

# WHY "SEX WORK" CAN'T BE UNIONISED AND SHOULDN'T BE "LEGALISED"

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My name is Miranda Matthews. I am a practising dominatrix of English origin, living these days in Australia. In the past I would have identified myself as a "sex worker", but now I do not. This is because I now believe that this is a term foisted upon a variety of workers by politically correct feminists who want to haul them into the collective feminists fold. These workers do a variety of jobs, ranging from sex chat line operator through to lap dancer, to prostitute, and a whole host of other jobs in between. Many of these workers would be horrified to be called "sex workers", while others would be glad to use the term since it would be linguistically preferable to alternative forms of address, such as "whore" for a prostitute. Leaving aside those usually American "sex workers" who have "reclaimed" the term, most English and Australian prostitutes I know might get their roles confused if confronted with the term and change from prostitute mode to dominatrix mode and thump the speaker of the word in the mouth! However, since the term sex worker is now in general usage I shall use it, subject to the aforementioned, in the rest of this paper.

I write this paper against a background of sex workers and their collaborators in the UK unionising themselves and forming the International Union of Sex Workers, which recently joined the GMB Union. The GMB is the fourth largest union in Great Britain which given current trade union membership rates doesn't make it that big numerically.

For the purposes of joining both of these Unions, Ms Venes, spokesperson for the GMB Union, during an interview for Woman's Hour on BBC Radio 4, said that people who work in a factory producing sex toys could be classified as "sex workers". I wonder how many of these workers know that and would want to be called that. I think most of them would tell their mates down the pub that they work in a factory! By this definition perhaps people who work for the London Rubber Company, which produces condoms, should be reclassified as sex workers. If the workers at this company, now members of the Transport and General Workers Union, which covers the rubber industry, were all to do a mass exodus to the International Union of Sex Workers, this would considerably swell its ranks.

I also noted during the Woman's Hour interview that the spokesperson for the GMB was keen to note that members of the Sex Workers Union did not "only" mean prostitutes. In fact she seemed to want to keep the idea that some prostitutes would join the GMB at something of a distance. I noted some contempt, listening between the lines, aimed at prostitutes: an impression that was confirmed by some independent listeners I asked to review the programme.

## MOST "SEX WORKERS" ARE SELF-EMPLOYED

The idea of a Union for Sex Workers is only useful for those in the industry who are already legally employed under the PAYE sys-

tem. The basis of all Trade Unions, apart from supplying benefits to members such as insurance schemes and free legal help etc., is their ability to bargain collectively on the behalf of their members. If peaceful negotiation between the employers and the Trade Union fails, the union can apply the ultimate sanction of being able to bring the workers out on strike collectively. Obviously very few sex workers work under conditions where this could apply. It might work in the case of a sex toy factory or a sex chat call centre, but I see very few other instances in the sex industry where it could.

In all other sectors of the industry where the workers are legal or semi-legal, such as in massage parlours, lap dancing clubs, escort agencies, where girls working in flats, and when people work as independent call people, the employment status of the workers is that of being self-employed. Even where the activity itself is illegal, such as in street work or work with more than one prostitute in a flat, the employment status of such people would still be that of self-employed. It was established in the case of Miss Whiplash (a.k.a. Lindi St. Clair) versus the Inland Revenue, (CIR v Aken TL3241 63TC395), which now forms the basis of Guidelines to Income Tax Officers, (IM2955 – Prostitution), that prostitution is a taxable activity. How could a Trade Union organise these people collectively to negotiate with the employer when they are employed by themselves?

As to the tangible benefits offered by Trade Unions, such as cheaper insurance and free legal help, these benefits could be negotiated for by any collective mass of people, such as a Professional Association, or a Co-operative or Collective, or even by a Sex Worker Help Project. I personally am a member of the Professional Association for the Self Employed and receive all these benefits.

