

Cleaning Up Messes in Metaphysics, Markets, and Sex

1. The World We Make, and Making it Better

Parts of our world are constructs. We developed monetary systems to facilitate commercial interactions, legal systems to resolve disputes between parties, and governments to coordinate human behavior. Social institutions developed over time, typically to address communities' immediate needs according to their values. We can change some of these constructs to better suit our needs, problems, and values, but many are embedded in ways which make change difficult.

Philosophical subdomains concerned with normativity consider whether and how to change social constructs, whether they could be constituted differently and (if so) whether we should change them. Put another way: While moral and political philosophers offer what look like descriptions of a granite moral landscape, those views advance a proposal for how our social world ought to be structured or reconstructed.

(e.g.) Rawls (1971) and Nozick (1974) disagree about the appropriate analysis of justice; the disagreement matters in part because social reform proposals.¹ At a broad level, recommendations may look like abstract conceptual disagreements, but the substantive differences in recommendations, both in individual acts and in policy, show the distinction is not merely conceptual. Adopting Rawls's theory of justice includes a normative commitment to some social institutions taking a portion of lawfully transmitted wealth (including income, sales, etc.) to pay for common goods; adopting Nozick's theory holds that such institutions are generally wrongful expropriations of wealth. Their views differ substantively with regards to how the tax structures, public goods, and other parts of our social world ought to be organized.

Theories of how social facts and institutions are constructed vary.² I try to remain non-committal regarding these theories. This non-committal posture is possible because of two conditions: (a) All of the facts and institutions discussed in this paper are uncontroversial cases of construction and (b) being constructed trivially entails contingency. There is reasonable disagreement about whether first-order moral norms, epistemic norms, and scientific concepts are constructed; this paper is about social, cultural, legal, and economic norms, none of which are in dispute.

Contingency is the conceptual core of this paper: Something is contingent if and only if its existence depends necessarily on the existence or occurrence of something else. There is a subtle difference between saying something is contingent and saying its properties are contingent, but for the purposes of this discussion, both will obtain for these cases. Human history is contingent. Social institutions might have developed differently if the historical circumstances of these situations varied. Markets, laws, and other social institutions created to facilitate human interaction are themselves contingent and so are most of their properties. However, if we are going to meaningfully change these institutions, then we have to know how to change those properties and that's where the proverbial rubber meets the road.

It does not follow that because an institution might have been morally better, that it can presently be made better. This paper focuses on the change and reform of sex work and related

¹ The dispute between Rawls and Nozick acts as an example of substantive normative disagreement, (i.e.) a disagreement which produces extensional differences in recommendations. At a minimum, norms of distributive justice proposed by Rawls are explicitly incompatible with the norms of non-intervention on private property proposed by Nozick (1974, p. 169; Barry 2018).

² There are a range of such views with varying detail (Mallon 2019; Epstein 2018; Hacking 1999; Searle 1995).

Working Draft: Contingency and Sex Work

institutions and norms. Sex work raises a range of moral, social, and economic concerns: Exploitative labor conditions and trafficking; disparities in economic opportunity based on gender, race, and class create disparities; cultural attitudes towards sexual activity and gender.

1.1 Social Facts, Permissibility, and Contingency

Social facts matter to moral appraisal in some cases, but not all cases. Sex trafficking is wrong regardless of the social context in which it occurs; some acts are morally impermissible because of their relationship to social institutions.³ Trafficking and coercion in sex work is seriously morally wrong independently of any social institutions; the spouse who solicits a sex worker acts wrongly partly in virtue of contingent social facts as the marriage partly constitutes a promise to monogamy.⁴

For prudential reasons, I treat moral and epistemic norms as non-contingent.⁵ For the purpose of this discussion, we can safely stipulate: it is *pro tanto* impermissible to act in ways which harm or deny autonomy agents; fairness, including impartiality regarding gender, race, and class, is something social institutions should generally promote and protect. These are general rules and we can haggle over exceptional cases or cases where interpretation around the edges matters, but in most of the cases discussed in this paper, the generalizations of moral and epistemic norms will do.

Some acts are morally wrong as matters of our fixed moral points; (e.g.) trafficking children for sex is wrong and we should eliminate and limit such trafficking. Some acts are morally wrong because of a combination of the social facts, (e.g.) the spouse who cheats does something wrong because constitutive norms in marriage generally includes promises of fidelity and monogamy. Many reasons provided for criminalization of sex work are the result of the latter; further, the social norms in virtue of which sex work is wrong are social norms we should work to change anyway, (e.g.) treating women as a mere means to sex.

1.2 Permissivism, Eliminationism, and Triage

Some views entail that exchanging sex for money is never morally permissible. For many contemporary natural law theorists, this is a result of their analysis of sexual activity and

³ Plato's consideration of the Ring of Gyges (Republic 2:359a-360d; 10:612d) is often used as a metaphor for the ability to evade accountability and press why people ought to be moral if they are sure there will be no consequences. One response (though hardly a solution) to the Ring of Gyges question is to make the evasion of accountability itself subject to sanction; e.g., spoliation of evidence and perjury are special classes of criminal acts.

