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A libertarian society cannot be brought about merely by intervening in the political cut-and-thrust or by a superficial advertising campaign. The roots of the state are buried in thousands of years of history and libertarians recognize the importance of a sustained intellectual assault on the foundations of statist ideology — whether it be conservative, fascist, socialist or solidarist.

The primary aim of the Libertarian Alliance is to build up an effectively organized body of committed and knowledgeable libertarian propagandists. The Libertarian Alliance produces pamphlets, leaflets and a journal, and also conducts discussions, debates, lectures and seminars.

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**STOP
PERSECUTING
PROSTITUTES!**

**The
Libertarian
Alliance**

PREFACE

Prostitution is not illegal in Britain, and hardly anybody can be found to argue that it should be made illegal. This would be regarded as just as ridiculous as making sex outside marriage illegal, or for that matter, sundry sexual variations within marriage.

But there are numerous laws which persecute prostitutes and their associates. The result is that it is almost impossible to be a prostitute without breaking the law. Consequently, prostitutes are effectively denied the protection of the law, since by bringing a complaint they would incriminate themselves. Prostitution is therefore attended by various "abuses" which from time to time "appal and outrage all decent people." The decent people then think of ways to "tighten up" the law on prostitution, thus further aggravating the problem.

To criminalize any activity is to associate it with other kinds of crime. The classic case which everyone knows is prohibition of alcoholic beverages in the United States during the 1920s. A similar process is at work today with other prohibited drugs.

Some people consider prostitution immoral, but the libertarian view is that nothing should be penalized by law solely because it is immoral. The fact that libertarians defend freedom for prostitutes does not mean that we think prostitution is fine and good. Neither does the previous sentence mean that we deny prostitution is fine and good.

Libertarians include people of many religions and none. Where we all agree is that all religions, and atheism, should have freedom to organize and preach as their adherents see fit. Some libertarians are vegetarians or teetotalers, but they do not favour the use of force by the state to attack people who eat meat or drink beer. Some libertarians may think that prostitution is wonderful, others that it is disgusting. That has nothing to do with the justice of discouraging it by law.

The function of law, in the libertarian view, is to protect people from attack by others. "Attack" has to be interpreted broadly, but not so broadly as to imply that somebody can be "attacked" simply by knowing that someone else is doing something revolting.

Prostitution is usually defined as the giving of sexual favours (not necessarily "intercourse") for money or other rewards, but an exception to this definition is usually allowed for the marriage contract, and the courts have not yet applied it

to the woman who gives her boyfriend a big hug and kiss after he has managed to get tickets for the proms.

If one person buys a sexual service from another, without force or fraud, that is a matter between the two individuals concerned. No person's rights have been infringed. There is no victim, and where there is no victim, in the libertarian view, there is no crime.

In 1980 the Criminal Law Revision Committee gave consideration to the law on prostitution. The Committee called for evidence and issued a list of questions and notes for the guidance of people submitting evidence. We reprint below the questions and notes (shortened), together with our answers. The answers were written by our member David Ramsay Steele, were approved by the Executive Committee and submitted to the Criminal Law Revision Committee at the Home Office in August, 1980.

EXECUTIVE COMMITTEE, LIBERTARIAN ALLIANCE

EVIDENCE ON PROSTITUTION

1. DO YOU REGARD THE EXISTING LAW (S. 30 AND 31 OF THE SEXUAL OFFENCES ACT 1956) AS ADEQUATE, OR SHOULD ANY CHANGES BE MADE, FOR EXAMPLE, SHOULD THE OFFENCE APPLICABLE TO MEN BE AMENDED SO AS TO APPLY EQUALLY TO BOTH MEN AND WOMEN?

It is an offence under the Sexual Offences Act 1956:

- (i) for a man to live wholly or in part on the earnings of prostitution (section 30).
- (ii) for a woman for the purposes of gain to exercise control, direction or influence over a prostitute's movements in a way which shows she is aiding, abetting or compelling her prostitution (section 31).