It was also telling that that during the interview on Woman's Hour no mention was made of sex workers who offer more unconventional services. Within the sex industry there are workers who operate as dominatrixes but do not have sexual intercourse. There are workers who offer services such as golden showers and brown showers (I'll let you work out what these terms mean). There is even a branch of sex work known as Infantilism, which is nothing to do with paedophilia, but is where clients, usually men, like to dress up as and be treated as babies. The sector of the industry that deals with these services could come under the heading of Fetish and Fantasy. This represents a substantial sector within the sex industry but no mention was made of it, and yet any perusal of prostitute's cards in London would show how widespread it is. Would these workers be represented by the Union? Would people who perform in fetish pornography be represented? Or would these people be considered too bizarre or dirty? Where would the Union draw the line? Would there be a two-tier system, separating those workers considered worthy of representation from those not considered worthy of representation? Are the conservative British public really ready for a Union that would represent people like this?

I find the emphasis placed on women by the International Union of Sex Workers somewhat sexist, since many men are sex workers also. (Can men join?) In fact I find any division on the basis of gender to be sexist. I do not believe that such divisions should not be allowed to exist. In a free market and society I believe that people should be allowed to purchase, sell and associate freely, subject to the restriction that they do not abuse the rights of others to have safety and liberty. I just resent the idea that, as a "sex worker", I am meant to have some identification with, and solidarity with, other sex workers.

I also resent being expected to feel this way about women. My solidarity and identification is with those I love and who love me. This allegiance seems natural enough to me and totally in line with my experience of human nature. Indeed, in a limited market I am more likely to view sex workers, other than those with whom I have a personal relationship, as competition.

It would out of the question in today's society for those feminists who do advocate solidarity between women on the basis of gender, and those Trade Unionists who do advocate solidarity on the basis of occupation, to support any idea of solidarity on the basis of race. And nor would I. But at least my argument against all these bases of solidarity based on some arbitrary external factor such as

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gender, race or occupation is logically consistent. The feminists and Trade Unionists apply one set of logic to feminism and Trade Unions, and another set of logic to racism.

### UNDERSTANDING THE STATE MENTALITY

One of the aims of Trade Unions for sex workers is to promote the decriminalisation and legalisation of prostitution. Many people support this aim but not many appear to have thought it through.

I personally do not support the legalisation of prostitution and am cautious about decriminalisation. The legalisation of prostitution means, effectively, state control, which as a Libertarian I am opposed to.

I live in Australia, in Queensland, where prostitution in most states has been legalised and where there are state licensed brothels. However, all that legalisation has done here is to create a two-tier system where a few sex workers work within the very small legalised sector and the vast majority work in the illegal sector, where, having been pushed underground, they work in conditions which are very unsafe. The price of creating a legal sector was that draconian measures are now taken against those who operate illegally. This was the sop that was offered to those who opposed all legalisation of prostitution.

I quote from a transcript of a broadcast on the changing of the prostitution laws in Queensland (dated 21/2/1999) featuring Queensland Premier Peter Beattie, interviewer Bernard Bowen and an unidentified illegal brothel owner.

PB: "We are determined to have the toughest prostitution laws in Australia, and we will ..."

PB: "We can't stamp out prostitution. What we have to do is regulate it and control it and that's what we are seeking to do ..."

BB: "Won't that lead to a greater level of prostitution?"

PB: "No it won't ..."

The unidentified owner says of the reforms:

"They'll push the current industry underground and create health problems for the community. It'll double the industry, because you'll have two-tiered system similar to Victoria." [i.e. legal and illegal.]

BB [of the legislation]: "But won't this just lead to a two-tiered system of legal and illegal brothels?"

PB: "There are severe penalties for running illegal brothels here, including imprisonment. Now, that's what was missing in the other States. We're being tough."

So now we start to understand the state mentality. You give people something legal and crush those who operate outside the system. The existence of the two-tiered system after legalisation had been acknowledged. How do you deal with this? Even harsher laws for those operating illegally.

What is the situation two years after the legalisation of prostitution in Queensland?

www.ifeminists.com reports that the Queensland state government in Australia has given licenses to five legal brothels, with three more pending. At the same time, the government there has aggressively cracked down on unlicensed brothels (aka "competition") – 72 unlicensed houses of ill repute have been shut down since January of 2001.