⁴ The marriage case is a matter of the constitutive conventions underlying marriage, not merely regulative conventions; see Rawls (1955). One might adopt the view that this harm is negated if the spouses agree to non-exclusivity; this is an acceptable position, but simply modifies the social facts generally applied to marriage with a different condition constructed by the couple. This is a counterexample to the moral wrong being categorical, but my point is precisely that the moral wrong is not categorical; the wrong is sensitive to social facts.

⁵ If some version of metaethical constructivism is true, then the extent to which moral norms might themselves be subject to change raises further questions. This paper is agnostic regarding such constructivist proposals; a constructivist view of (e.g.) moral and epistemic norms can still treat those norms as fixed for the purpose of evaluating other institutions. Treating such moral and epistemic norms is neutral among metaethical theories, and so the prudent approach to this paper.

Working Draft: Contingency and Sex Work

marriage.⁶ Other views may hold no theological view, but simply hold that exchanging sex for money is categorically impermissible for a range of reasons, some of which we will touch on below. The problem this raises is one of intractability.

There are some elements of human life which cannot practically be excised; even if their emergence was historically contingent, they cannot be removed now. (e.g.) Humans reproduce sexually; it might have been that our species reproduced asexually, but we cannot change the evolutionary history of our species. Commerce is a part of how people pursue their desires and preferences. There may be long term ways we can change these two features of human life, but they are not presently, practically changeable.

Positions about sex work are multi-modal; they may have a posture regarding the moral permissibility of exchanges of sex for money and a semi-independent position on the decriminalization, legalization, and regulation of sex work. It is useful to create a grouping of a few different positions; this taxonomy is my own heuristic for trying to place key claims of the positions in this discussion.

*Eliminationism*⁷ about sex work is the view that sex work can be removed from a culture and should be removed. It may grant that some instances of sex work are morally permissible; it may not. It is committed to a metaphysical modal claim (i.e., it's possible to eliminate sex work) and a moral modal claim (i.e., we ought to eliminate sex work). I largely ignore eliminationism on the basis that the metaphysical modal claim is almost certainly false; given the historical and cross-cultural pervasiveness of sex work, it seems like elimination is a fools errand even if it were good or desirable. While, like the Queen of Wonderland, we can consider or even believe a dozen impossible things before breakfast, let's not waste our time.

Impermissivism is the view that sex work is generally or categorically morally impermissible and so should not be decriminalized or legalized on that basis. Impermissivism does not necessarily have an eliminationist view; it can allow that sex work is institutionally ineliminable, but still hold that there should be no social, legal, or moral sanctions for sex work.

By contrast, *permissivism* is the view that sex work can (under appropriate social institutions) be generally permissible, appropriately decriminalized, and commercially regulated like other licit goods and services. This is a popular position individuals describe when they talk about sex work legalization and the permissibility of markets in sex work; if sex work would be permissible in a society under certain social conditions and (as I will illustrate below) we have strong reason to try to instantiate those social conditions anyway, then it follows that under the state of social reforms established, one should be the legalization and regulation of sex work. This is a quick version of the argument, and details vary significantly depending on what contingent social conditions need to be reformed for the institutions to be appropriate. However, this is not the only position in favor of sex work decriminalization, legalization, and regulation.

What I call *the triage posture* is a dispositive position on decriminalization, legalization, and regulation of sex work: given the pervasiveness of sex work in our society and given the serious harms that can be perpetuated and exacerbated by criminalization of sex work, the

⁶ George and Bradley (1995) are representative of this view; they deny the conventionalist view of marriage explicitly (ibid., 301-302) and hold that sex is only permissible in marriage; it follows that sexual activity which is transactional outside of marriage (as cases of sex work in discussion here are) is categorically impermissible.

⁷ The term "eliminationist" here is multiply troubled. It has a philosophical cousin (eliminativism, per the Churchlands and Rosenbergs) and a genocide studies cousin (controversially pioneered by Goldhagen); unfortunately, the other term "abolitionism" also has a more closely related use in gender studies which is important to later parts of this project re: the normativity of gender, so I use "eliminationism" here with my stipulative terminology.

Working Draft: Contingency and Sex Work

responsible, prudent position is to manage harm and risk in sex work through decriminalization and the development of a regulatory apparatus. In some ways, this view is a response to the demonstrable failure of criminalization regimes in much of the world, where victims of sex trafficking lack legal recourse and protection and sex workers (i.e., those who are not being trafficked or forced) are frequently endangered by these practices. I cannot survey the range of positions and policy proposals to group under triage here, but there are plenty of such cases in the context of every country with criminalization statutes.

These are all positions on the public policy towards sex work; they are not exhaustive of all of the possible moral views and are not always exclusive from each other. Their purpose is to provide a shorthand for evaluating whether a particular position stands on relevant questions.

Is there some practically plausible set of social conditions on which exchanging sex for money is generally morally permissible? Impermissivism and eliminationism say no; permissivism says yes; triage can be either or neither.

Is the optimal regime for sex work, regarding possible harms all things considered, one of decriminalization, legalization, and regulation? Permissivism and the triage posture say yes; eliminationism says no; impermissivism may vary depending on whether it adopts a triage posture.

