

Prostitution & Instrumentalization

Rob Lovering argues that a popular argument against prostitution doesn't work.

As you are undoubtedly aware, prostitution is illegal throughout much of the world. You might also be aware that opposition to its criminalization is on the rise. Amnesty International endorsed its decriminalization not long ago, followed by numerous organizations such as the World Health Organization, UNAIDS, Human Rights Watch and, particularly noteworthy for us, philosophers such as Peter Singer, Philip Pettit, and Patricia Marino. Recent cover stories for *New York Magazine* and *The New York Times Magazine* have asked: 'Is Prostitution Just Another Job?' and 'Should Prostitution Be a Crime?'

So how strong are the reasons for treating prostitution as a crime? Some people advocate the continued prosecution of prostitution on grounds to do with the safety or well-being of its participants, or its effects on the wider community. However, another reason also frequently given is that prostitution is immoral. As Donna Hughes, a professor of women's studies, puts it, "Most existing laws concerning prostitution were formulated on the assumption that prostitution is immoral activity, with women being the most immoral participants." (*Making the Harm Visible*, 1999). The question naturally arises: *Is prostitution immoral?* Various philosophers have put forward arguments for thinking so, one of the most notable being that by engaging in sexual activity with someone for payment, the prostitute *instrumentalizes* himself or herself. (Henceforth in this article I'll limit myself to a single set of gender-specific pronouns: she, her, and herself). Let's call this the instrumentalization argument for the immorality of prostitution. But what does this even mean? Well, here are two main understandings of what it means to instrumentalize oneself:

- (i) To use oneself, or to allow oneself to be used, as a mere means to an end; or
- (ii) To block, damage, or destroy one's self-integration.

Let's examine these two understandings of instrumentalizing oneself more closely, and in the process examine the version of the instrumentalization argument that goes with each.

Being Used as a Mere Means to an End

The version of the argument that relies upon the first understanding of instrumentalizing oneself has its roots in the ethical theories of Immanuel Kant. Kant's famous Categorical Imperative says that it is wrong to use a person purely or merely as a means to an end, since to do so is to treat them not as a person but as an object. This is so, Kant adds, even if the person in question is yourself. What exactly is meant by using oneself or allowing oneself to be used as a mere means to an end is an issue over which much ink has been spilled, but one common understanding of it is for oneself to

agree to ends to which one cannot in principle agree (by coercion, manipulation or for any other reason). More specifically, to be used as a mere means to an end is to agree to behavior – be it one's own or another's – to which one, as a rational moral agent, cannot rationally agree. ('Rational moral agent' – hereafter just 'agent' – is an ethical jargon term for someone who is capable of making, and acting on the basis of, moral and nonmoral judgments.) On this understanding, to use oneself or to allow oneself to be used as a mere means to an end is to agree to behavior to which one, as an agent, cannot rationally agree.

The *mere* is important, because we all use people as a means to our ends; by letting them do us any service – cook us a meal, for instance. The question is whether that is *all* we're treating them as. I should also reiterate those final three words, emphasizing the second: cannot *rationally* agree. Whether one is using oneself or allowing oneself to be used as a mere means to an end turns on whether one can rationally agree to the use to which one is being put. If not, then one is thereby instrumentalizing oneself.

For example, suppose someone sincerely desires that others always, invariably tell her the truth. In doing so, she cannot rationally agree to behavior that *prevents* others from telling her the truth. For were she to agree to that, then she would be desiring contradictory things which, in virtually any sense of the word, is not rational. So were she to agree to behavior that prevents others from telling her the truth, then she would be allowing something that contradicts one of her own most fundamental ends; so she would be allowing herself to be used as a mere means to an end, and thus instrumentalizing herself by denying her own nature as a rational agent.

Given this understanding of instrumentalizing oneself, the first instrumentalization argument against prostitution may be understood as claiming that by engaging in sexual activity with someone for payment, the prostitute agrees to behavior to which she, as an agent, cannot rationally agree. Whether this version of the instrumentalization argument is sound turns on whether this claim is true.

