

Paying for sex—only for people with disabilities?

Brian D Earp, Ole Martin Moen

ABSTRACT

Thomsen (2015) argues that people with disabilities should be granted an exception to a general prohibition on paying for sex. In this response, we argue that Thomsen's call for an exception does not withstand careful scrutiny. The concerns that appear to motivate his argument point instead, we argue, to a case for legalization of prostitution, coupled with sensible health and safety regulations.

INTRODUCTION

In "Prostitution, Disability and Prohibition",¹ Frej Klem Thomsen argues that there is a reasonable case to be made that paying for sexual services should be prohibited. However, he also suggests that people with disabilities should be granted a legal exception. People with disabilities, Thomsen argues, stand to lose a particularly large benefit by being prohibited from buying sex (since the ability to participate in sexual relations is a significant good that it might otherwise be very difficult for them to obtain), and at the same time, they constitute less of a physical threat to prostitutes (or sex workers)¹ than other clients do.

Thomsen's argument deserves careful consideration. First, as a group of individuals who might desire to pay for sex, people with disabilities have been largely neglected, both in popular and academic debates. By focusing on this group, Thomsen rightly calls attention to and challenges misleading stereotypes, including the view that people with disabilities have fewer sexual needs than others. However, in this response, we shall argue

¹The terminology here is contentious, and reflects deeply polarized views about prostitution, even within, for example, feminist philosophy. We will not enter into that debate here, and will instead use the terms interchangeably. We also do not aspire to give a comprehensive assessment of the (legal or moral) permissibility of prostitution, but instead offer a more narrow response to the specific arguments raised by Thomsen in his article.

Correspondence to Brian D Earp, Visiting Scholar, The Hastings Center, 21 Malcolm Gordon Road, Garrison, NY, 10524, USA; brian.earp@gmail.com

that Thomsen's thesis falls short of being very convincing. Both his general argument in favor of prohibition, and his more specific argument for an exception for people with disabilities, are weaker than Thomsen takes them to be. The concerns that motivate Thomsen's call for an exception, we argue, should instead motivate him to support legalization of prostitution along with reasonable health and safety regulations.

THOMSEN'S GENERAL CASE FOR PROHIBITION

Thomsen's argument for a general prohibition on paying for sex is this:

- (1) Prostitution is bad because it causes harm to prostitutes.
 - (2) We have reason to avoid harm to persons.
 - (3) Prohibiting prostitution will reduce harm to prostitutes.
- (C) Therefore, we have reason to prohibit prostitution. (p. 453)¹.

Premises (1) and (3) are the ones that are controversial; let us consider them one at a time.

In order to make the case for premise (1), Thomsen challenges an argument put forth by one of us (Moen) in a recent paper in this journal.² In this paper, Moen argued that prostitution is no more inherently harmful than a range of other occupations that we do not see fit to prohibit (but rather regulate), and that many if not most of the harms that do seem to correlate with prostitution are a consequence, not of prostitution itself, but rather of our social and legal maltreatment of prostitutes. As Moen pointed out, prostitutes must often hide their work from friends and family, and tend to be prevented from joining labour unions, renting a place where they can work, hiring security agencies, and advertising. They are also barred from negotiating work contracts that would regulate salary, working hours, working conditions, health insurance, retirement savings, and so forth. The way we treat prostitutes, in other words, is so merciless that *any* group treated this way would be likely to experience significant harms.

In his response, Thomsen acknowledges that certain extrinsic factors (such as the

ones just mentioned) are likely to be responsible for *some* of the harms associated with prostitution. However, he argues that these factors cannot account for *all* of the harms. To support this view, Thomsen cites a study by Ine Vanwesenbeeck³ which shows (in Thomsen's words) that "roughly half—but no more than half—[of] the variance in [certain negative outcomes] experienced by indoor prostitutes in the Netherlands was explained by external factors including stigma, lack of control and poor working conditions" (p. 453)¹.

In reply, we note that—contrary to what Thomsen suggests—Moen did not argue that *all* of the harms associated with prostitution can be explained by external factors. Instead, Moen states explicitly that: "prostitution carries both medical and psychological risks," among other types of risk and additional negative attributes, some of which "appear to be present regardless of our social or legal treatment of prostitution" (p. 79)². Second, although the study by Vanwesenbeeck shows that not all of the harms suffered by the prostitutes in her sample were the result of external factors, the issue of *sampling bias* does not appear to have been fully accounted for. This bias suggests that, given the various stigmas surrounding prostitution, it is likely to be people who are already in very difficult situations who would find it worthwhile to sell sexual services.