The real devil is in the details of the proposals, and this is where I think the useful work is to be done; the purpose of this heuristic is to provide some clarification of where different views within the literature stand on the basic modal questions of practical and moral possibilities generally, before getting into specific points of disagreement (which are numerous and diverse).

1.2 Why sex (work)?

Like sex, the world is often messy.

Regulative norms around sex (and therefore sex work) are complicated because they implicate a range of semi-independent issues. The heuristic above is meant to provide some loose grouping that grants the messiness of these positions.

(1) As a conceptual matter, what is “sex” and what is the scope of sexual activity?⁸ (2) There are a wide range of views about the normativity of sex generally, including marital normativity, heteronormativity, pluralism about sexual practices. (3) If the state and the law have some role in enforcing some moral norms, then there has to be some understanding of the nature and scope of that role.

There is broad agreement that there is some role, e.g. the protection of minors from sexual exploitation, criminalization of sexual violence. (4) How do we reconcile the diversity of attitudes to sex and promote attitudes of dignity of persons historically dehumanized or objectified in sexual content?⁹ This implicates political questions of protection, open societies, and broad political obligations.

Put bluntly: Sex work is a hard case because there are a lot of different moral and social problems that are hard to separate. Sex work is a Gordian Knot of issues, and these illustrate how

⁸ For useful surveys of the conceptual analysis problems regarding sexual activity, see Halwani (2018) and Migotti and Wyatt (2017).

⁹ Sexual activity is hardly the only issue that avails itself of open society questions, but the close regulation of sexual activity in many cultures for a range of putative justifications (e.g., theology, public health, child protection) does make it an especially prescient case for broader open society issues.

arguments predicated on contingency are related and tangled together. Tracing the tangle (rather than presuming to chop through it) is ambitious but instructive.

2. Autonomy and Exploitation Arguments

Voluntariness is a central property of commercial interaction. Involuntary “commerce”¹⁰ is generally impermissible, from theft to slavery. This is a moral point about coercion and a conceptual point about commercial interaction. Commercial interaction provides value socially when it allows all participants involved in an interaction to pursue their preferences.

Fleurbaey notes (2021, Sec. 3.1) that the notion of Pareto optimization and the reduction of inefficiency was historically regarded by some economists a moral reason in favor of economic systems (Adler 2012; Stiglitz 1987). Under some circumstances, individuals bargaining freely over the price of goods are each able to maximize their preferences by coming to the optimal balance in price among the bargaining parties; this is a form of economic fairness. As many critics of this strict, cost-benefit centered approach note, real markets have complicated factors including conflicting pressures and variation in means between bargainers (Sen 1979; Blackorby and Donaldson 1990) which make this analysis problematic and fail to account for other non-economic dimensions of well-being (Adler 2012).

Let us stipulate that, at a minimum, consent is a necessary condition for any sexual activity to be morally permissible. Some sexual activity is morally permissible only if all parties involved consented. This does not require that all consensual sex is permissible; it is merely a sufficient condition for some sexual activity being impermissible. Basically, the contemporary categories of sexual assault and rape are morally impermissible on the basis of at least that property. Further, that is a category of action in which the state takes a criminal interest, that sexual assault and rape should be subject to criminal prosecution. These are meant as a bare minimum position that is hopefully widely agreeable: there are at least some cases where sexual activity should be subject to intervention by the state; further, the ability to effectively intervene in that subset of cases matters. Put another way, not having legal interventions in sexual assault and rape is unacceptable and the interventions themselves being ineffectual is also unacceptable.

2.1 Sex Trafficking and Easy Cases of Violating Autonomy

Sex trafficking is morally simple.¹¹ It violates human autonomy and dignity; it harms those trafficked; it is coercive. Even if we set aside the systematic gender, racial, and economic unfairness perpetuated by sex trafficking (which we should not), it would remain one of the most severe moral atrocities in contemporary society. There is practical complexity around sex trafficking, logistical and prudential questions about how best to minimizing trafficking.

Consider partial decriminalization, as on the so-called “Nordic model” (Langford and Skilbrei 2021). The Nordic model separates three sets of acts in sex work: selling sex, buying sex, and auxiliary services. Selling sex is decriminalized while buying sex and auxiliary services are criminalized (and the penalties are typically increased). One idea behind the Nordic model is

¹⁰ The scare quotes are meant to acknowledge that some analyses of commerce hold voluntariness is a necessary condition; if one provides an analysis of commerce in terms of voluntary associations, then “involuntary commerce” is like “squared circle.” See Hayek (1946, chs. 1, 5, and 6) as formative to this view; but this paper does not take a position on economic theory.

¹¹ The analysis of sex trafficking is complicated (Reap 2019), but trafficking entails coercion and so whatever the appropriate analyses of sex trafficking are, the instances will invariably be morally wrong.

