamental consequences that criminalisation has on prostitutes is that it enforces the notion that prostitutes are bad and entrenches the negative stigmas associated with prostitutes and prostitution. This clearly goes against the notion that individuals should not have personae imposed upon them as it affects their imaginary domains and their ability to develop into whole persons. According to the South African Law Reform’s (19) findings criminalisation is a “clear expression of society’s condemnation of prostitution.” As Cornell (1995: 99) asserts, the law serves to entrench and reinforce stereotypes and in so doing can perpetuate the negative attitudes that society holds towards a certain group of people. Criminalising prostitution “reflects and deepens the stigmas and identifies prostitutes as immoral and relegates them to the ranks of criminals” (SALRC, 2009: 19). In other words, within a criminalised framework prostitutes are not equivalently evaluated and they are not considered worthy of personhood. Prostitutes thus have these personae imposed upon them and so they are not afforded an equal chance to develop into whole persons.
This not only has a negative effect on the way prostitutes think of themselves and their ability to develop into whole persons; it also affects the way society views and treats prostitutes. Because prostitutes are treated as of less than equivalent worth to the rest of society they begin to see themselves in the same way and adjust their behaviour in accordance with this view (SALRC, 2009: 19). Most women tend to live double lives because of the shame they feel because they are involved in prostitution (Trotter, 2008: 26). They work as prostitutes but when they return home they hide this fact from their families and communities for fear of being ostracised. This shame is the result of the negative stigmas that are attached to prostitution and prostitutes themselves. Within a criminalised framework this stigma is increased and entrenched because the legislation reiterates the notion that prostitution is reprehensible and unacceptable. It is claimed that “criminalisation and stigmatisation contribute to a climate in which society treats prostitutes with discrimination and violence” (SALRC, 2009: 19).

The notion that prostitutes are criminals and that their occupation is punishable as an offence leads to the notion within society that it is acceptable to discriminate against prostitutes and treat them violently because they are less than worthy of equality and personhood, and because they lead criminal(ised) lives. As Ericsson (1980: 334) so aptly claims it is because of the stigma attached to prostitution that prostitutes are exposed to exploitation and in danger of mental and physical problems. Gould and Fick (2008: 71) further add that “the stigma attached to sex work makes it easy to justify abuse by clients [against prostitutes].” Because of the lack of rights and equality afforded to prostitutes within a criminalised framework they are more vulnerable to abuse and exploitation at the hands of pimps, brothel owners and clients. As previously discussed, because prostitutes choose to express their sexuality against the norms of society and because they are considered as less than equivalent when they are abused or violated society does not take them seriously and at times society does not even think it is capable to abuse or violate them because of their work. This also serves to further entrench the notion that prostitutes are not worthy of personhood and do not deserve the same rights and protection as the rest of society.
Cornell (1995: 11) argues that to deny people rights and equality on the basis of their sexuality or sexual lives is to degrade them and treat them as less than worthy of personhood. In line with this the SALRC (2009: 20) argues that within a criminalised framework prostitutes are treated as of less than equivalent worth and denied basic legal and human rights. This is a fundamental problem with the criminalisation of prostitution. Criminalisation acts as a barrier to prostitutes claiming their basic human rights and legal rights (20). Criminalisation is essentially acting as a means for the repression of female sexual agency and autonomy by denying women the opportunity to express their sexuality as they choose.

The denial of rights and protection relates also to employment and workers rights that are not afforded to prostitutes because their work is considered to be a criminal activity. Not being afforded employment rights has many implications for women working as prostitutes. *Firstly*, it places prostitutes “outside the protection of labour laws and the law contract” (20). This means that prostitutes are not afforded the same rights and protection as other workers and cannot gain any compensation if they are exploited by their employers or clients. It is because of this issue that Ericsson (1980: 353) argues that the prostitution contract should be regarded as a proper and legitimate (and enforceable) form of employment contract so that prostitutes can have the same legal protection and rights that are afforded to employees within other occupations. Because prostitutes are not afforded any employment rights they cannot try to improve their working conditions or challenge any unfair labour practices (SALRC, 2009: 20). Therefore prostitutes often have to work in very poor conditions where they are abused and exploited by pimps, brothel owners and clients. In addition to this, because there are no rules governing the running of brothels or the standards which should be maintained in brothels, brothel owners are able to set their own rules and fees (21). The brothel owners take a cut of the prostitutes’ earnings often leaving the prostitutes with very little compensation for the work they have performed. This leaves prostitutes in a very vulnerable position as they have no claim against the brothel owners because of the illegal nature of their work. Criminalising prostitutes creates a climate conducive to the abuse and exploitation of prostitutes. Brothel owners, pimps and clients are able to exploit and abuse prostitutes in countries where prostitution is criminalised without
repercussion due to the fact that prostitutes are not in a position to report such crimes.

In countries where prostitution is criminalised, like South Africa, it is also difficult for prostitutes to form unions or rights-organisations. Currently in South Africa there are some rights-organisations, such as SWEAT, which aim to help improve the lives of prostitutes and ensure that they are afforded their basic human rights. However, it is very difficult for these organisations to be effective when prostitution is illegal and punishable by the law. These organisations cannot insist that the working conditions of prostitutes be improved or that perpetrators of violence against prostitutes be prosecuted because prostitution itself is illegal. Therefore, these organisations have little chance of ensuring that there is fair and legal recourse for prostitutes. Where prostitution is criminalised prostitutes also prefer to remain anonymous and not seek help from unions and organisations for fear of being reported to the police. Without some kind of legal backing it is difficult for unions to achieve their goals of empowering prostitutes and ensuring they are afforded rights. In other words, it is only where prostitution is decriminalised that unions and organisations are able to work effectively. Where prostitution is criminalised prostitutes do not necessarily have the opportunity to make use of unions and organisations to assist them in gaining rights and protection.

In instances where prostitution is criminalised women working as prostitutes do face abuse in all forms. They are “abused financially, physically and sexually by gangsters, clients, brothel owners and pimps” (SALRC, 2009: 21). The criminalisation of prostitution makes these women particularly vulnerable to abuse and violence. This is for two main reasons, firstly because prostitutes are mostly women and secondly because of the criminal nature of their work. In other words, prostitutes are so vulnerable to abuse because of the way female sexuality is viewed as inferior to male sexuality and because prostitutes have no legal rights or protection. According to findings by the SALRC (21) women prostitutes’ mortality rate is 40 percent higher than the national average. The criminalisation of prostitution forces prostitutes to go underground and work in far worse conditions in which they
face more violence and abuse than they would if prostitution were not criminalised (Kilvington, et al. 2001: 85). To reiterate, criminalising prostitution does not achieve the aim of reducing harm against women instead it creates a climate in which abuse and violence are more prevalent. Criminalisation also serves to reinforce the notion that female sexuality is inferior and that women should not express their sexuality publicly.