Where have the sex workers from these closed-down houses gone? Underground of course. They don't just give up the trade. They operate furtively, fearing now not only danger from clients and pimps but also the government.

### THEY DON'T WANT IT WRITTEN DOWN

In November 2000 prostitution was made fully legal in Holland. The following is from an article in NYTimes.com called "New Rights for Dutch Prostitutes, but No Gain":

The Dutch turn out to be far less tolerant than expected.

Legalisation has done nothing to diminish the taboo associated with the sex trade. Prostitutes who are trying to set themselves up as self-employed business women are finding that accountants, banks and health insurance companies want nothing to do with them.

And many experts are worried too that the new law is simply pushing a huge number of prostitutes underground, where they are at greater risk of being taken advantage of ...

One woman ... said that some of the prostitutes simply left the business (a safe but previously illegal brothel), because they did not want to lose their anonymity by registering with the police and paying tax ...

"So far it is true that they, (the prostitutes), have all the duties but none of the advantages they were promised" said Jola Vollebregt, a police policy adviser on the issue ...

The article ends:

But for many prostitutes, the first problem is going public with what they do. "They have children who are in school" said Ms ten Broeke. "Their parents, sometimes their husbands, don't know what they do. They don't want it written down anywhere."

My sentiments exactly! In all countries where prostitution has been legalised it is estimated by the World Health Organisation that about seventy percent of all prostitutes continue to operate outside the law.

Even under "decriminalisation", there would still be interference by the state as there would be a push to register prostitutes for taxation purposes. So presumably the two-tier system would operate here also, with harsh penalties for those who failed to register.

Even under decriminalisation most prostitutes would fail to operate legally since in my experience the above point is so true: *They don't want it written down anywhere*. It is not for nothing that most prostitutes operate under an assumed name, usually using, these days, an unregistered mobile phone, in a flat where they do not live, which is usually rented under a false name.

They do not do all of these things because they fear the law. They do them simply because they wish to retain their anonymity, and if that is true in liberal Holland it is even truer elsewhere.

If sex workers unions do push for decriminalisation/legalisation I think the only people it will benefit is that small minority who do not mind being public anyway, but I think it would be doing a great disservice to the vast majority, who want to practise anonymously and who if the profession was decriminalised/legalised now would have another enemy to contend with: The State.

I know from personal experience that my clients rely on my discretion. They would not want to go within a million miles of a registered brothel or a registered sex worker. It is interesting that clients in Queensland are voting with their feet and frequenting the 72 illegal brothels in far greater numbers than they are in visiting the registered brothels.

By the way, the brothel owner who was featured in the article on the legalisation of prostitution in Holland is now, he has updated me, having to advertise for prostitutes in the local Job Centre for the unemployed, because all but two of his regular girls who worked for him for up to ten years prior to legalisation have left! They now operate illegally!

### EVERYTHING TO LOSE AND NOTHING TO GAIN

On a more serious note two of the most vulnerable groups of prostitutes, minors and illegal immigrants, would not be any more protected by decriminalisation/legalisation. In fact, illegal immigrant prostitutes would be even more vulnerable since they would be committing yet another criminal act: that of operating illegally as prostitutes.

In Britain at the moment, the vast majority of prostitutes operate in an "illegal but allowed" atmosphere. Even when police close down houses and massage parlours they only want to charge the owners and very rarely prosecute the girls themselves. Even in court the girls are usually only known by their first names. In reality, even if working flats and massage parlours are technically illegal, the Police tend to turn a blind eye. Only when neighbours complain, or when the Police suspect that illegal immigrants or minors are working, or that hard drugs or crime are involved do they conduct a bust. Decriminalisation/legalisation would do nothing to remedy these situations.