So is it? Not at first glance. After all, in agreeing to engage in sexual activity with someone for payment, the prostitute is not, at the same time and in the same respect, also *not* agreeing to engage in sexual activity with someone for payment, which would be a contradiction and hence irrational.

But perhaps the prostitute necessarily desires something *else* that engaging in sexual activity with someone for payment prevents, which would also be irrational. If so, then this version of the instrumentalization argument could be sound.

A number of potentially necessarily desirable things could be proposed here, but for the sake of space let's consider just one, which might however be thought fundamental to the issue at hand. It might be that the prostitute necessarily desires that her agency be *respected*. It's possible that engaging in sexual activity with someone for payment prevents respect for one's agency. With that in mind, two more questions arise: Does a prostitute necessarily desire that her agency be respected? And, if she does, does prostitution deny respect for her agency?

Addressing the first question would involve a complex discussion of the nature of agency; so for the sake of argument, let's just assume that a prostitute *does* necessarily desire that her agency be respected. This brings us to the second question: Does engaging in prostitution prevent respect for one's agency?



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Not necessarily. An effective way of demonstrating this is in steps: the first step being determining whether *in general* engaging in an activity with someone for payment prevents respect for one's agency; and the second step being that of determining whether engaging particularly in *sexual activity* for payment prevents respect for one's agency.

Arguably, engaging in an activity with someone for payment does not in general prevent respect for one's agency. On the contrary, engaging in an activity with someone for payment, instead of, say, for free or because one is coerced, seems partly to *arise* out of one's own respect for one's agency. The purchasing of one's services also *confers respect* upon one's agency. When, say, a professional musician requires that she will be paid for her work, she does so in part out of respect her own agency. Indeed, a requirement to be paid would be bewildering (to say the least) if it were *not rooted in any way* in respect for her agency! And by paying the musician for her work, her employer accepts her chosen conditions of cooperation and thereby respects her agency. Engaging in an activity with or for someone for payment, then, does not appear to prevent respect for one's agency in principle.

As for whether engaging specifically in *sexual activity* with someone for payment prevents respect for one's agency, once again, arguably it does not. To begin with, given that in general, engaging in an activity with someone for payment does not prevent respect for one's agency then neither does

engaging in sexual activity with someone for payment *if* all else is equal. But it might be argued that all else is not in fact equal.

But why think this? What is it about sexual activity that precludes the prostitute from preserving respect for her agency when she engaging in it with someone for payment?

One argument here starts with the claim that when the prostitute engages in sexual activity with someone for payment she (temporarily) *sells her body*, and ends with the claim that she thereby treats herself as if she were an object rather than an agent.

Although there's a lot more to this argument than meets the eye, let's keep things simple and ask, is it true that when someone engages in prostitution, she temporarily sells her body? To determine whether it is, let's first consider what selling things *other* than one's body usually involves.

Ordinarily, when someone sells something – say, a bicycle – she requires payment in exchange for the transfer of ownership of the bicycle from herself to the purchaser. Perhaps what the selling of the prostitute's body involves, then, is the (temporary) transfer of ownership of her body. I'm confident you will agree that this is scarcely credible. As countless philosophers have argued, people, and with them their bodies, do not seem to be the sorts of beings that can be sold or owned, morally speaking at any rate. Whatever else the use of the prostitute's body for prostitution might involve, then, the transfer of ownership of her body is not a part of it, ostensibly. To be sure, the client might end up treating the prostitute *as if* he owns her body. But that he might do so is no indication of, nor does it accord him, actual ownership of the prostitute's body.

Perhaps, then, what the selling of the prostitute's body involves is not the temporary transfer of ownership of her body, but the temporary transfer of *command* over her body.

This transfer of command might be limited or unlimited. Beginning with the latter, instead of arguing the issue let's cut to the chase and suppose that the transfer of unlimited command over the prostitute's body does prevent respect for her agency. However, this does not commit us to holding that prostitution prevents respect for a prostitute's agency, since prostitution (usually) does not involve the transfer of unlimited command over the prostitute's body. For instance, it is standard practice for a prostitute to forbid her client from engaging in certain acts – for example, condom-free intercourse – and to require the client to agree to terminate sexual activity at her discretion (*Women Working*, Eileen McLeod, 1982, pp.38-42). Of course, as before, the client might end up treating the prostitute *as if* he has unlimited command over her body. But once again, that he might do so is no indication of, nor does it accord him, actual unlimited command over the prostitute's body.