Working Draft: Contingency and Sex Work

that it is easier to locate, investigate, and prosecute traffickers if sex workers and victims of trafficking are not worried about being prosecuted. Victims of trafficking have a reasonable concern they will face prosecution if they go to law enforcement to report traffickers; this problem is exacerbated by the common law enforcement tactic of offering to ignore crimes in exchange for cooperation, which builds in an implicit threat of prosecution if they do not cooperate, or their cooperation is deemed inadequate. Removing the possibility of criminal prosecution outright ensures those who are trafficked need not be worried; further, the fact that sex buying and auxiliary services including brokering transactions is criminal means that those engaged in trafficking are easier to prosecute when sex workers come forward.

If the purpose of law is facilitating and coordinating and commercial interaction and we want to eliminate sex trafficking, then statutes should focus on limiting sex trafficking through whatever means effectuate reduction. On that view, how to limit sex trafficking is an empirical question.

Sometimes, rather than probing the empirical question, advocates opposing the decriminalization and legalization of sex work shift to a conceptual posture: the role of the law is partly to communicate attitudes. Criminalization of sex work is a way of signaling social disapproval. This shifts the debate to the gap between permissivism and impermissivism, the dispute over permissibility of exchanges of sexual services for valuable consideration, and away from the triage position. I will explore this at greater length below; this is an important distinction in how people think about the role of social regulative norms, especially law.

2.2 Economic Necessity, Forced Choices, and Social Conditions

There are cases where reasonable people disagree about whether coercion is present.

The disagreement in these cases sometimes looks empirical, as it implicates facts about cases, but is fundamentally conceptual. The mugger who produces a gun and says “your wallet or your life” isn’t giving the victim a choice; the locution involves a choice, but we know this choice isn’t meaningful. The intuitive way of understanding the case is that the immediate threat of violence (e.g., “if you don’t give me your wallet, then I will shoot you”) implied by the act clearly does not count as a choice. Strictly speaking, the victim of the mugging does have a choice, it’s just that options that don’t include giving the mugger a wallet include getting shot, and the threat of getting shot makes those options unappealing.

A trite lie we tell children is “you can be whatever you want when you grow up.” In a broad, modal metaphysical sense, this is true; there is some strange logically possible world where a child raised Muslim in Riyadh becomes the Pope. There is a difference between logical possibility and practical possibility. Individuals make choices and face possibilities in terms of alternative practical possibilities, not the full scope of logical possibilities. The imminent threat of violence leaves a nominal choice, but no practical choice. In the most obvious cases of sex trafficking, victims have their agency and freedom curtailed completely by the imminent threat of violence, but not all coercive forces are so direct.

Some people are brought up in environments where their opportunities are curtailed by a lack of access to resources (e.g., financial, educational, familial, etc.) or opportunities. There is a meaningful difference between someone who is forced to have sex under threat of violence and someone who goes into sex work because they have a dearth of options; neither has a free choice in the economic or ethically salient senses of the term.

Working Draft: Contingency and Sex Work

Consider the same point from the perspective of rational choice and practical reasons: Practical decisions are comparative (Chang 2016). For simplicity, we sometimes frame choices in terms of doing some act or not, but usually not doing the act opens a range of alternatives. There is a logical structure to this, but the technical details are not important to the present point.

If a victim of sex trafficking is presented with the option of having sex to receive money and her alternative, if she refuses, will be sexually assaulted by the trafficker, then she does not have a choice in any morally meaningful sense. She does not have the ability to freely refuse. A sex worker who enters exchanges for sex out of dire economic need, because the options for earning enough money for stable housing, food, and other necessities are all worse on her appraisal of the circumstances. She does not want to work in sex work, but feels it is her least-worst-option among a set of undesirable options. There is a moral difference between the structure of choice in these two cases, but there are often still conflicting judgments about whether the sex worker in the forced choice of a least-worst-option is still properly making a free choice. In these cases, the empirical differences between cases will matter, but what is at issue is conceptual; even if we find full agreement on the comparison of the choices, we may not find agreement on the moral judgment of whether the choice is free.

“Free choice” is a vague concept.¹² This is true not just in the sex work case, but in all cases. The sex trafficking case is obviously not a free choice; the case of someone who has other revenue streams and independent income but chooses sex work as a career path is making a free choice. The differences lie in the available alternative options and their relative desirability.

Sex work is both an ordinary case of a labor problem and a special case for forced choice issues.

Sex work is an ordinary case of a labor problem because many instances of labor involve forced choice, and often those labor choices include sex work as one of the bad options. Someone born without access to education or easy transport in a rural area may have a limited range of options for work and does not have the financial autonomy to forego work to build skills or hunt for opportunities more suitable to their needs. Suppose a child in that environment has a “choice” between working in a brothel and working in a textile plant, where both will satisfy basic income needs but both are bad. Is the sense of “choice” morally meaningful in that case? It seems like the forced nature of the choice and the least-worst-option may make the instance less severe than the outright threat of violence, but it is still morally grotesque. Still, this is true across a lot of industries; the choice to go into textile labor in that example is also a forced choice and dire economic circumstances still apply. The labor in those environments is still coerced. In both cases, it seems reasonable to say that there is no free choice in a morally meaningful sense; the question is the degree of free choice, the availability of alternatives. In some circumstances, we allow that the range of alternatives are sufficiently satisfactory that we no longer consider the choice forced; many cases of sex work do not rise to that level, but some do.