Apart from facing abuse at the hands of pimps, brothel owners and clients one of the more devastating forms of violence that prostitutes face as a result of the criminalisation of prostitution is police violence. In some societies, particularly South Africa, prostitutes face more abuse at the hands of the police than they do from any of the other parties involved in prostitution. This violence takes the form of extortion, rape, being mistreated, assaulted and verbally abused. According to Trotter (2008: 139) some prostitutes are forced to pay police a weekly payment in order to avoid arrest or prostitutes have to arrange sexual favours for the police and their friends to avoid arrest. Often when a prostitute is arrested a police officer will request free sex in return for not arresting her. Because of the police violence and harassment prostitutes are afraid to go to the police if they have been assaulted or violated for fear that they will be arrested or mistreated because they are prostitutes. According to research compiled by Gould and Fick (2008: 55) 47% of prostitutes have been threatened with violence by police, 12% have been forced to have sex with a police officer, i.e. raped by a policeman, and 28% of prostitutes have had to have sex with a police officer in exchange for their release. Prostitutes are also afraid to complain about police that have mistreated or abused them for fear of retaliation (SALRC, 2009: 22). Prostitutes will also work in much more isolated, dangerous places in order to avoid the police and in so doing have their own safety compromised.

The police are supposed to protect and ensure the safety of all members of society. However, because prostitution is illegal and prostitutes are treated as criminals they are not afforded any protection and instead have to face abuse from those who should be protecting them. This in turn impacts on a prostitute’s ability to live with dignity and safety (22). This also impacts on the ability of prostitutes to imagine
themselves as whole persons as they are treated as unworthy of the rights and protection that should be afforded to all members of society. The fact that prostitutes face abuse at the hands of police also means that many women (prostitutes) will not report crimes that have been committed against them even if these crimes are not related to prostitution. As many as 20% of the prostitutes interviewed by Gould and Fick (2008: 57) claimed that they would not report crimes to the police merely for the fact that they are prostitutes and will not receive help from the police. Prostitutes should be able to report violence against them for the very reason that they are members of a society and should be afforded the same rights as other members of society. But because of the criminalised nature of prostitution prostitutes are not even afforded their rights as women of society, in fact it seems that they are afforded very few if any rights at all purely based on how they choose to express their sexuality and live out their sexual lives.

Within a criminalised framework police corruption and abuse are not only possible but are rather inevitable (61). This leads to prostitutes not reporting abuses and their vulnerability increasing. Apart from this aggressive policing also does not act as a deterrent for prostitution. In fact the aggressive policing of prostitution leads to an increase in prostitution in that prostitutes have to work longer hours to make up for the time and money they lost while in police custody and for the admission of guilt fines they have to pay to the police (60). Therefore, it would appear that the criminalisation and police enforcement of laws against prostitution do little to prevent prostitution or help women who work within prostitution and in essence cause more harm than good. Whether prostitution is criminalised or not prostitutes should be afforded certain rights and legal protection because they are human and members of a society. It seems that the legal system and the police services overlook this fact and deem prostitutes as unworthy of rights and protection because the way they choose to express their sexuality is considered morally unacceptable. The criminalisation of prostitution also hinders the ability of prostitutes to access other services available to the rest of society, such as health services.
One of the most important services that should be available to prostitutes is health care services. Prostitutes are particularly vulnerable to sexually transmitted diseases, including HIV and AIDS because of the nature of their work and so should be afforded easy access to services that can provide education and assistance with such matters. However, when prostitution is criminalised it is difficult for prostitutes to access health care services. One of the reasons that prostitutes are reluctant to access the health care services that are available to them is for fear of disclosure of their identity (SALRC, 2009: 20). Many prostitutes do not use their real names and do not want people to know their real identities. When prostitutes make use of health services or other services they are generally required to give the provider their real name and residential details and thus are made to expose their identities. For most prostitutes this is a major concern as they try to keep their profession a secret and do not want others to know that they are involved in prostitution.

Many prostitutes are reluctant to access health care services because once it is known that they are prostitutes they are treated with prejudice and disdain by the service providers (20). The negative attitudes of clinic staff and the negative way in which other clinic attendees treat prostitutes (80) discourages prostitutes from going to clinics and receiving the health services that they require. This in turn affects the ability of prostitutes to protect themselves from HIV infection and infection of other sexually transmitted diseases. Prostitutes should be afforded the same opportunity to access health care services and clinics that other women are. Prostitutes must be given the necessary education and means to protect themselves against the infection of sexually transmitted diseases and HIV infection. However, under the current dispensation prostitutes are treated as outcasts and are not provided with health care services which are especially necessary in their line of work. Health care providers should remain objective and impartial and provide services irrespective of what work their patient does. However, because of the way society has entrenched the notion that prostitutes are not worthy of equal treatment or the same protection as others even some health care providers treat them in this way. Apart from the fear of prejudiced and negative attitudes towards them prostitutes are also afraid that if they do disclose that they are prostitutes they will be arrested and charged (20). Therefore, prostitutes are extremely reluctant to disclose the nature of their work for
fear of the legal and social repercussions which in turn affects their ability to access medical assistance and maintain their health.

Criminalisation also has the effect of forcing prostitution underground and making it more invisible. Prostitutes are forced to work in dangerous places out of the view of police and so health service providers are not able to adequately reach these prostitutes (SALRC, 2009: 20). Therefore, even when there are health care services targeted specifically at prostitutes they are not very successful. Health service providers are not able to reach prostitutes because they purposely hide themselves from authorities and so cannot receive the benefits and health services that are being provided for them. Because prostitution is illegal and persecuted prostitutes have a fear and distrust of most people outside of the industry. This does not serve to assist prostitutes in any way as they are not receiving the services that are necessary to them and that should be afforded to them as members of society. Laws which criminalise prostitution impede education and prevention programmes and in so doing act against one of the main aims of the laws criminalising prostitution which is the prevention of the spread of HIV/AIDS. “Health and occupation standards cannot be implemented where prostitution is illegal” (82). Therefore, it seems that criminalising prostitution does not aid in the prevention and control of diseases, it rather prevents prostitutes from accessing the health care services that are necessary to avoid HIV infection and the infection of other STD’s.