An effect of the offence under s. 31, which is applicable to women, is that it does not extend, for example to women shopkeepers who display advertisements by prostitutes and make large profits as a result. However, if the male offence, in s. 30, were extended to women a person employed by a prostitute (eg as a maid) would possibly be at risk of prosecution.

REPLY

In the opinion of the Libertarian Alliance, s. 30 and 31 of the Sexual Offences Act 1956 should be repealed. The Law should be amended so as to apply equally to men and women, by removing the offences of living on the earnings of prostitution and of aiding, abetting or compelling prostitution.

In our view it is inconsistent, incoherent and tending to erode respect for the law, to endeavour to discourage by judicial means an activity (prostitution) which is not explicitly illegal, by covertly sniping at it through penalization of its concomitants. There should be no grey areas of legality: that which is not unlawful should be regarded by the legal system as entirely legitimate.

It is clearly unthinkable and unworkable to make prostitution *per se* an offence. It is also unjust, since prostitution consists of voluntary acts between consenting adults, acts which in themselves do not aggress against anyone else. But these considerations apply also to all those voluntary transactions into which prostitutes may wish to enter.

If section 30 were strictly interpreted it would be impossible for a prostitute to live, because the butcher, the baker and Marks and Spencer would be unable

to serve her without living in part on her earnings. As long as there are prostitutes, we all live in part on their earnings, perhaps at several stages removed in the market process. Although this interpretation would be ludicrous, there can be no reliable and sensible demarcation between it and any other interpretation.

We agree that it should be unlawful to *compel* anyone's prostitution. However, it is unlawful to compel someone to take up *any* job (that is, to enslave her). There is no reason for a special law forbidding compulsion to any particular occupation, whether it be deep sea diving, dentistry or prostitution. It may be that the use of compulsion does arise more frequently in the case of prostitution, but that is not an argument for a special law on the matter. (The fact that chocolates are stolen more frequently than smelling salts does not demonstrate that the law relating to theft has to make any mention of chocolates). It is an argument for the removal of all statutes which penalise activities associated with prostitution, thus condemning prostitutes to live in a semi-legal twilight in which violent coercion is stimulated.

2. SHOULD THE EXISTING LAW ABOUT BROTHEL KEEPING – UNDER WHICH IT HAS BEEN HELD THAT IT IS AN OFFENCE FOR TWO OR MORE WOMEN TO USE PREMISES FOR THE PURPOSE OF PROSTITUTION – REMAIN UNALTERED?

Under the Sexual Offences Act 1956 it is an offence for any person to keep a brothel, or to manage or act or assist in the management of a brothel.

For legal purposes, a "brothel" means any place resorted to by persons of both sexes and habitually used for the purposes of illicit sexual intercourse. Premises cannot, however, be a brothel unless there are at least two persons using them for the purpose of illicit sexual intercourse or acts of lewdness (*Caldwell v Leech* [1913] 77 JP 254). Rooms or flats let separately to individual women, though they may be in the same building, constitute separate premises for this purpose (*Strath v Foxon* [1955] 3 All ER 398). But they may be a brothel "if they are sufficiently close to each other to constitute in effect what might be called a nest of prostitutes," or at least if there is some common management of the business of prostitution or if (as in this case) at least two of the prostitutes are collaborating in their business (*Donovan v Gavin* [1965] 2 QB 648).

REPLY

In our view s. 33 should be repealed. There ought to be no legal sanction against keeping an honest brothel, which is to say, a business enterprise organizing the provision of desired services to customers, on a voluntary basis without coercion or fraud. Since the sale of these services is not illegal, it is

inconsistent to make illegal the organization and accommodation of their provision.

The total decriminalization of brothels would have a wholly beneficial effect upon them, and upon their customers and employees. Brothels would vie to provide the safest, least embarrassing, most enjoyable, cleanest, healthiest and most elegant product at the lowest price. The professions of prostitution and pimping would become well-ordered, well-organized, sober and law-abiding. Low-quality, criminal operators would lose business and become no more common than they are in professions like nursing or law.