Sex work is especially morally complicated because sex is complicated. Having sex under conditions of forced choice is regarded as reasonably subject to special moral worries, because consent is of particular value in contemporary ethics about sex. If we grant that

¹² “Vagueness” is a technical philosophical term (Sorenson 2022). For reasons I cannot develop here, the technical details of how we conceptualize and approach vagueness matter; there are important practical differences between epistemic theories of vagueness (Schiffer 1999) and ontic theories (Barnes 2010). Whether the vagueness at play in moral concepts (Schoenfeld 2016) or legal practice (Schiffer 2016) is epistemic or ontic matters to how we approach these issues. I hope to dedicate future work to this point but cannot do so here.

Working Draft: Contingency and Sex Work

non-consensual sexual activity includes forced choice cases, then it is especially important to be attuned to the variations in forced choice in the case of sex work, with a kind of care more delicate than (e.g.) mining.

Sex work is often a product of forced choice; it is the result of a dearth of opportunities to do otherwise, especially for girls. The fact that many societies have limited educational and economic opportunities for women and girls creates this forced choice, and these limited opportunities are a changeable social fact. We know they are changeable, because there are successful initiatives changing these background social and economic conditions at smaller scale. One point here which is advanced from the triage posture (and should be adopted by everyone, regardless of posture) is that improving education and economic opportunities is a necessary condition for reducing a morally and economically noxious form of sex work; regardless of one's background posture, this is something that we should generally be pursuing anyway.

There are cases of people who enter sex work under conditions of free choice and with a range of other economic opportunities. Under ideal conditions, that would be true for all sex workers, that all sex work was a matter of free choice and was not even in the grey area of forced choice described above. In order for that to happen, we would have to implement broad educational and economic reforms to ensure access to reasonable alternatives, especially in communities where women and girls are systematically disadvantaged or prohibited from pursuing such opportunities.

3. Expressing and Signaling Values about Sex

The purpose of law is not just harm reduction; laws coordinate social behavior more broadly. The ways in which law influences behavior is heterogeneous. Some laws directly influence individual behavior through stipulating benefits or penalties; some laws provide broader indication of social values, including which industries are subsidized and which are regulated.

There are a wide range of responses to markets in certain goods and services which hinge on the idea that law is not merely logistical, but also expresses social values. Speed limits coordinate physical movement through communities in ways which consider balances of safety, commerce, efficiency, and accessibility. Some philosophers object to social institutions (or properties of institutions) on the basis that those social institutions promote or fail to promote the right kinds of values and considerations; this is a general approach to argument about these institutions which depends necessarily on contingency and changeability of those institutions.

The taxonomy of arguments in this form is messy; people disagree substantially about how to classify arguments. For that reason, let me adopt a somewhat idiosyncratic taxonomy of these arguments more suited to my purposes. Suppose argument P holds there should not be markets in sex work because sex ought not be exchanged for money, and decriminalization would promote the social tolerance of exchanging sex for money. This is familiar summary of an argument in the literature; the problem is that significant conceptual work is happening off-stage (metaphorically). Depending on background interpretations, argument P could mean any of a few points. Based on varying the assumption, we might get: P(1) that decriminalization empirically increases the number of transactions for sex work, thereby promoting people doing something (exchanging money for sex) that they ought not do;¹³ P(2) that creating markets in sex

¹³ This interpretation P(1) is driven by the assumptions that the “promoting a value” includes cases of mere coordination without collective intention and that the increase in number of exchanges of sex for money is such a form of “promoting.”

will result in some people adopting attitudes to sex as a commodity (and perhaps also adopt bad attitudes about gender), and causing them to adopt those attitudes is wrong;¹⁴ P(3) that creating markets in a good or service is a form of social toleration of that good or service.¹⁵ There are various ways to sort and classify these types of arguments, but this is just a heuristic for sorting out where different arguments against markets in sex work think the problems with markets in sex work lie. I will move through these arguments below and try to show how these arguments intersect with points about contingency, triage, and social reform raised above.

3.01. On Patronizing Readings

A central point of this paper is that fields with different norms of analysis and methodological assumptions coalesce around similar points of critique when discussing markets in sex work. This shows a much broader base of intellectual support for certain positions and reform proposals regarding markets in sex work and how we understand sex work.

One serious challenge for interdisciplinary discourse is that differences in norms and methodologies are often treated as grounds for undermining legitimacy of those areas of studies. I have no time or energy for that here. Lazy stereotypes abound (e.g., analytic philosophers get lost in the weed; economic analysis obscures many important factors; feminist theory is overly technical and vacuous; etc.); the focus of this paper is to take arguments seriously on their own terms and show their connection to each other in understanding assumptions. The interdisciplinary jockeying for who is authoritative is counterproductive.

3.1 Regulative Norms, Values, and Contingency

Values within a community¹⁶ can be explicitly endorsed by a community collectively (e.g., gender equality) or implicitly imposed on practice through patterns of behavior (e.g., value of status goods). In some cases, values which are explicitly endorsed are contradicted by patterns of behavior. A society can explicitly endorse gender equality while having widespread gender discrimination; a society can endorse autonomy of workers while simultaneously creating forced choices in labor markets. Often there is equivocation in how we interpret values and some differences in background assumptions about how we individuate and ascribe values.