Most Police activities against working girls in the UK involve street prostitutes, and I do not believe decriminalisation/legalisa-

tion would do anything to help the vast majority of these girls. The ones who choose to do street work do it for the freedom it allows them. They would not work from premises anyway, for again, they want their anonymity. Of the girls who work on the street because of pimps, drug addiction or being single mums, more help would be offered to them by education/exit/training programmes, removal of pimping laws for non-violent pimps, stronger punishment for violent pimps, and the decriminalisation of drugs for drug users, and medical help rather than criminalisation for drug addicts – and the complete removal of that archaic law that designates some street workers as "common prostitutes".

Would decriminalisation/legalisation promote the health of prostitutes? Nor really? Most prostitutes already practise safe sex, and the distribution of free condoms without receivers needing to give their real name by prostitution outreach projects successfully reinforces that. As to those prostitutes who do not use condoms because the client offers more money to go "bare back"(!), the problems are usually poverty and drug addiction more than education. Girls really needing the money would go without a condom whether prostitution was legal or not.

What I think legalisation/decriminalisation would mean would be yet more state interference, in the form of requiring girls to attend health clinics, presumably in their real name otherwise how would you prove that the "all clear" health certificate referred to you?

So what I am advocating is to allow and encourage prostitution to continue to be placed in the "illegal but allowed" category. From the legalising/decriminalising of it, prostitutes have every thing to lose and nothing to gain.

### **UNANIMOUS IN REJECTING LEGALISATION AND DECRIMINALISATION**

It is interesting to me that, amongst the people I have met in the UK, the push for the legalisation/decriminalisation of prostitution and the unionisation of sex workers seems to come more from certain feminists who categorise themselves as "sex worker advocates", and certain academics who have sometimes engaged at the fringes of sex work, rather than from sex workers themselves.

In 1997 I attended a "Sex Workers Reassessed" conference at the University of East London, and attended a work shop for sex workers only. Present at the meeting was a member of Red Thread, the Dutch sex workers union who support the decriminalisation/legalisation of prostitution. In debate the UK based sex workers present were unanimous in rejecting the decriminalisation/legalisation of sex work in the UK, on the grounds that they would have to pay tax!

### **FEMINISM VERSUS LIBERTARIAN FEMINISM**

People may not know it, but there is a network of Sex Worker Projects around the world. These provide services such as the distribution of low cost or free condoms, quick access to sexual health services, drop-in centres, counselling etc. for sex workers. In countries such as Britain, that have socialised health care systems, these projects are paid for out of your taxes. As these are usually staffed by people committed to the ideal of socialised medicine there is a socialist bent in the ideology that underpins these activities, even if this would be officially denied. There also appears to me to be a tendency towards a feminist ideology that supports the idea of the legalisation/decriminalisation of prostitution and the unionisation of sex workers, although there is free discussion and no-one is forced to hold this point of view against their will, or obliged to say they do in order to access the service.

The problem arises when only one version of feminism is considered the true feminism. I am a feminist in the sense that I believe that being a woman should not prevent me from doing what I want (within the law and civilised manners), but I do not believe that I have, or should have, any natural identification with any and all other women, simply because I am female. And the same applies to sex workers. I am not a collectivist by nature or by persuasion: I am an individualist who believes in a free, voluntary and tolerant society where I can operate my business co-operatively as a woman and as a human being. That is a Libertarian society, and that makes me a Libertarian Feminist. And since a man can believe in these ideals also I believe men can be feminists!

Whilst my proposal that prostitution should continue to be practised in the "illegal but allowed" sector of the market may seem like a fudge: this is actually about as near as you could get to a true libertarian market, at least in the UK. It fulfils many, if not all, of the libertarian market ideals.

The way I practise my dominatrix work will demonstrate what I mean:

- (1) It is a voluntary contract (usually verbal). No-one forces me to do it and no-one forces my client to do it. The fee, terms and conditions are all mutually agreed prior to the service.
- (2) I am using property that I have ownership of, my mind and body.
- (3) I pay no taxes and keep the full contents of my fees, except when I employ a driver/minder in another voluntary, mutually agreed and non-taxable contract.
- (4) My working conditions and fees etc. are not controlled or negotiated by any external collective authority such as the Government or a Trade Union, etc.
- (5) The only time I have ever used the State is when I have involved the Police in one matter. A number of flats being used by prostitutes were being robbed. This is in line with one school of libertarian thought that a minimalist State could exist with the functions of providing the citizen protection within the law against crime and civil dispute, which is what I did. There is also a school of libertarian thought that there should be no such thing as the State, but in a society like that I would be able to employ private armed guards to control my working premises and the chances are that the robbery would not have occurred in the first place!