3. DO YOU RECOMMEND ANY CHANGES IN S.34 OF THE ACT, UNDER WHICH IT IS AN OFFENCE FOR THE LESSOR OR LANDLORD TO LET PREMISES KNOWING THAT THEY ARE TO BE USED IN WHOLE OR IN PART AS A BROTHEL OR TO BE A WILLING PARTY TO THAT USE CONTINUING?

REPLY

Section 34 ought to be repealed. We can see no good reason to forbid lessors or landlords from letting their premises for any voluntary and non-coercive activity.

4. DO YOU RECOMMEND ANY CHANGE IN S.35, UNDER WHICH IT IS AN OFFENCE FOR THE TENANT, OR OCCUPIER OR PERSON IN CHARGE OF ANY PREMISES KNOWINGLY TO PERMIT THE WHOLE OR PART OF THE PREMISES TO BE USED AS A BROTHEL, AND THE PROVISIONS OF THE FIRST SCHEDULE TO THE ACT DEALING WITH ASSIGNMENT OR DETERMINATION OF A LEASE ON CONVICTION FOR AN OFFENCE UNDER THIS SECTION?

REPLY

Section 35 ought to be repealed. Tenants, occupiers or persons in charge of premises ought to be free to permit the premises to be used as a brothel. Naturally this freedom (as that of the landlords or lessors) would be subject to contractual obligations. For example, leases or tenancy agreements might stipulate that there be no children, pets, noisy parties, etc.

5. DO YOU RECOMMEND ANY CHANGE IN S.36 OF THE ACT, UNDER WHICH IT IS AN OFFENCE FOR A TENANT OR AN OCCUPIER KNOWINGLY TO PERMIT THE WHOLE OR PART OF THE PREMISES TO BE USED FOR THE PURPOSES OF HABITUAL PROSTITUTION?

REPLY

We recommend that section 36 be repealed.

6. ARE THERE ANY GAPS IN THE LAW ABOUT BROTHELS AND HABITUAL PROSTITUTION WHICH OUGHT TO BE FILLED, OR OTHER CHANGES WHICH OUGHT TO BE MADE?

REPLY

The Libertarian Alliance recommends that prostitution be put legally on a par with any other peaceful industry which caters for the wants of responsible paying customers. No law should even mention prostitution. All laws which persecute people simply because they practise a particular (lawful and non-aggressive) trade are unjust, morally indefensible, irrationally discriminatory and incipiently totalitarian.

Furthermore, the anti-prostitution laws have a wholly deleterious effect upon law enforcement generally. For example:

(a) These laws squander the valuable resources and manpower of the police, prison officers, probation service, courts etc. The supreme function of law is to protect individuals against aggression: violent attack, invasion of property, threats, nuisances and fraud. The state law enforcement agencies are not displaying spectacular success in performing this function, and they can obviously ill afford to divert resources to the discouragement of voluntary and victimless transactions.

(b) An occupation which is not unlawful and which is certain to continue on a substantial scale, yet which cannot be practised without contravening the law, produces a sub-culture of pervasive criminality — as in the celebrated case of the production of alcoholic drinks during Prohibition in the United States. The protection of the law is effectively withdrawn from numerous individuals. Consider, for example the position of a prostitute abused by her employer or landlord. She is effectively denied the legal protection available to any other employee or tenant.

(c) The enforcement of the law against prostitution has a degrading and brutalizing effect upon the police and others who engage in it. Whereas protecting the public from theft, assault, rape and murder is heroic as well as patently necessary, harassing peaceable women who are not harming anyone is so vile and despicable that no one could engage in it and retain an ounce of self-respect. Furthermore, the police's job can hardly amount to anything more than conducting random sallies into a substantial, popular trade which they can have no hope of seriously curbing. Cynicism and corruption are thus endemic. In effect the police operate a protection racket against the prostitutes.