But that is not the end of the issue. For even if one were to grant that there are real or even serious harms caused by prostitution, this would not provide a sufficient reason to endorse its prohibition. In the first place, people are usually granted significant autonomy in their choice of work; and insofar as an argument can be made that it is possible for someone to *choose* to become a prostitute (given the usual constraints), then this must count against a general ban. But even more importantly—to turn our attention now to premise (3)—it does not follow that the harms of prostitution, even if one concedes that they may be profound, will be smaller as a result of prohibition.

THE PERILS OF PROHIBITION

The reason for this is simple: prohibition cannot alleviate the background conditions that contribute to people's motivation to sell sexual services in the first place. To see the significance of this point, consider a partially analogous case. As Luke Semrau⁴ has argued with respect to the debate over establishing a marketplace

for kidneys, there is an important distinction to be drawn between “being pressured to sell X” and “being pressured, with the option to sell X.” If someone is being *directly pressured* to sell her kidney (or become a prostitute, etc.), then prohibiting the selling of X could at least in principle be of some help. (Of course, prohibition often drives problematic vending practices underground, as opposed to getting rid of them, but let us set that point aside for the moment).

On the other hand, if someone is experiencing a more general pressure (such as extreme economic insecurity), but has a number of ways—including, but not limited to, selling X—to begin to relieve this pressure, then prohibiting the selling of X is actually more likely, all else being equal, to make this person even worse off. This is because it would remove (or drive underground, and therefore make more dangerous) at least one otherwise viable option for “making ends meet.” As a consequence, the person who was considering selling X, and who would do so if it were not prohibited, must now turn to an *even less desirable option* (as judged by them) to relieve the more general pressure.

If we wish to benefit sex workers, then, we have reason to give them more options, not take options away. Accordingly, Thomsen may be mistaken when he writes that a central reason to permit prostitution is the benefit it could provide to (disabled) clients (p. 456)¹. It may actually be the benefit to prostitutes.

Still, we agree with Thomsen that legalization of prostitution is not a miracle cure. Unless the social stigma associated with prostitution is also lifted, prostitutes will continue to be harmed and harassed. But there is little reason to believe that prohibition would be better than legalization and regulation—assuming that our goal is to improve the lot of sex workers—insofar as the former would probably increase, rather than decrease, stigma and its associated harms.

Taking these and other factors into consideration, even Thomsen admits that: “the case for prohibition is murkier and weaker than its proponents sometimes suggest” (p. 455)¹. This may seem at first a surprising concession. But we should note that the relative weakness of the case for prohibition is actually implicit from the very beginning of Thomsen’s paper: His argument never states that we have *sufficient* reason to prohibit paying for sex, only that we have *some* reason to do so.

THOMSEN’S CASE FOR AN EXCEPTION FOR PEOPLE WITH DISABILITIES

Thomsen next turns to the case for an exception. In this section, he suggests that, however strong the general case for prohibition is, for people with disabilities, the case is much weaker. In other words, even if we might be justified in prohibiting most people from paying for sexual services, we are not justified (or are much less likely to be justified) in prohibiting people with disabilities from doing so. Two observations lay the groundwork for Thomsen’s position:

- (1) Many or most persons have a sexuality that generates strong needs for sexual relations, and
- (2) Some disabled persons are partially or entirely incapable of satisfying this need except through the purchase of sexual services from a prostitute. (p. 455)¹.

To illustrate what he means by (2), Thomsen cites the case of a man who “couldn’t walk and his carer would bring him. You had to lift him out of the wheelchair and into the Jacuzzi and he was stiff because he didn’t move his arms and legs. He couldn’t move, could get an erection but that was about it” (ref. 5, quoted in p. 455¹).

How strong is our reason to allow this man in particular to pay for sex? To answer this question, we must first observe that the man’s disability didn’t make it so that he *physically couldn’t have sex*.ⁱⁱ If that had been the case, hiring a prostitute could not have helped his situation. Instead, the issue was more that he couldn’t otherwise find a willing sexual partner—for whatever reason—but presumably in large part due to his physical disability.