What could be helpful in ensuring that prostitutes are provided with adequate health care is the presence of unions. However, as already discussed, in a criminalised environment unions are not as effective as they could be. As Cornel asserts unions are essential within sex industries in order to ensure that sex workers are protected against, amongst others, sexually transmitted diseases and thereby are equivalently evaluated. However, this does not seem to take place within a criminalised framework because criminalisation affects the ability of unions to protect prostitutes and ensure that they are protected against HIV infection. This in turn reinforces the notion that prostitutes are not of equivalent worth and not worthy of protection against sexually transmitted disease. Thus far it can be seen that the laws
criminalising prostitution have little benefit for prostitutes themselves and for the rest of society. Prostitution in relation to other crime within a criminalised framework will now be discussed.

One of the main purposes of criminalising prostitution is to reduce the amount of criminal activities related to prostitution, such as assault, robbery and organised crime syndicates. However, according to research done by the SALRC (2009: 26) “criminalisation actually enabled an increase in organised criminal activity within the prostitution industry.” Whilst governments aim to reduce the amount of criminal activities related to prostitution by criminalising prostitution they are actually allowing these criminal activities to flourish. As Ericsson has stated the criminalisation of prostitution forces it further underground. By forcing prostitution underground the government is, in essence, encouraging organised crime. Because prostitution is illegal prostitutes look for help from pimps and other criminals in order to protect them and this “increases the leverage that outsiders have in exploiting prostitutes” (57). In many cities prostitution is “highly organised and tightly controlled by pimps, gangs and drug dealers” (57). Therefore, criminalising prostitution essentially forces prostitutes to turn to pimps and crime syndicates in order to provide protection for them and ensure they have work. This places prostitutes in an even more vulnerable position and more likely to become victims of abuse and oppression. As discussed in the previous chapter in order to curb the influence and control of pimps and gangs what is needed is the empowerment of prostitutes. This could ultimately lead to prostitutes being in control of the industry and the eradication of the need for third parties such as pimps. Criminalisation does not aid in the empowerment of prostitutes or the empowerment and liberation of female sexuality in general. Instead criminalisation reduces the ability of prostitutes to control their own lives and places the control in the hands of those who exploit and abuse prostitutes. In other words, it does not seem that criminalising prostitution achieves the aim of reducing other criminal activities associated with it. In fact it allows these criminal activities to continue while giving more power to pimps, gangs and drug dealers and placing prostitutes in vulnerable positions where they face violence and abuse. Criminalising prostitution also “reduces the ability of prostitutes to protect themselves against these syndicates and gangs that have extended control over large parts of the
industry” (SALRC, 2009: 24). Therefore, it appears that criminalising prostitution does not achieve the goal of reducing the criminal activities related to prostitution nor does it achieve the goal of reducing violence against women.

The criminalisation of prostitution in order to curb the crimes associated with prostitution seems illogical and unfounded. As the SALRC (56) argues this kind of reasoning is circular in that it “attributes the results of the criminal prohibition of prostitution to prostitution itself.” In other words, it is not because of prostitution itself that these associated crimes arise; it is rather because of the conditions created by the criminalised nature of prostitution that these ancillary crimes arise (56). Therefore, it is not prostitution itself that is the problem it is rather the conditions created by criminalising prostitution that are the problem. If prostitution were not criminalised prostitutes would not be so reliant on gangs and organised crime syndicates and so the flourishing of these would probably diminish. The SALRC (57) further argues that “there is no direct link between prostitution and drugs, crime and urban decay.” The reason that prostitution is linked with crime is because when prostitution is criminalised it often takes place in areas of the city that are already crime-ridden and derelict. It thus seems like prostitution causes crimes to arise and neighbourhoods to decay, but it is rather the case that prostitution takes place within environments that are already full of crime and in neighbourhoods that are already ‘decaying’. Thus prostitution is not the cause of neighbourhood decay; it is rather one of the consequences of the criminalisation of prostitution that prostitution takes place within already unsavoury neighbourhoods. According to the SALRC (57) in the areas “where brothels are integrated into healthy neighbourhoods no decline takes place.” Criminalising prostitution is not going to curb the occurrence of crime syndicates or decrease the decay of neighbourhoods because prostitution is not the cause of these.

In my mind criminalisation is the worst possible form of legislation with regards to prostitution in that it makes women more vulnerable to abuse, degradation and exploitation. It allows the police, clients and third parties to violate and abuse prostitutes without any ramifications and criminalising prostitution provides no help or
protection for the women who work within the industry. What is more likely to curb the occurrence of crime and violence in relation to the prostitution industry is the empowerment of prostitutes and the recognition of prostitutes as worthy of personhood and protection. Criminalising prostitution does no more than further disadvantage women who are already in a disadvantaged position because of the way society views prostitution and female sexuality. Criminalisation also serves to create an environment in which the abuse of women is seen as acceptable. The legislation that will best serve the interests of the women working within prostitution and allow for the empowerment of female sexual agency is decriminalisation. The reasons for my argument that decriminalisation is the most suitable form of legislation with regards to prostitution will now be discussed.

Decriminalisation

The decriminalisation of prostitution means that there are no criminal sanctions against prostitution and its related activities, prostitution is accepted as a legitimate form of work and is approached through labour laws, where prostitutes are regarded as employees (SALRC, 2009: 13). The decriminalised framework takes into consideration the rights of prostitutes and respects the decision of women to enter into the prostitution industry. Respecting the decision of women to enter into prostitution is important if prostitutes are to be equivalently evaluated and considered as worthy of personhood. Respecting this decision also aids in the empowerment of female sexuality and sexual agency by respecting women as the creators of their own sexual identities and allowing women the opportunity to assign their own meaning to their sexuality.

Labour laws do not automatically apply to prostitution; “whether, how and to what extent labour laws apply to prostitution is a policy choice dependant upon the nature and content of the laws of a particular jurisdiction” (13). This means that in some areas labour laws may apply to prostitution in the same way that they apply to other
businesses, while in other areas only some or no labour laws may apply to prostitution. However, despite the fact that the labour laws applied to prostitution may vary prostitution is still considered a legitimate form of work and prostitutes are afforded legal rights and basic human rights that they are not necessarily afforded under a criminalised framework. Under a decriminalised framework the aim is for prostitutes to be evaluated equivalently and regarded as worthy of personhood.