7. ARE THE EXISTING PROVISIONS OF THE CIVIL AND CRIMINAL LAW ADEQUATE TO COMBAT NUISANCE CAUSED BY PROSTITUTES IN "RED LIGHT" DISTRICTS, EG:

(A) ANNOYANCE TO NEIGHBOURS AND OTHER RESIDENTS IN THE VICINITY

(B) USE OF ILLUMINATED SIGNS ETC. TO INDICATE WHERE AND WHEN PROSTITUTES ARE AVAILABLE?

REPLY

The Libertarian Alliance shares the widespread concern about nuisances and annoyances which may be imposed by some individuals upon others. Whilst we do not believe that some people, just because they don't like prostitution, should be entitled to interfere with it, we emphatically agree that those engaged in prostitution should not be entitled to impose its harmful effects upon others.

The question of annoyance should be considered in two parts: (a) annoyance which would be just as great regardless of its source — for instance, car doors slamming late at night; (b) annoyance which arises simply from the subjective awareness that prostitution is going on. In *neither* case is there any sound reason to have a law which singles out prostitution for special mention. Whatever means are chosen to control (a), they should apply even-handedly to any source of nuisance. A cinema, church or youth club may well cause annoyance to nearby residents, and there is no just cause to give these institutions privileges over brothels. However, it may well be that if the tiresome legislation which discriminates against prostitutes were entirely removed, there would be less incentive for brothels to be operated in ordinary residential streets.

As for (b), it is of course no justification for legal penalties against prostitution that some people do not like it, any more than penalties for some unpopular form of religious worship could ever be justified, no matter how intense or how widespread the moral revulsion they might arouse. It would be end to all liberty if the mere knowledge that some disliked activity was going on in the neighbourhood turned out to be grounds for stopping that activity. It should be noted that people can always move from the vicinity of a brothel (or mosque, or football ground) and there are various non-coercive means by which residents and property-owners may band together to limit some undesired activity in their locality.

8. IS THE LAW CONCERNING IMMORAL EARNINGS, BROTHELS ETC. SUFFICIENT TO DEAL WITH THE PROBLEMS WHICH ARISE IN SOME HOTELS, EG:

(A) ROOMS HIRED TO PROSTITUTES FOR THE PURPOSES OF HABITUAL PROSTITUTION

(B) LOUNGES USED TO PICK UP CLIENTS

(C) HOTEL STAFF CONTACTING PROSTITUTES?

REPLY

Since prostitution and the running of brothels are matters of voluntary agreement between consenting participants, and do not injure anyone else, they are not the legitimate concern of anyone else, including the state. The question implies that the use of rooms for habitual prostitution, the use of lounges to pick up clients, and the contacting of prostitutes by hotel staff are "problems". These are in no way "problems" to those responsible. Their problem is possible interference by the police. Presumably these practices may be problems for those who could be embarrassed or annoyed by witnessing them, just as it is a problem for the non-smoker if he finds that the lounge is full of cigarette smoke or for the vegetarian if he finds that all the meals contain meat. If they care enough about it, the non-smoker will seek out hotels which have no-smoking areas, the vegetarian will seek out hotels which provide ample vegetarian meals, and the person with an intense distaste for prostitution will seek out hotels whose managements see to it that prostitution is discouraged on the premises. None of this is any of the state's business.

9. ARE THERE ANY OTHER PROBLEMS OF THIS TYPE WHICH NEED TO BE DEALT WITH BY THE CRIMINAL LAW?

REPLY

No.

10. SHOULD ANY CHANGES IN THE EXISTING LAW BE MADE CONCERNING:

(A) ADVERTISEMENTS FOR PROSTITUTES' SERVICES IN SHOP WINDOWS OR DISPLAY CABINETS (USUALLY IN EUPHEMISTIC TERMS, SUCH AS "FRENCH LESSONS")

(B) ADVERTISEMENTS IN NEWSPAPERS, 'CONTACT' MAGAZINES ETC?