I would add on a personal note that I have used the services of state-subsidised Sex Worker Projects in the UK. This is inline with my personal interpretation of libertarian practise in this society: I am also a writer and pay taxes on that work and I believe in using State services in recompense to the level of the amount of money taken off me by the State in taxation. And no more.

Here's a quote concerning conditions in Australian brothels since legalisation:

The massage parlours in NSW usually require regular health checks from their employees, as do the licensed brothels in Victoria. Working conditions in these brothels seem to be rather poor: the women are bound by a large set of house rules, cannot reject clients and are required to sign a contract waiving their civil rights and entitlement to health and safety protection.

Enough said!

### **PROPOSALS**

I have presented the arguments against the legalisation/decriminalisation of sex work. Since I also think it would be rather negative to present the arguments against something without also suggesting alternative proposals I, and a group of interested parties, put our heads together to come up with some alternative ideas.

Our Proposals:

- (1) If a client is unsatisfied with a service he should have the mechanism of the free market in which to register his dissatisfaction. He need not return. If a criminal act such as theft is committed against him he has recourse to the law. If a person is too embarrassed to be associated with prostitution and thus does not report the crime this would be the case if prostitution was legal or not.
- (2) Prostitutes should have recourse to the law, as do all citizens under the present system for criminal acts committed against them. If they are treated badly by the police then the police need educating. They have the right to be protected from all criminal acts committed against them and should enforce this right in full. They could be supported in this process by many of the support organisations that already exist.
- (3) A contract between a prostitute and a client should be enforceable in law. This is not now the case. If a prostitute is not paid for her services she cannot pursue payment through civil courts. An occupation does not need to be regulated/ licensed by the state for a contract to be upheld in civil law. There is

no compulsory state registration for professions in the UK such as hairdressers, hypnotherapists, or psychotherapists but a contract between a client and a practitioner of any of these professions is fully enforceable under current UK law.

- (3) If people want to push ahead with making prostitution legal it should take the form of decriminalisation not “legalisation”, with ongoing consultations with sex workers at all stages, and people should be aware of the possible pitfalls noted in this paper. We have several suggestions we thought might be useful in this respect:

(a) In Australia it is recognised that although somebody may operate as a sex worker they may not want to be officially identified as such. To this end, for taxation purposes, the worker may use a euphemism for their occupation on the tax form. The most common one used is “Entertainer”. As long as the tax paid seems an appropriate amount the tax authorities do not care how you identify your occupation.

(b) There should be no requirement to identify the sex worker as such on any official documents. In some countries where prostitution is legal this information is put on your passport!

(c) No compulsory registration with the Police. Prostitution is a profession not a criminal activity.

(d) No compulsory medical checks. Sex Workers Health Projects that operate in the UK at the moment ensure anonymous registration by allocating the patient a number for clinical purposes, not a name, such as Sexually Transmitted Disease clinics do. A false name may be used and usually is. There is no compulsion to notify the patient’s GP and therefore complete anonymity is assured. Registration is also voluntary. Sexual health is best promoted through voluntary schemes and education, not compulsion. If sex workers were required to have compulsory health checks and produce certificates then this requirement should be extended to clients, otherwise the scheme would be inequitable. (Or is the health of a sex worker worth less than that of a client?)

(e) No compulsory state registration of individual sex workers. If sex workers wanted to form an organisation for the voluntary registration of sex workers to ensure quality of delivery and health to clients etc., this would be fully acceptable and completely in line with libertarian principles.