Generally the goal of decriminalisation is to identify genuine harms such as child prostitution and trafficking and increase the punishment against these while at the same time decreasing unnecessary regulation with regards to voluntary adult prostitution (SALRC, 2009: 154). According to the SALRC (175) “[decriminalisation] models are more likely to express concern for the rights, health and safety of prostitutes and to seek to minimise socio-economic harms caused to prostitutes themselves;” criminalisation models are, on the other hand, not generally concerned with these issues. By decriminalising prostitution certain societies, such as New Zealand are taking into consideration the fact that for many women prostitution serves as a viable form of income and so these women should be afforded rights and protection and be respected in the decision to enter into prostitution rather than being punished and condemned. Decriminalisation also respects the sexual autonomy of women by allowing women to determine how they will express their sexuality and live out their sexual lives. The decriminalisation of prostitution also affords women the opportunity to create their own sexual identities without having the personae that are associated with prostitutes in criminalised frameworks to be imposed upon them. Decriminalisation, therefore contributes positively towards the struggle of all women for sexual liberation.

*Characteristics and effects of the decriminalisation model*

Apart from any other benefits decriminalising prostitution might have the fact is that many women choose prostitution as a form of work as it is the most financially rewarding and allows them a certain amount of flexibility and independence, and so
the decision to enter prostitution should be respected. According to Jenness (1990: 405) “most women who choose to work as prostitutes have made the conscious decision to do so, having looked at a number of work alternatives [and so one] cannot deny women the choice to enter prostitution.” According to Gould and Fick (2008: 61) those who argue for criminalisation “do not take into account the needs of women for whom sex work is a real alternative to jobs which they consider to be equally demeaning, such as domestic or factory work, but where remuneration may be much lower.” Whether this line of work is a woman’s first choice or not does not take away from the fact that it is her choice and one that should be respected. If this choice is not respected and prostitutes are degraded based on this choice society is considering them as less than worthy of personhood and essentially as not having the rational capacity to make decisions for themselves.

Cornell and Ericsson would argue, along with other prostitution activists, that women should be afforded the opportunity to use their bodies as they wish as it is a matter of personal choice relating to their own individual autonomy (SALRC, 2009:192). Whilst these choices might have been made “under constrained circumstances and within a socio-economic context of gender inequality” (192) the choices still need to be respected and given the same protection as other forms of labour before the law. By decriminalising prostitution governments are respecting the choice of women to enter into the prostitution industry by recognising prostitution as a legitimate form of work. By aiding women financially prostitution empowers and liberates women against one form of male domination and control. Many women are in oppressive and exploitative conditions due to male financial domination, prostitution is thus a means for women to overcome this oppression.

Prostitution is not only a matter of choice and necessity in relation to economic circumstances; prostitution can also be a means through which women can gain sexual liberation and empowerment. Cornell and Ericsson both believe that prostitution can be a means through which women express their sexuality and gain a kind of sexual liberation. According to the International Labour Organisation (167) “some women freely choose prostitution as an expression of sexual liberation.” This
can be shown by the fact that even in instances where there are other options available to prostitutes many do not want to leave the industry as they feel a sense of empowerment and control over their own lives as well as over men. Decriminalisation not only recognises that women have the autonomy and rationality necessary to make the decision to enter prostitution it also creates better working conditions which can improve the way prostitutes think of themselves as well as the way other people think of prostitutes. By enabling women to make the decision to enter the prostitution industry society is empowering these women to make their own decision regarding their sexuality. The decision, for women, as to how to express their sexuality and live their one’s sexuate lives is one of the most necessary steps in the liberation of female sexuality. The decriminalisation of prostitution is therefore not only beneficial for prostitutes themselves; it is also beneficial for all women within society.

Under a criminalised framework “prostitutes are seen as less than human and are without rights and protection from violence” (SALRC, 2009: 70). However, under a decriminalised framework prostitutes are given the same respect and protection as other kinds of employees and other citizens of society. As it currently stands society seems to regard prostitutes as a separate class of citizens who are not worthy of the same rights as other citizens. Not only is this view against basic human rights it also has a detrimental effect on the way prostitutes view themselves as well as the way society views prostitutes. And in turn this affects the ability of prostitutes to create images of themselves as whole persons. Decriminalising prostitution is the first step that can be taken with regards to changing the way in which society views prostitutes as well as the way in which prostitutes view themselves. Through decriminalisation and recognising prostitution as a legitimate form of work the stigma attached to prostitution may begin to be diminished (83) and so aid in improving the attitudes people hold towards prostitutes. This could assuage the need for secrecy within the prostitution industry as women may not feel the need to hide the fact that they are prostitutes from their families and communities. While it may seem that the notion that prostitution could be viewed as a completely acceptable form of work seems idealistic I think that by decriminalising prostitution a necessary step is being taken towards improving the way prostitution is viewed so that one day people might come
to view prostitution as acceptable and not shun those that work as prostitutes. This will also go a long way to securing the rights and protection of prostitutes as members of society and as employees.

Under a decriminalised framework prostitution is considered a legitimate form of employment and prostitutes are generally afforded the same kinds of rights and protections that other employees are afforded. According to The European Court of Justice\textsuperscript{46} prostitution is a form of labour in the full juridical sense (SALRC, 2009: 171). This means that prostitution should be considered a legitimate form of employment and is subject to the same basic principles that govern other forms of employment. In viewing prostitution as a form of employment prostitutes can be afforded rights and protection in terms of their working conditions and conditions of employment. In other words, prostitution can be viewed in the same way as other employment contracts to which all parties must adhere if they wish to avoid repercussion. Earlier I suggested that perhaps one of the ways in which the prostitution contract could be improved was to make it a more formal, written contract. This idea has been adopted in New Zealand where prostitution is decriminalised but the signing of a written contract is not enforced.