Analytic discussions of social ontology often conceive of valuing in terms of collective intentionality; the standard examples of collective intentions involve explicit representations of the collective identity by individuals (Schweikard and Schmidt 2020, sec. 2.3; Sellars 1980; Collingwood 1947, p. 146-150). This develops into a particular approach to thinking about social values in terms of explicit intentions endorsed by individual members, “[T]he *intendings* are two in number but the *content* of those intendings is the *same*.” (Schweikard and Schmidt 2020, sec.

¹⁴ P(2) is driven by the notion that law partly models appropriate scope of interactions with other people. (e.g.) If one argues that regarding each other as mere means, that “using” other people is morally noxious (O’Neill 1985), one could adopt the view that encouraging people to see each other as mere means is also morally noxious. This adopts a Kantian framing of the harm done (treating others as mere means) but fleshes this out in the volume of harm done increasing as a consequence of policy adoption. These arguments (like all modern interesting ones) are hybrids of thoughts both on moral valuation and causal responsibility.

¹⁵ P(3) is driven by the methodological assumption of public reason liberalism (Quong 2022), that laws are formulated as public rules the purpose of which can be reasonably inferred and interpreted. It requires rejecting social coordination as a complete theory of law and accepting some laws matter because of what they say, rather than what they do (Raz 2009, esp. ch 14).

¹⁶ There is some disagreement about what counts as a value; my use of the term is intended to be neutral between disagreeing theories, but is drawn from Scheffler (2010, p. 15-40).

Working Draft: Contingency and Sex Work

2.3; Sellars 1968, p. 217) On this view, saying “a group G believes that p” or “a group G values p” means that the members of that group have, at least generally, some conscious intentions about the collective to that effect, they have “we-intentions” about the active belief.

Not all ascriptions of acts to social institutions are cases of collective intentions. When we say, “America values equal economic opportunity,” this can express a claim about the explicit social attitudes of the collection of people or it can be an empirical claim about the aggregate behaviors of the society. “America values equal economic opportunity” is a controversial statement on both accounts, because making such a claim can implicate a wide range of issues depending on context. Often, disagreements about whether such a claim is true depends on addressing the broader context.

Consider the claim about social values and norms in terms of two different properties: what the group explicitly and collectively endorses and how the group comports itself. There is inevitable variation in interpretation about the values themselves, what it means to have economic opportunity. Those discussions are more difficult, but we can handle them by focusing on the uncontroversial cases; this is especially important with assessing how the group comports itself. A group might endorse gender equality in economic opportunity but have systemic features and patterns of behavior which push women into career trajectories; this might be through other social attitudes about the role of women in society, sexist beliefs about different capacities, or it might be the result of biases. As a collective intentional matter, most people reading this people would agree that society should endorse gender equality in economic opportunity; there may be substantive, practical disagreements about what that means, but there are also grounds for some useful, general agreement about minimal necessary conditions.

In Sec 2.1, I note that coercion understood in terms of direct threats of violence are clear point of consensus and forced choices below a certain threshold of alternative possibilities is another. In those cases, we can understand economic opportunity in terms of (at least) limits on free choice; some proposals for improving autonomy developed by Satz do implicate potentially disagreeable judgments about what “promoting autonomy” means,¹⁷ but many things (like basic access to education and potential alternative sources of employment) are straightforward. These are ways of driving together the consensus. We can find agreement on minimal conditions for toleration of sex work (and distinguishing sex work from sex trafficking) which allow for progress, even with substantial disagreement about background theory and central conceptual claims (e.g., ascriptions of collective intention).

3.2 The Contingency of Communication

Some arguments against markets in sex work have clear practical and consequentialist interpretations; given a general preference for certain outcomes (e.g., fewer crimes against children and more prosecutions for sex trafficking), then we ought to pursue policies most likely to realize those preferences. That is a reasonable and familiar way to talk about public policy, and grounds many of the triage arguments in favor of decriminalization of sex work. (e.g.) arguments for the Nordic model focus on the ways in which it makes prosecuting traffickers easier by making victims of trafficking more willing to come forward.

¹⁷ Part III of Satz (2010) includes extensive discussions of the possible interpretations and implications of promoting autonomy. Her points about coercion and forced choice in chapters 8 and 9 are a major influence on my discussion in the preceding section, though I focus on comparativism about rational choice as a framing device.

Working Draft: Contingency and Sex Work

This is not the only way of talking about public policy decisions, especially as it pertains to markets. There are a contentious subset of objections to markets in certain goods which are not directly connected to the consequential consideration of the policy, but a matter of what the policy “says” or “communicates” or “expresses” by its adoption.