So does *limited* command over the prostitute's body prevent respect for her agency? Seemingly not. Firstly, limited commands are *limited*. Accordingly, the client can, and often does, respect the prostitute's agency by regulating his command over the prostitute's body in accordance with the limits put forward by the prostitute herself. Failing to do so would be assault.

Moreover, requesting that somebody perform certain actions or services in return for payment does not *in itself* prevent respect for the seller's agency, if we disregard for a moment the nature of those actions. If it did then, implausibly, virtually *every* kind of service would prevent respect for the seller's agency. Beauticians, accountants, decorators, surgeons, none could sell their services without preventing respect for their agency. But that is very hard to believe.

Much more could be said about this version of the instrumentalization argument: for instance, might engaging in sexual activity with someone for payment be immoral *even if* one can rationally agree to do so? But this will have to suffice.

Prostitution As Self-Disintegration

Let's turn now to the second version of the instrumentalization argument, which relies upon understanding 'instrumentalizing oneself' as being to block, damage, or destroy (hereafter, simply to 'block') one's self-integration.

This version of the instrumentalization argument is advanced by some 'new natural lawyers' (these are ethicists who believe in 'new natural law theory' rather than practitioners of the law). These philosophers contend that by engaging in sexual activity with someone for payment, the prostitute reduces her bodily self to the level of an instrument for her conscious self, and thereby blocks her self-integration (what this blocking might involve will be addressed shortly).

To provide empirical support for the contention that the prostitute reduces her bodily self to the level of an instrument, consider the following description of prostitution provided by former prostitute and retired philosophy professor, Yolanda Estes. Writing of sexual activity between a prostitute and her client, Estes remarks:

"[The prostitute's] yielding to any sensations that might arise in their sexual activity, responding either with frank displeasure or with genuine arousal to what is happening in and to her body, jeopardizes the integrity of her relationship with the client, others, and herself. To avoid this danger ... she must detach herself from the bodily events without, for all that, losing control over her body." (*The Philosophy of Sex*, ed. Alan Soble and Nicolas Power, 2008, p.357)

In other words, the prostitute renders her own body an instrument separate from her inner self in order to preserve the necessarily limited, tightly defined nature of her relationship with her client as well as to protect herself. But is it true that she thereby blocks her self-integration? And even if she does, is prostitution thereby immoral?

In order to answer the first question, clearly we need to know what self-integration involves. Consider the following example of a self-integrated act provided by new natural lawyers Robert George and Christopher Tollefsen (written, allow me to stipulate, from George's perspective):

"When I wish to eat an apple, I reach out and take it; I then take a bite. Thus, I see, reach for, touch, and taste the apple. In all these actions, consciousness – mind – and body are fully integrated. My

seeing is not like the inner presentation of a picture. My reaching out does not consist of an inner attempt, and then an external reach. Nor do touch and taste consist of an external sensation and then an internal one. Internal and external are integrated in all these happenings.”

(*Embryo: A Defense of Human Life*, 2008, p.71)

According to George, then, his eating this apple involves his desiring (conscious component) to eat (bodily component) an apple, which gives rise to his eating (bodily component) and tasting (conscious component) an apple, thereby fulfilling his desire (conscious component) to do so. In this his conscious and bodily components are fully integrated because they function as an interrelated, harmonious whole: in short, they function as one.

Now consider, instead of the eating of an apple, the actions that a prostitute performs during sex with a client. Each consists, surely, of a conscious desire to act (conscious component), followed by the physical action itself (bodily component), followed by experiencing (conscious component) and so on. Again, the conscious and the physical components of the act are intertwined and integrated into a seamless whole.