In New Zealand it is the “individual choice for prostitutes and brothel operators to declare the employment status of prostitutes working in brothels” (159). In other words prostitutes can sign formal, permanent contracts which provide them with stability and the benefits of employment status or they can work as independent contractors and retain a degree of freedom and flexibility (159). Whether these contracts are as formal as a written contract or more informal, verbal contracts they are still enforceable and any disputes relating to these contracts are dealt with through employment resolution processes and the courts (159). This ensures that prostitutes are provided with protection when they enter into contracts with employers and are able to prosecute employers who do not adhere to the conditions and

\textsuperscript{46} The European Court of Justice (ECJ) is the highest court of the European Union and has the ultimate say on matters of European Union law in order to ensure that they are consistent across various European Union member states (see SALRC, 2009: 171)
of their contracts. The recognition of the prostitution contract as a legitimate contract is essential if prostitutes are to be afforded the same rights as other workers and are able to prosecute anyone who violates the terms of the contract.

Ericsson (1980: 353) claims that the prostitution contract is the same as an employment contract in that someone hires a prostitute to provide them with a service in exchange for a form of remuneration. Apart from being a contract of mutual benefit for the parties involved the prostitution contract also serves as a means through which “prostitutes are empowered to address issues of abuse” (SALRC, 2009: 170). Prostitutes are also able to fight for “better working conditions and minimum standards for employment and attendant regulation for occupational and health safety” (170). This also relates to the presence of unions. Where prostitution is decriminalised unions can play a very important role in ensuring that working conditions are improved and that there is some standard that must be adhered to in terms of the conditions in which prostitutes work. It is also only in a decriminalised environment that unions can be effective as prostitutes are not considered criminals and are afforded basic rights and protection. Prostitutes therefore have legal rights which are then upheld by political action, such as unions. Where prostitution is criminalised, it could be argued that, prostitutes are denied the right to decent working conditions which in turn amounts to a violation of human rights (170). Therefore, where prostitution is decriminalised prostitutes are given the rights and protection necessary to demand decent working conditions and have the opportunity to prosecute those who abuse or violate them.

Apart from this, within a decriminalised framework prostitutes are also given more freedom to determine exactly what they are and are not willing to do for clients and they have the right to refuse clients if they choose (155). In addition to this prostitutes cannot be forced to have sex by anyone, including pimps, brothel owners and clients, even if the client has paid. This means that prostitutes have a lot more control over their own lives and the services they are willing to provide, this is very important for the empowerment of prostitutes and the diminishing of the abuse and exploitation of prostitutes. Because prostitution is not illegal within a decriminalised
framework prostitutes do not have to rely on pimps and criminals for protection instead they have much more opportunity to decide where they work and for whom they work. This leads to many prostitutes working for themselves and being in complete control of their working situations. Prostitutes working in societies where prostitution is decriminalised often do not face the same kind of abuse as those who work in societies where prostitution is illegal. This is because prostitutes are able to choose what clients they take and are not forced to perform services they do not want to or rely on others for protection from the law.

Aside from providing prostitutes with protection in terms of employment the decriminalisation of prostitution also affords women basic human rights and the protection against violation of these. Cornell would agree with the statement that prostitutes “as members of the human family deserve to be treated with dignity and to enjoy the human rights guaranteed to all people” (SALRC, 2009: 86).Prostitutes should thus be protected by the same laws that protect all the citizens of a society. When prostitution is criminalised prostitutes are not afforded the same protection because they are engaging in an illegal activity. Therefore, when prostitutes are raped, violated and abused they are not able to prosecute the offenders or demand the same treatment that is afforded to other members of society. According to the SALRC (71) “existing laws against rape, assault, robbery and harassment are often not applied to prostitutes when such offences are committed against them signifying a lack of adherence to local and international law.” There are international laws that deal specifically with prostitution however “these only address the rights of prostitutes who have been trafficked and are being exploited and do not protect the rights of those who work voluntarily as prostitutes (89). In a country such as South Africa where human rights issues have been at the core of governmental and Constitutional issues one would assume that the human rights of all the country’s citizens would be protected. However, under the current legal dispensation prostitutes are not afforded their basic human rights based on the notion that they are not worthy of personhood or of equivalent worth because of the sexuate lives they choose. As well as being able to claim their basic rights within a decriminalised framework, prostitutes will also be able to join unions and become self-organised.
In places such as New Zealand where prostitution is decriminalised, prostitutes are able to become members of trade unions (SALRC: 2009: 155). This means that prostitutes, like other workers, are able to claim rights and protection from abuses at the hands of their employees. Belonging to trade unions can serve to decrease the amount of exploitation that prostitutes face as they are able to act against employees who force them to work long hours or in poor conditions. In this sense prostitutes are better equipped to deal with exploitative conditions and demand the right to be treated equally and to have decent working conditions. These unions then, empower prostitutes and create an environment in which the abuse of prostitutes is not tolerated. These unions respect the decision of some women to become prostitutes and so affirm that they are sexual agents with the freedom to determine their own sexual agency.

The SALRC (37) argues, along with Cornell, that the “criminal nature of prostitution affects the work of intervention programmes because there is difficulty in accessing sex workers when the industry is forced underground.” In other words, it is very difficult for intervention programmes to reach prostitutes because they are forced to work underground for fear of the ramifications associated with their line of work. However, where prostitution is decriminalised these programmes have more chance of assisting prostitutes as prostitution is not as secretive and hidden as it is when prostitution is illegal. The intervention programmes that the SALRC (38) discusses in relation to prostitution include programmes aimed at “basic harm-reduction, on-site counselling and advice, health screening, safety plans, help with housing and childcare; and/or peer support.” The SALRC (38) further adds that these programmes need to take into account the complexities surrounding prostitution and the different circumstances prostitutes find themselves in and assist them with long-term goals rather than just short-term goals.” For some women this may mean strategies to exit prostitution while for other women who do not want to leave the prostitution industry long-term goals could be improving the conditions under which they work and finding suitable housing. Whatever support these intervention programmes can provide will only be effective in a climate where prostitution is decriminalised and prostitutes are not afraid to seek assistance for fear of
punishment or stigmatisation. This also relates to HIV awareness and prevention programmes.

HIV and AIDS are amongst the most fundamental challenges facing many countries, especially South Africa. Therefore one would assume that the government would set in place as many effective measures as possible to create awareness concerning HIV and AIDS and try to prevent these. While the government and various organisations have launched a fairly extensive campaign to raise awareness and ultimately try to prevent the spread of HIV and AIDS they have not addressed it effectively enough in terms of prostitution. HIV is “inextricably linked in popular consciousness to behaviour regarded as deviant and with individuals regarded as deviants” (SALRC, 2009: 73). For this reason prostitutes are often held responsible for the spread of HIV. However, this seems to be a widespread misconception. Research shows that generally women are more vulnerable to HIV infection than men due to their physical nature and so prostitutes are at greater risk of becoming infected than their clients are (74). Aside from this prostitutes are generally more aware of the need for safer sex practices than the general population (75) because of the nature of their work and so they take careful precautions to prevent infection. Thus, it could be argued that prostitutes are high risk candidates for the infection and spread of HIV because they have multiple sex partners and are at times involved in violent or coercive sex. However, it is rather that prostitutes are well aware of the dangers involved in their line of work and take precautions to avoid them, whilst their clients are not as cautious and are more likely to spread HIV infection than prostitutes are.