(f) If a sex worker in this country did wish to become “legitimate” under present law there is nothing to stop them from identifying themselves in euphemistic terms to the tax authorities. Most of my friends do this. Many identify as therapists, or lap dancers simply as dancers, etc. Indeed this identification may not be thought of as euphemistic if this is how the workers genuinely identify themselves. As long as you pay an appropriate amount of tax the authorities are satisfied. There are many benefits to this system such as:

— Many people have inflated ideas of the amount of money sex workers actually make, so if you classify this as your occupation you may find yourself “assessed” by the tax man and get landed with an extortionate tax bill! The burden of proof is then on you to prove that you have not earned a large income. As sex work is largely a cash business this would be difficult. However, you would have this problem in common with many other cash businesses so you would seek the same professional advice. Therefore it would not be preferable in most cases to identify yourself as a sex worker.

— As a self employed person paying tax you could get a mortgage.

— As a self employed person you are still entitled to state benefits when you are not working and many when you are.

— The stress of leading a double life would be diminished. You are a citizen paying taxes, and as someone entitled to state benefits when you would not be committing fraud if you claimed them.

- (2) Both parties would be protected equally under criminal law. Prostitution would not be a defence against rape where rape itself really did occur and was not part of an act of prostitution.
- (3) The crimes of soliciting, kerb crawling, procuring and living off “immoral” earnings would cease to exist.
- (4) Forcing anyone into prostitution against their will, violence and intimidation, and prostituting minors would continue to be offences. (I know that some libertarians consider children to be capable of entering into contracts, so there may be some debate concerning children working as prostitutes in some areas. I do not consider that children can enter into contracts in any informed way, so I would continue to consider prostituting minors as a criminal offence.)
- (5) State registration of prostitution would not be a requirement. It should not be in any other profession either. Voluntary registration as in a Professional Association with a code of ethics and professional indemnity insurance etc. would be allowed.
- (6) Prostitution would be able to be run as a business in a private home without State regulation. This should be the case for all occupations subject to:
- (a) Any clause prohibiting such in a lease with the landlord/mortgage provider.
- (b) Any nuisance caused to neighbours as a result of this practise, e.g. noise, drunk and abusive customers etc., would be subject to civil proceedings. This problem could be solved by something similar to the current Antisocial Behaviour Orders available now. Presumably in a truly libertarian society this matter would also be dealt with under civil law concerning antisocial behaviour clauses in contracts covering private property developments.
- (7) No compulsory health checks for either prostitutes or clients. If the health or safety of a client or prostitute was put in jeopardy, remedy could be sought at civil law, in the form of damages, compensation, etc., or in the case of a criminal act e.g. criminal negligence, at criminal law.
- (8) Private security guards could be employed for protection but they may not commit criminal acts in pursuit of this protection.
- (9) In a true Libertarian society no tax would be payable, but if taxation is required the worker should classify their own occupation – sex worker, sex therapist, performance artist, etc. – for taxation purposes and for all other purposes, not the State.
- (10) No Police registration necessary. Prostitution is a profession not a criminal activity.
- (11) Where prostitutes operate on other people’s premises – hotels, saunas, brothels, etc. – they are subject to the rules governing that business and any contract of employment they enter into.

For any “sex workers” reading this I recommend:

— The Federation of Small Businesses. This is a Professional Association which covers all aspects of self-employment, including taxation and mortgages, etc. Don’t say you’re a sex worker through!

— The English Collective of Prostitutes. I don’t agree with their ideology but they are excellent with legal matters.

— If you want an accountant, look in *The Stage*, a magazine for the acting profession. Be cautious, but they are pretty liberal in their views.

— Equity (the entertainment trade union) for dancers. They will help you with contracts that have “non-consummation clauses”, which are for if you don’t want to have sex with customers. You do not have to be a member of Equity for this service.

— If you travel, go into Google on the Internet and type in “Network of Sex Worker Projects”. This is an international group of sex worker projects available to sex workers around the world. They will provide low cost condoms, health care and local advice, etc.

— The Libertarian Alliance!

#### **A LIBERTARIAN MODEL FOR THE DECRIMINALISATION OF SEX WORK**

- (1) Prostitution would be a civil contract between the parties involved enforceable at law. The job of the State would be to enforce the contract if necessary.