Naturally you might object that, appearances aside, the prostitute does *not*, in fact, desire to perform those actions at all; she does so only because she desires the payment that comes from doing it. But George and Tollefsen's example of a self-integrated act says nothing about the *strength of* or the *reason for* George's desire to eat an apple. Nor should it, I submit, as neither aspect seems to bear upon whether an act blocks one's self-integration.

Regarding the strength of George's desire to eat an apple, let's take the worst-case scenario: that, contrary to the narrative; it's not just that George has no desire to eat an apple, George strongly desires *not* to eat an apple. Does George block his self-integration if he goes ahead and eats one anyway? Not necessarily. If, for example, George desires something that eating an apple provides, such as nourishment, and he eats an apple in order to fulfil *that* desire, then it seems his doing so does not block his self-integration, despite the fact that he strongly desires not to eat an apple, as it were for its own sake. After all, his bodily activity (eating an apple) is a response to his conscious state (the desire for nourishment), performed for the purpose of fulfilling that conscious state and producing other bodily and conscious states (to be nourished and to experience the effects of being so). Indeed, if his eating an apple under such conditions *did* block his self-integration, then many other everyday activities would suddenly turn out to be problematic for the same reason. For example, many people exercise because they desire something that doing so provides – namely, physical health – despite the fact that they otherwise strongly desire *not* to exercise. But the idea that exercising under these conditions blocks one's self-integration is implausible.

As for George's reason for eating an apple, this, too, seems not to bear upon his self-integration. Whether he does so to acquire nourishment, experience pleasure, or even appease a coercer, his doing so does not appear to block his self-integration. Let's consider just the most extreme of these, to appease a coercer: a fruitarian extremist with a gun who orders George to eat an apple. George's bodily activity (eating an apple) is a response to his conscious state (the desire to appease his coercer), performed for the purpose of fulfilling that conscious state and producing other bodily and

conscious states (to appease and to experience the effects of doing so). So even reluctantly eating an apple in order to appease a coercer, then, involves conscious and bodily components that are ostensibly integrated. To be sure, George's eating of an apple under such conditions is not fully voluntary. But this does not seem to block his self-integration, since an act that is not fully voluntary is not one and the same as an act that is unfree or disharmonious.

And even if engaging in sexual activity with someone for payment *did* block one's self-integration, it is arguably not thereby immoral. Or rather, if reducing one's bodily self to the level of an instrument for one's conscious self and thereby blocking one's self-integration were immoral, then many activities we previously believed to be morally permissible would (implausibly) be immoral too. Take being on the receiving end of a (non-sexual) massage. Many people do so for the sheer feeling of it, thus reducing their bodily selves to the level of instruments for their conscious selves. Is being on the receiving end of a massage thus immoral? If it is, so much the worse for this version of the instrumentalization argument, I say.

Of course, the individual on the receiving end of a massage may not have to combat responding to it with either "genuine arousal" or "frank displeasure" and, in turn, be forced to "detach herself from the bodily events without, for all that, losing control over her body," as Estes contends the prostitute does. So perhaps it is the specific way in which the prostitute reduces her bodily self to the level of an instrument that renders prostitution immoral. But this, too, is implausible, because this specific way of instrumentalizing oneself is not unique to prostitution. Consider mind-numbingly boring jobs such as paper-filing, or horribly disgusting jobs such as cleaning portable toilets. If those who perform such work are to avoid responding "with frank displeasure" they must, paraphrasing Estes, detach themselves from the bodily events without losing control over her bodies. Yet there nevertheless seems to be nothing immoral about performing either job. And as for responding with genuine arousal, consider that some theater productions contain scenes involving simulated sexual activity. If the actors are to avoid responding with genuine arousal (and they should, as a marvelous scene from the movie *Birdman* illustrates) they must detach themselves from the bodily events without losing control over their bodies. Again, there seems to be nothing immoral about their doing so.

A Modest Conclusion

Much more can be and has been said about the instrumentalization argument for the immorality of prostitution, and there are many other arguments for the immorality of prostitution. I'll conclude, then, on a modest note: To the extent that opposition to prostitution is rooted in the above versions of the instrumentalization argument for the immorality of prostitution, to that extent we have reasons to be wary of it.

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