Often the risk of HIV infection occurs because of clients who do not want to use condoms. Thus, “while prostitutes use condoms more consistently than other populations similar in age, race and sex” (78) the high demand for unprotected sex and the power relations involved in the prostitution contract leave prostitutes more at risk. In essence then it is not prostitutes who are likely to spread HIV it is their clients who either use violence or offer more money for unprotected sex that are likely to spread HIV. The problem then is not that prostitutes are unaware of the dangers or
do not take precautions to prevent HIV infection, the problem is that in a criminalised environment prostitutes often do not have the power to demand that clients use condoms and have no way to enforce these precautions. As mentioned earlier the “ability of prostitutes to prevent HIV infection is [also] affected by their ability to access health care services” (SALRC, 2009: 80). Therefore, it is necessary to decriminalise prostitution so that prostitutes do not have to work in insalubrious conditions that give clients the power over the prostitutes and afford prostitutes little say in condom use. It is also necessary to decriminalise prostitution so that prostitutes are able to access health care programmes and HIV awareness and prevention programmes in an attempt to avoid HIV infection. Again, the presence of unions can also assist in both empowering prostitutes so that they have enough control within the prostitution contract to ensure that condoms are used and aiding in enforcing the rule that condoms must be used at all times by clients.

Decriminalisation will make it easier for prevention programmes to reach prostitutes and for prostitutes to access these programmes and it will afford prostitutes more control over the prostitution contract and so allow them to insist upon condom use\(^\text{47}\). Prostitutes will also have easier access to free condoms from clinics and prevention programmes because they will not be so condemned and discriminated against. Therefore, one of the ways to prevent the spread of HIV is not to criminalise and punish prostitution; it is rather to decriminalise prostitution and make health care and prevention programmes more accessible to prostitutes as well as making it easier for prostitutes to insist upon condom use with their clients. Decriminalisation can have positive effects on the prevention of the spread of HIV as is found in New Zealand where there is a low incidence of HIV and AIDs amongst prostitutes due to effective HIV/AIDs campaigns (158). Thus far it can be seen that decriminalisation is more beneficial than the criminalisation of prostitution in many regards.

\(^\text{47}\) Prostitutes will not be working under illegal conditions that force them underground and force them to work in more dangerous areas under the rule of third parties. Therefore they will be better able to insist upon certain conditions and have these conditions adhered to. This is because they will be able to prosecute those who do not adhere to these conditions, which they are not able to do when prostitution is illegal.
The final issue I will discuss with regards to the decriminalisation of prostitution is the link between prostitution and other ‘unsavoury’ practices, including child prostitution, trafficking and drug use. It is argued that because prostitution is connected to these issues it should be criminalised in an attempt to eradicate these abuses. To begin with, drug use is a problem that affects a large proportion of society not just those who work within the prostitution industry. Despite the notion that many women enter prostitution to fund a drug habit or use drugs to mentally escape from the kind of work they do it is in fact the case that most prostitutes do not actually use drugs. According to Gould and Fick (2008: 35) there is a low rate of drug use amongst prostitutes and more clients use drugs than do prostitutes. The research conducted by Gould and Fick (59) indicates that most, if not all, of the brothels they studied in Cape Town had a strict no drugs policy in line with laws governing drug use. This drug policy meant that prostitutes were not allowed to use drugs recreationally nor were they allowed to take drugs with clients. In any case most prostitutes do not take drugs as they are in this particular line of work to generate an income to support themselves and their families rather than to fund a drug habit. Therefore it is not as a result of the criminalisation of prostitution that prostitutes do not take drugs it is because there are laws which specifically prohibit drug use that prostitutes do not take drugs and because of the unreliability of prostitutes who do take drugs that many pimps and brothel owners disapprove of drug use. For most women the reason they do not use drugs is because the money they earn is necessary for them and their families to survive rather than something which can be wasted on drugs. The decriminalisation of prostitution will not necessarily cause an increase in drug use because there will still be laws which relate specifically to drug use.

Of course there are prostitutes who do use drugs as a means to escape from their work or alternatively who use prostitution as a means to fund a drug habit. For these women it is important that there are programmes which can help them overcome their drug addictions and alleviate the exploitation they face because of their drug addiction. Prostitutes who do use drugs are more vulnerable to violence and rape and are more willing to engage in any activities, such as unprotected sex, in order to gain drug money (SALRC: 2009: 67). These women are very vulnerable to abuse and exploitation because they are at the mercy of their addiction and often under the
control of drug dealers. It is necessary that prostitutes in this position receive help in order to overcome their addiction and escape this cycle of abuse and exploitation. Within a society where prostitution is criminalised it is unlikely that these women will get assistance as they are very unlikely to be reached by intervention programmes. However, within a decriminalised framework these women have more chance of being reached by intervention programmes that can assist them in overcoming their addictions. Therefore, for women who are as vulnerable as those addicted to drugs decriminalisation is a very necessary step to helping them overcome exploitation and abuse and to improving their lives. Criminalisation does not help them in any way as it makes their already vulnerable position even worse and does not provide them with any assistance to remove themselves from this vulnerable position.

Instances of human trafficking and child prostitution are also cited as reasons that prostitution should not be decriminalised. According to Jenness (1990: 405) “problems associated with forced prostitution cannot be addressed until voluntary prostitution is legitimate.” By making a distinction between legal voluntary adult prostitution and illegal forced, underage prostitution it could be easier to punish those who traffic women and children and force them into prostitution. According to the research done by Gould and Fick (2008: 144) within the Cape Town prostitution industry no cases of internal trafficking victims could be found. Two cases of women who were possibly trafficked overseas where discovered, however these women were no longer being forced to prostitute themselves and had no intention of leaving the prostitution industry (144). It was also discovered that of the thousand-odd prostitutes in Cape Town only five were underage and none of these had been forced into prostitution (78). It is not whether prostitution is legal or illegal that prevents trafficking and child prostitution it is rather the specific laws which relate to these which determine whether trafficking and child prostitution will occur, or instead be effectively prevented. An inquiry done into the effectiveness of decriminalisation in New Zealand shows that there has not been an increase in trafficking or child prostitution since the act was passed (SALRC: 2009: 158). However, one of the
problems that prostitutes do face is strategies to exit prostitution. I will now suggest some issues that do need to be addressed within a decriminalised framework.