The Law Commission have pointed out that under the present law the placing or display of these advertisements in shop windows or display cabinets outside shops in euphemistic terms such as "French lessons" or "doll for sale", and which overtly are not usually indecent, does not in itself constitute any offence. A male shopkeeper who displays them may, however, commit the offence under s.30 of the Sexual Offences Act 1956 of knowingly living wholly or in part on the earnings of prostitution, and there have been successful prosecutions of shopkeepers who have made the advertisements a substantial source of income. It is understood that the police do not prosecute without giving a caution first.

The offence applies only to men, however, so that no similar action can be taken against a woman shopkeeper. While it is possible that a jury might decide that the agreement between a shopkeeper and a prostitute or her pimp for the shopkeeper to advertise the prostitute's service in this way constitutes the offence of conspiracy to corrupt public morals, this conduct has not, so far as the Law Commission were aware, been so prosecuted.

Where advertisements displayed are overtly indecent they are subject to prosecution under existing legislation — the Indecent Advertisements Act 1889 and the Vagrancy Act 1824.

REPLY

Following our recommendation under Question 1 above, it ought not to be an offence to live on the earnings of prostitution, and this applies to the display of advertisements. The whole notion of "conspiracy to corrupt public morals" is incoherent and unjust, and should cease to be an offence. We favour the repeal of the Indecent Advertisements Act of 1889 and the Vagrancy Act of 1824. All possibility of prosecution should be dispelled, even when the advertisements are "indecent".

11. IS THE EXISTING LAW CONCERNING BROTHELS, LIVING OFF IMMORAL EARNINGS ETC. ADEQUATE TO DEAL WITH PROSTITUTION IN MASSAGE PARLOURS, SAUNA BATHS AND SIMILAR ESTABLISHMENTS? ARE THERE ANY CHANGES IN THE LAW WHICH YOU WOULD RECOMMEND?

REPLY

Like most of the others, this question is so framed as to strongly suggest that the only changes worth considering are in the direction of greater severity. It asks whether the existing law is "adequate" (for what?). It does not ask whether the existing law is compatible with elementary civil liberty. Doubtless the law will never be adequate for those who are always seething with the malicious desire to poke their meddling fingers into other people's lives. For our part, we see no need for a law of prostitution to apply to massage parlours, sauna baths, hotels, hot dog stalls, paddling pools or putting greens.

12. IS THE EXISTING LAW ABOUT LIVING OFF IMMORAL EARNINGS, PROCURING ETC. ADEQUATE TO DEAL WITH PROSTITUTION UNDER THE COVER OF ESCORT AGENCIES? ARE THERE ANY CHANGES WHICH YOU WISH TO SUGGEST?

REPLY

As prostitution is voluntary, non-aggressive and legal, it is difficult to see why

it has to be "dealt with", under cover of escort agencies or not. We wish to suggest that escort agencies be left alone.

13. SHOULD THE EXISTING PROVISIONS ABOUT SOLICITING BY PROSTITUTES IN STREETS AND PUBLIC PLACES BE RETAINED?

Experience has shown that men solicited by prostitutes are usually unwilling to give evidence and accordingly the Working Party on Vagrancy and Street Offences and the Wolfenden Committee did not favour any form of provision requiring proof of annoyance.

REPLY

The existing provisions should be entirely repealed. There are ample laws regulating annoying behaviour in the streets. Where soliciting is a nuisance it can be dealt with under these laws. Where it is no nuisance, there is no justification for restricting it. Soliciting is salesmanship, the offer of services at a price. The legal system should certainly enable people to be protected against annoying or embarrassing salesmanship, but there is no justification, in our opinion, for singling out prostitution for special mention. Many people are annoyed to be approached by representative of religious sects, selling books and records. We recommend that prostitutes soliciting be treated exactly on a par with these religious solicitors.

Many men heartily wish to be approached by prostitutes, and are extremely annoyed to have this amicable encounter hindered by uninvited third parties.