All constitutive norms of communication are contingent. This is true of linguistic conventions, but also of conventions of implicit communication of respect, norms of politeness, etc. The fact that throwing up a middle-finger communicates disrespectful attitudes towards another person depends on the communicative norms of the community. If a small club of individuals use a term of abuse as a friendly greeting, deciding that their community is going to “change the meaning” of that term within the context of their use, then their changing of those conventions will (within that limited context) change the meaning; it will not change the meaning in the broader community, but terms are subject to change in broader communities as well. Communicative conventions change, sometimes through gradual processes and sometimes through explicit agreement.

As a matter of fact, offering someone money for sex does communicate disrespect for that person in many contexts; hopefully that goes without explanation. However, not all offering of money does communicate disrespect; paying for nursing or therapeutic services does not communicate disrespect and (when appropriately situated) discussion of pay can be a way to communicate respect. The problem is a local one about sex work, about norms around exchanging money for sex; in the following subsections, I argue that these problems are grounded in part by noxious attitudes and norms pertaining to sex, which we should reform anyway.

3.21 Legal Regulatory Norms and Sex

Part of the reason markets in sex work are politically and morally contentious is because of diverse and conflicting regulatory norms that apply to sex.¹⁸

Some communities have a collective social attitude that homosexual sex is non-normative while others have enforcement mechanisms (e.g., social exclusion, imprisonment, violence). In many societies, regulative norms regarding homosexual sex have changed substantially over the last fifty year in the United States alone. *Lawrence v. Texas* (2003) struck down state laws criminalizing homosexual sex between consenting adults; American law has also reformed constitutive norms for the civil institution of marriage to allow for same-sex couples to marry. Of course, these norms are not *just* about sex, but also about the rights and protections of a group of people. The purpose of this analogy serves two purposes: it is a direct illustration that norms about sex can and do change and that communicative content of decriminalization is not an expression of approval.

The decriminalization, legalization, and even regulation of an activity does not constitutive or even imply approval of that activity. The 21st Amendment does not endorse drinking alcohol; *Lawrence v. Texas* does not endorse homosexual sexual activity. They express a limit to the legal structure of American society, that whatever one’s opinion these things should not be criminal. This is necessary as a political philosophical position in any pluralist society. Some subgroups within a society (and perhaps even a majority) may believe that some act is

¹⁸ Some regulatory norms governing sex are moral; that is not relevant except as an argument for enforcement. Some moral norms pertaining to sex (e.g., prohibition of sexual assault) should be enforced; most norms do not rise to that level, especially in the triage posture.

Working Draft: Contingency and Sex Work

immoral, but merely having that belief is not sufficient reason for adoption of legal norms. This is necessary for preserving the pluralism of that society. Preservation of the rights of members of a society to different forms of life is important; there has to be strong reason (e.g., preventing certain kinds of harm) to enforce such restrictions. This shifts the argument back to the triage discussion, whether the harms around sex work are best addressed through prohibition or decriminalization.

3.22 Implicit Norms, Regulatory and Constitutive

Rawls (1955) lays out the central distinction between what we now call constitutive and regulatory norms, by separating out the constitutive concept of a rule from the regulative. Constitutive norms describe conditions under which something qualifies as a member of a social category (Searle 1969; Midgley 1959); (e.g.) the constitutive norms for marriage in America include the filing of documents, vows, witnessing, etc. which distinguish a genuine marriage from the marriage in a play or acted out by kindergartners. This is in contrast to regulatory norms, which can be expressed with deontic modal operators (i.e., obligatory or permissible); (e.g.) some states have regulatory norms which prohibit people under a certain age from entering into a marriage contract. Both constitutive and regulatory norms matter to the meaning of social acts (Glür, Wikforss, and Ganapini 2022, sec. 1.2).

Constitutive norms are all constructs and subject to change through social agreement and reform; this makes changing constitutive norm a straightforward process once there is agreement about the change. Regulatory norms are more complicated, because identifying and addressing them often requires addressing patterns of behavior related to regulative norms after the change in those norms.

Regulatory norms are heterogeneous. Some are formulated universally, others generally, and others contextually. The question for those norms is not appropriateness of *adherence*, but appropriateness of *enforcement*. There are certain universal regulative norms which should be enforced, either legally or socially. Norms prohibiting sexual assault, protecting children, and establishing standards for ability to consent are all reasonable norms to enforce; norms prohibiting sexual conduct are subject to enforcement within communities. Some people argue that the latter set of norms should also be subject to legal enforcement; pluralist considerations in political philosophy suggest such arguments are weak, but I will not delve into that here.

If one is going to argue that there is or should be a regulative norm in effect prohibiting some sort of sexual activity (including sex work), then there must be considerations for the reforms of those norms. These can and should be handled through the deliberate processes of our community; this is where debates about if and how we ought to decriminalize, legalize, or regulate sex work out to be conducted, based on the justifications. How those discussions of public policy are framed (e.g., providing public reason; legislative fiat; common law development) is a complicated question, but at least orients discussions of sex work towards practical outcomes.

Regulatory norms governing exchanges of sex for money are necessary at least in some part to prevent harm and secure the autonomy of sex workers. The practical and prudential considerations should be the subject of discussion. This discussion is often distracted by ancillary issues about commodification and signaling, which are matters of changeable social attitudes which should be addressed independently (e.g., changing the regard for labor generally as mere means).