Suggestions

Some theorists, such as Pateman, would agree with the SALRC's (2009: 220) statement that prostitution “is not a job like any other. Rather it is a form of abuse and exploitation that women engage in only if they are forced to or have no other options.” Yes, it can be argued that there is a certain degree of exploitation and abuse within prostitution. However, some women choose prostitution after carefully and rationally deciding that it is the best option available to them. Therefore it is not necessarily the case that these women have no other choose but to enter prostitution. What makes the situation that prostitutes have to work in worse is the system of legislation which governs prostitution. The legal approach taken towards prostitution affects the way the rest of society treat prostitutes and thus has an impact on the amount of abuse they face. In countries where prostitution is criminalised the amount of abuse and exploitation prostitutes face appears to be greater than in countries where prostitution is tolerated and legal. In other words, the way a government chooses to handle prostitution has an almost direct effect on the conditions in which prostitutes must work and the kind of abuse they encounter. This in turn has an affect on the ability of prostitutes to imagine themselves as whole persons and to be evaluated equivalently.

According to Gould and Fick (2008: 52) “changing the Sexual Offences Act (in South Africa) to decriminalise sex work would of itself not ensure that all sex workers are treated equally and fairly. However, such a change would ensure that the basic rights of an employee are guaranteed by law and these rights could then be insisted upon.” Decriminalisation is the first step necessary to ensure that prostitutes are treated fairly and equally. It is also the first step necessary to ensure that reforms take place which will improve the industry and see prostitutes treated as autonomous sexual agents. But even where prostitution is decriminalised there are still some
shortcomings which need to be addressed in order to ensure that prostitutes are afforded the rights and protection they deserve.

One of the issues that needs to be addressed within a decriminalised framework relates to outdoor prostitution. The research conducted by the SALRC (2009: 48) shows that “outdoor prostitutes are typically in more vulnerable socio-economic positions” than prostitutes working from brothels, clubs, massage parlours and other indoor environments. Street, or outdoor, prostitutes are usually poorer, have lower education levels and are subject to greater community intolerance (48). These prostitutes face greater intolerance because they are more visible than indoor prostitutes and usually prostitute themselves in order to gain enough money or material benefits merely to survive. While decriminalised frameworks can be effective at addressing the indoor sector of prostitution they often do not focus on the specific needs of the more vulnerable women in the outdoor sector. Street prostitutes often have to work in more dangerous conditions and are often taken to very isolated areas by clients. They also do not generally have protection in the form of a brothel owner, other prostitutes working in close proximity to them or surveillance cameras which indoor prostitutes do. This means that “street prostitutes are more vulnerable to abuse and not being paid” (Gould & Fick, 2008: 69). The ability of outdoor prostitutes to imagine themselves as whole persons is probably also much slimmer due to the fact that they face increased stigma and intolerance. Therefore, measures must be put in place not only to aid in decreasing physical violence against them but also to aid in ensuring that their minimum conditions of individuation are protected and they are treated as worthy of personhood.

Therefore decriminalisation can work well to improve the conditions of women working within indoor prostitution but it does not necessarily aid those on the street, especially in terms of “welfare and occupational health and safety” (SALRC: 2009: 158). Decriminalising prostitution can help outdoor prostitutes by decreasing police violence, discrimination and perhaps provide them with a bit more control over their lives. However, decriminalising prostitution does not necessarily improve the
conditions of those working on the street and so it is suggested\textsuperscript{49} that these prostitutes either move to the safer indoor industry or leave prostitution altogether (SALRC, 2009: 158). This to me does not seem like an effective enough solution. Many women feel that street prostitution is more flexible and independent as they do not have to work for anyone else and it is easier to leave than indoor prostitution, therefore they might not want to leave prostitution or move to the indoor sector. I think it is necessary therefore that the government looks at ways that can specifically improve the conditions of outdoor prostitution. This can be by ensuring that health care programmes are targeted directly at outdoor prostitutes, that these prostitutes are provided with free condoms and that they are given police protection against client abuse amongst other things. Unions can also play an important role by ensuring that the stigma attached to outdoor prostitution is diminished and that outdoor prostitutes have an equivalent chance to develop into the persons they imagine themselves to be. It is not enough that decriminalisation only helps those in the indoor sector. Outdoor prostitutes are in a more vulnerable position and so it is the responsibility of the government and other organisations to ensure that outdoor prostitutes also receive the benefits of decriminalisation.

A \textit{second} area that I think should be addressed is the way in which prostitutes are treated by the police in a decriminalised environment. While prostitutes may not be harassed or violated by police in a decriminalised environment it is still not certain that they will be treated fairly because of the deeply ingrained notion of prostitution as immoral and of prostitutes as less than worthy of personhood. Therefore it seems necessary that police be taught special guidelines on how to deal with victims of trafficking (127), as well as legal prostitutes so that they are aware of the fragile condition that these women may be in. It is also necessary that police be issued with a code of conduct in relation to how to behave in an environment in which prostitution takes place (127). By informing and instructing the police how they should act in relation to prostitution the way they do treat prostitutes could improve and so enable prostitutes to report crimes committed against them. This is essential if prostitutes are to have the opportunity to develop beyond the image of themselves

\textsuperscript{49} This suggestion was made by a commission that investigated what effects decriminalisation has had on the prostitution industry in New Zealand.
as victims or criminals and create a new image of themselves. In a decriminalised environment it will also be possible for prostitutes to prosecute violence and the hands of police. Again, political action can play an important role in ensuring that prostitutes are able to prosecute perpetrators of violence and abuse and that claims of abuse are taken seriously.