But if that is the correct view, then the reason this man was not able to have sex without paying for it is not altogether different from the reason many people face—including those who do not have an “obvious” disability of the kind exemplified by quadriplegia. *All sorts of people* find it difficult to find a willing sexual partner—or enough willing sexual partners—to “satisfy” their “[sexual] needs” (to use Thomsen’s words) due to *a whole*

range of issues that have little (or nothing) to do with physical disability. They may simply be perceived as unattractive, for example. Or they may be shy, or face other challenges in forming social or romantic relationships. Alternatively, they may be perceived as very attractive, and be quite comfortable in social settings, but have an insatiable sexual appetite. Are all of these people “disabled” on Thomsen’s account?

DEFINING DISABILITY

It is hard to tell. On the one hand, Thomsen could define “disability” in a very narrow sense that captures only the cases that everyone would recognize—perhaps along the lines of what is typified by the man in the example. But this would result in an unreliable proxy for the real underlying moral issue, which is (presumably) the difficulty that some people face in finding a willing sexual partner(s)—sufficient to meet their sexual needs—without having recourse to payment. The proxy is unreliable because there are many people with disabilities who have satisfying sexual relationships, and many people without disabilities who have unsatisfying, or no, sexual relationships.

On the other hand, Thomsen could define “disability” in a very broad sense, touching generally on the issue of sexual difficulty, which is what he does in fact choose to do. But this carries problems of its own. To begin with, such a broad definition can only pick out a rather vague and amorphous group of people who (to quote from Thomsen) have “an anomalous physical or mental condition that, given [their] social circumstances, sufficiently limits [their] possibilities of exercising [their] sexuality, including fulfilling [their] sexual needs” (p. 455)¹.

But this could include almost everyone. In part, this is due to the nearly boundless room for interpretation surrounding most of the key terms in Thomsen’s definition: “anomalous,” “physical,” “mental,” “condition,” “sufficiently,” and “fulfill,” just to start. To take an example, does “anomalous” include all that is statistically uncommon? Is shyness a mental condition? What about “fulfill”? Would not most married couples report that their sexual needs were not “fulfilled” in some relevant way? Indeed, one survey puts the figure at 57%.⁶

We can see that pinning down the relevant meaning(s) to these words would present an almost insurmountable challenge. Therefore, it would be very difficult to determine who, exactly, should be

ⁱⁱThis term should be interpreted broadly—including such acts as masturbation (by oneself or another)—rather than in a restrictive heteronormative sense encompassing only penile-vaginal intercourse.

Response

considered legitimately “sexually disabled,” such that they could register themselves accordingly and pick up their “prostitution exemption” card (or whatever the practical mechanism would be).

Now as Thomsen notes, these questions are primarily a matter of public policy, not of ethics, and so he is happy to set them aside in order to pursue his more philosophical project. But we would like to suggest that these very same questions point to a deeper problem in Thomsen’s account. Specifically, the underlying issue that appears to be motivating Thomsen’s case for an exception to a ban on prostitution (as we have argued) is the difficulty that some people face in having their sexual needs satisfied without being able to pay for it. But if that is the case, then the group that should be allowed to pay for sex is the same as the group that would actually do so if it were legalized.

So why use disability as a proxy? Perhaps this is due to the belief that people with disabilities pose less of a physical threat to prostitutes than other clients do—as Thomsen argues, and as Jacob Appel has intimated as well.⁷ But if that is the case, then disability would still be an unreliable proxy for the real issue. This is because (a) having a physical disability of some kind does not necessarily make one less able to cause harm to a prostitute, and (b) there are many ways to create security for prostitutes other than taking away all of their non-disabled clients. For example, prostitutes could be permitted to work in brothels that are required to follow health and safety regulations and that are subject to inspections

just like other businesses. Though it might, of course, be objected that there would still be a problem with un-regulated and illegal prostitution, this problem would presumably be even worse with Thomsen’s proposed solution. This is because *all* prostitution (without a relevantly disabled client) would be driven underground.