3.23 Norms as Putative Conceptual Entailments

Some ostensible conceptual entailments have normative force; this is where philosophical clarification is useful. Part of the reason for the more technical approach of this paper is because analytic philosophy has spent several decades discussing normativity in conceptual analysis. Some people hold that sex work is morally wrong because there is a clear set of normative conceptual entailments regarding “good sex” where “good” includes a normative (and perhaps moral) valence. How the notion of “good sex” is constructed in a particular context varies. For some groups, all sex outside of heterosexual, church-ordained, marital sex is immoral; other groups exclude sex work on the view that sex work must entail a forced choice.

Let’s start with the unobjectionable claim: some forms of sexual activity are morally wrong. At a bare minimum, sexual violence, coercion, and sexual activities with those who can’t consent are morally wrong. We may disagree about why they are wrong, but there are some cases where no reasonable person disagrees that the activity is bad. As a corollary, at least some sexual activity is morally permissible, despite enormous disagreement about which sexual activity and under what conditions.

The question for sex work folds into a broader question about political philosophy in open societies. The broad contemporary consensus¹⁹ is that society ought to allow for individuals to broadly comport their lives according to their own beliefs, preferences, and values. This approach shifts the onus for justifying restrictions on behavior to the state, requiring some basis for intervention (e.g., harm, denial of autonomy). Such reasons for intervention exist in sex work: trafficking and sexual violence, child sexual abuse material, non-consensual use of content, and many other considerations establish grounds for some intervention. The issue is whether contemporary policies are appropriate interventions for addressing those problems, especially, but not limited to, criminalization.

3.3 Arguments for Prohibition on Sex Work, in situ

Reconsider the three versions of arguments that we might see in discussing markets in sex work. P(1) that decriminalization empirically increases the number of transactions for sex work, thereby promoting people doing something (exchanging money for sex) that they ought not do; P(2) that creating markets in sex will result in some people adopting attitudes to sex as a commodity (and perhaps also adopt bad attitudes about gender), and causing them to adopt those attitudes is wrong; P(3) that creating markets in a good or service is a form of social toleration of that good or service.

P(3) and related arguments mistakenly conflate decriminalization, legalization, and regulation with social toleration or approval. There are ways in which laws express approval or disapproval of certain behaviors, as with tax deductions for retirement contributions or sin taxes for cigarette; there are also non-legal ways society may express an attitude. This is a mistake about the semiotics of decriminalization, legalization, and regulation; it also ignores the prospect

¹⁹ Pluralist and restrictive views obviously vary wildly in what behaviors and to what extent people are free to comport themselves. There is reasonable disagreement about limits. There are some political theories (e.g., Vermeule’s “common good constitutionalism”; Xi thought) which restrict the possible behaviors of individuals sufficiently that they are no longer even open society views on the most minimal formulation.

Working Draft: Contingency and Sex Work

that mechanisms for discouraging certain behaviors requires that those behaviors be subject to a regulatory scheme (e.g., taxation).

P(2) and related arguments are better situated, because social institutions can and do impact the ways in which people perceive, relate to, and interact with each other. However, these arguments face a chicken-and-egg mistake; attitudes reducing people (especially women) to a means to sex are independent of sex work criminalization. P(2) identifies a real problem, but makes the mistake of treating sex work as the etiology of these noxious attitudes, rather than either an exacerbator or a venue for expression of those attitudes. Addressing noxious attitudes (including sexist and misogynistic attitudes) is a necessary and widely agreeable reform proposal; such a proposal may even have normative implications (e.g.) for the representation of sexual activity in media, the sorts of sexual goods and services it is appropriate to have on markets, and regulation of markets in sex work. Mistaking sex work for the origin of such noxious attitudes is a mistake, and using those attitudes to attack sex work as category does not help to address either.

P(1) and related arguments are the most interesting, but these are fundamentally arguments about the nature and scope of appropriate triage in dealing with harms caused on markets in sex work. These questions should motivate whether to decriminalize, legalize, and regulate sex work, as well as appraising proposals for what legislation and regulation look like. P(1), as formulated, is intended as a categorical argument against sex work on the impermissivist assumption; however, one might simply frame a different argument suggesting that the major focus should be in reducing the kinds of morally noxious behavior (especially uncontroversially morally repugnant behaviors) and focus on how we eliminate and reduce those behaviors, again bringing us back to the triage posture and the uncontroversial role of law as a way to limit systematic harms.

4. Drawing Reform Proposals Together

There are substantial theoretical and methodological differences between reform proposals for improving sex work, but many of these proposals can be adopted irrespective of those differences.

Improving economic opportunities and education access for vulnerable groups to prevent forced choice situations in sex work is something we should encourage regardless of background commitments; we should try to reduce social attitudes regarding the objectification of people (especially women) tied to sex. If discussion of philosophical and methodological background gets in the way of discussing how to practically address these problems, then we need to acknowledge that those discussions are imprudent. It is certainly possible to do both at the same time, but the literature has not done this well, especially in the context of sex work; if given a choice between getting the theoretical background sorted and making progress on and implementing reform proposals, then we ought to do the latter.

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