Many prostitutes may feel safer discussing problems with a female police officer; therefore perhaps all police stations should have a female officer who is equipped to deal with problems relating specifically to prostitution. Apart from improving the way prostitutes are treated, creating an environment in which prostitutes feel comfortable interacting with the police could also have some benefits for the police. For instance Gould and Fick (2008: 59) argue that prostitutes can be invaluable in providing police with information concerning trafficking victims and missing persons, including children. Improving the way prostitutes are treated by the police not only has positive ramifications for prostitutes themselves, it can also play a very important role in helping the police detect instances in which trafficking is taking place more effectively. This aids in ensuring that those who are exploiting and abusing women and children are punished, as well as aiding in creating a safer environment for those who voluntarily choose to work in the prostitution industry.

The final issue I wish to raise with regards to the shortcomings of decriminalisation is that of strategies to aid women in leaving prostitution if they want to. Even when prostitution is decriminalised and prostitutes are not so discriminated against it is still difficult for them to leave the industry or find other work alternatives. One of the ways that the government in New Zealand has attempted to deal with this is to “reduce the barriers to exiting the sex industry, for example by allowing prostitutes immediate access to government unemployment benefits” (SALRC, 2009: 155). I think measures such as these are imperative in assisting women to leave the industry if they no longer want to work in it. A problem within South Africa, however, is that unemployment benefits may not provide the same kind of income that prostitution does and so by leaving the industry many women will potentially lose their income (158). The lack of assistance and income thus makes it very difficult for women to
leave the industry. Aside from the loss of income some prostitutes find it difficult to leave the industry for various other reasons. These can include that they are drug addicts, have been rejected by their families and communities, need to repay debts, do not have sufficient funds to return home\textsuperscript{50}, or even that they have no home to return to (SALRC, 2009: 36). There are intervention groups which assist women to leave prostitution on a voluntary basis however without real work alternatives it is unlikely that these intervention groups will be successful. The SALRC (40) insists that prostitutes “require tangible social and economic assistance from the government; within the broader range of anti-poverty measures.” It is therefore necessary that the government and intervention programmes develop measures to assist women in leaving the prostitution industry. If women are not assisted in leaving the industry when they want to it could be claimed that they are being forced to prostitute themselves on the ground that they desire to leave the industry but are forced to remain within it. This will also have the effect of creating a situation in which a woman cannot create a persona for herself or imagine herself as a whole person due to the fact that she is being ‘forced’ to work in an occupation that she does not want to be in. So again, this will amount to a prostitute being treated as unworthy of personhood and furthermore she will not be an autonomous sexual agent because she is living a sexual life that she has not chosen for herself.

43\% of the South African population live below the poverty line (29) with women in general being poorer than men. This means that prostitution can act as a viable option for women who are in a poor financial situation and are subject to economic oppression. However, many women do not see prostitution as a long-term option and so should be provided with the necessary assistance to leave the industry once they feel ready. Decriminalising prostitution is not going to ensure that prostitutes are able to exit the industry; it is instead up to governmental institutions and organisations to ensure that measures are put in place to assist women to leave. This means, in part, that the “access to decent work and alternative employment needs to be promoted” (85). For many women no other form of employment will provide them with the same income that they can earn working in prostitution and so
this is a further reason why women choose to remain in the industry. For some women the choice to enter the prostitution industry is about expressing their sexuality and creating a certain sexual image for themselves. Ultimately it is a woman’s choice as to whether or not she decides to work as a prostitute and this choice should be respected but other alternatives and assistance should be available if a woman decides that she no longer wants to work as a prostitute.

Conclusion

In conclusion, the decriminalisation of prostitution will “probably have little effect on power relations and might not put an end to exploitation but it will aid in making prostitution safer” (Gould & Fick, 2008: 157). It is clear that there are inherent problems within the prostitution industry. As Pateman argues prostitution is an industry in which domination and subjection do take place. However, this does not mean that it cannot be modified and improved so as to make it a safer industry and one in which women can find independence and liberation. For many women the decision to enter prostitution is a rational one based on the evaluation of their available alternatives. The decision to enter the prostitution industry is one that must be respected as it is a decision based on a person’s own bodily integrity and how they choose to live out their sexual lives. It is for this reason that I find Cornell and Ericsson’s arguments pertinent in relation to prostitution. While both these theorists admit that there are certain problems related to prostitution they do not deny women the possibility of entering into the industry and they both view women as having the capacities necessary to decide to become prostitutes. Pateman, on the other hand, could be correct in arguing that women face subjection and domination in prostitution, but she seems to patronise and victimise women. Pateman believes that women do not rationally choose prostitution because they are merely offering themselves as a kind of sex slave to men. This is where Pateman’s argument, in my mind, falls short of those of Cornell and Ericsson.
Criminalising prostitution has never achieved the goal of abolishing prostitution and generally only serves to push prostitution further underground and create worse conditions for prostitutes themselves. Criminalising prostitution denies prostitutes the right to employment benefits and places them in conditions of violence and abuse and in the hands/at the mercy of pimps, brothel owners, clients and especially the police. Decriminalisation, conversely, serves to protect women working as prostitutes and afford them their rights as human beings. It also aids in decreasing the stigma attached to prostitution and as such lessens the discrimination with which prostitutes are met. Through prostitution women are able to earn an income and for some it is a way they can express their sexuality or gain some kind of consolation for abuses they have faced at another time in their lives. Prostitution is therefore not simply a means through which men dominate and control women. It can be a means through which women gain liberation and independence from men and through which they live their own sexuate lives as they desire. To deny women the opportunity to work as prostitutes is in a sense oppressing them in that it does not allow them freedom of choice or to live their lives as they see fit. To deny them this choice is also to consider them as less than worthy of personhood as it will have a negative effect upon their ability to imagine themselves as whole persons.

Rather than the criminalisation of prostitution, what is necessary is the liberation of female sexuality and the valuation of female sexuality as equal to that of male sexuality. Prostitution is one of the ways through which women can assert their sexuality and use their sexuality as a means to improve their own lives and overcome male domination. In essence then, prostitution can act as a tool in overcoming patriarchal oppression. According to Cornell (1995: 153) there is “evidence that societies and communities in which there is sexual tolerance, and in which the proliferation of sexual imaginaries are encouraged are safer places for women.” By decriminalising and thereby legitimising prostitution societies may come to be more respectful of the female sex and sexuality which in turn could have positive effects for all the women of society. The only way prostitution can be legitimised and aid in improving the way female sexuality is viewed is through decriminalisation and the recognition of prostitutes as humans with equal worth.
Decriminalisation can lead to prostitutes being treated with respect and dignity and being provided with the necessary tools to ensure their safety and security.
Reference List