CONCLUSION

We have tried to show that Thomsen’s argument, while certainly nuanced and carefully laid out, is ultimately not very convincing. This is because Thomsen’s proposal occupies an unstable middle position: either the definition of disability is so narrow as to be unjustifiably arbitrary as a proxy for the real underlying moral issue, or it is so broad as to include almost anyone. Moreover, to the extent that the reasons that motivate Thomsen’s account are in fact good reasons, they would seem to count in favor of legalization along with reasonable health and safety regulations, rather than prohibition with an exemption for people with disabilities. That said, Thomsen’s proposal may have a certain strategic value (insofar as one grants that prohibition is not good policy). Specifically, it might work as a meaningful first step in countries where prostitution is entirely prohibited, by eliciting public support for a narrow exception. This, in turn, could open up a path for eventual legalization.

Acknowledgements Parts of this essay have been adapted from an informal piece by the first author, entitled, “Prostitution, Harm, and Disability: Should

Only People with Disabilities be Allowed to Pay for Sex?,” originally posted at the *Journal of Medical Ethics Blog*, and subsequently published as a short e-letter.⁸ A handful of sentences have also been adapted from an interview with the same author for the website *Daily Nous*.⁹ Thanks to Daniel Goldberg for feedback on an earlier draft of this essay.



CrossMark

To cite Earp BD, Moen OM. *J Med Ethics* 2016;**42**:54–56.

Published Online First 5 November 2015

J Med Ethics 2016;**42**:54–56.

doi:10.1136/medethics-2015-103064

REFERENCES

- 1 Thomsen FK. Prostitution, disability and prohibition. *J Med Ethics* 2015;**41**:451–9.
- 2 Moen OM. Is prostitution harmful? *J Med Ethics* 2014;**40**:73–81.
- 3 Vanwesenbeeck I. Burnout among female indoor sex workers. *Arch Sex Behav* 2005;**34**:627–39.
- 4 Semrau L. The best argument against kidney sales fails. *J Med Ethics* 2015;**41**:443–6.
- 5 Sanders T. The politics of sexual citizenship: commercial sex and disability. *Disability and Society* 2007;**22**:439–55.
- 6 *National Survey of Marital Strengths*. https://www.prepare-enrich.com/pe_main_site_content/pdf/research/national_survey.pdf.
- 7 Appel JM. Sex rights for the disabled? *J Med Ethics* 2010;**36**:152–4.
- 8 Earp BD. Prostitution, harm, and disability: Should only people with disabilities be allowed to pay for sex? *Journal of Medical Ethics* 2015, E-letter. Available at https://www.academia.edu/13252176/Prostitution_harm_and_disability_Should_only_people_with_disabilities_be_allowed_to_pay_for_sex.
- 9 Weinberg J, de Marneffe P, Demetriou D, et al. Philosophers on prostitution’s decriminalization. *Daily Nous*, 13 Aug 2015. <http://dailynous.com/2015/08/13/philosophers-on-prostitutions-decriminalization/>.



Paying for sex—only for people with disabilities?

Brian D Earp and Ole Martin Moen

J Med Ethics 2016 42: 54-56 originally published online November 5, 2015

doi: 10.1136/medethics-2015-103064

Updated information and services can be found at:

<http://jme.bmj.com/content/42/1/54>

These include:

References

This article cites 6 articles, 4 of which you can access for free at:

<http://jme.bmj.com/content/42/1/54#BIBL>

Email alerting service

Receive free email alerts when new articles cite this article. Sign up in the box at the top right corner of the online article.

Errata An erratum has been published regarding this article. Please see [next page](#) or: </content/43/5/350.2.full.pdf>

Notes

To request permissions go to:

<http://group.bmj.com/group/rights-licensing/permissions>

To order reprints go to:

<http://journals.bmj.com/cgi/reprintform>

To subscribe to BMJ go to:

<http://group.bmj.com/subscribe/>

Correction: Paying for sex – only for people with disabilities?

Earp BD, Moen OM. Paying for sex—only for people with disabilities? *J Med Ethics* 2016;**42**:54–6. doi:10.1136/medethics-2015-103064

This article is missing the affiliation of the second author, Moen OM. The affiliation for this author should be:

Centre for the Study of Mind in Nature, University of Oslo, Box 1020 Blindern, Oslo N-0315, Norway; o.m.moen@ifikk.uio.no

J Med Ethics 2017;**43**:350. doi:10.1136/medethics-2015-103064corr1



CrossMark