14. SHOULD THE PRESENT SYSTEM OF ADMINISTERING TWO CAUTIONS BEFORE PROSECUTION REMAIN UNALTERED?

It is an offence under s.1 of the Street Offences Act 1959 for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution. But there is a cautioning system, under which a woman who has not previously been convicted of an offence under this section is not charged with an offence unless she has been cautioned by the police on at least two occasions and the cautions have been formally recorded. Although this system is extrastatutory, s.2 of the Act provides for a procedure for getting unjustified cautions expunged from the records.

REPLY

As there should be no offence of "soliciting", it follows that there should be no system of two cautions, or any other. The system of two preliminary cautions arose partly because, in the absence of complaints from those solicited, identification of soliciting prostitutes is a hit and miss affair.

15. IS A NEW OFFENCE REQUIRED TO DEAL WITH "KERB CRAWLING" AND RELATED BEHAVIOUR BY MEN WHO SOLICIT WOMEN IN PUBLIC PLACES?

The Working Party on Vagrancy and Street Offences considered that a new offence should be created to control "kerb crawling" and related behaviour on the lines of it being an offence for a man persistently to accost a woman or women for sexual purposes in a street or public place in such circumstances as are likely to cause annoyance to the public, such as residents and users of the street.

"Kerb crawling" used to be prosecuted under s.32 of the Sexual Offences Act 1956, which provides that "it is an offence for a man persistently to solicit or importune in a public place for immoral purposes" until the case of *Crook v Edmondson* [1966] 2 QB 81.

REPLY

The Libertarian Alliance sympathizes with women who are embarrassed and intimidated by kerb-crawlers and others, and we think that there ought to be some legal protection for these women. However, we point out that a great deal of this unwelcome accosting arises precisely because prostitution is persecuted. Consequently prostitution is not entirely above board, it is not plainly labelled and the conditions of supply are sometimes uncertain.

In our opinion, this is one of many problems which will ultimately be solved only by the total de-nationalization, and transfer to private ownership, of all streets, roads and public places. Different streets, roads, squares, shopping centres, arcades and footpaths would be subject to various kinds of regulation ("house rules") by their owners, in the same way as hotels, motels, department stores, theatres, hospitals and casinos. Women would know which rules prevailed in different streets and be able to choose where to go. Those who wished to minimize the possibility of being accosted, and those who wished to make and receive sexual overtures, would frequent different locations. Specialization of streets in this way tends to occur even now, but government ownership prevents its being put on a firm contractual basis.

16. ARE ANY CHANGES REQUIRED IN THE LAW REGARDING PROCURING GIRLS FOR THE PURPOSE OF PROSTITUTION AND CAUSING PROSTITUTION?

There are provisions concerning procurement and causing the prostitution of women in s.23 and 22-29 of the Sexual Offences Act 1956. These include the following sections on which the Committee would be particularly glad to have any observations:

Section 2: Procurement of women by force.

Section 3: Procurement of women by false pretences.

REPLY

The Libertarian Alliance supports the law against recruitment to any profession by force or fraud, but can see no reason to make this law relating to one profession any different to the same law as it relates to every profession. It is the force or fraud which alone is aggressive and therefore justly forbidden by law. The nature of the job has nothing to do with it.

17. DOES THE LAW ADEQUATELY DEAL WITH HOMOSEXUAL PROSTITUTION? (SEXUAL OFFENCES ACT 1967 S.4-6).

REPLY

In our view homosexual prostitution should not be treated by the law in any way differently from heterosexual prostitution — and that includes the age of consent.

18. WHAT FORM OF PUNISHMENT DO YOU RECOMMEND FOR OFFENCES BY PROSTITUTES? IF YOU DO NOT REGARD IMPRISONMENT AS APPROPRIATE FOR MINOR OFFENCES, ARE THERE ANY ALTERNATIVES WHICH YOU CAN SUGGEST (BEARING IN MIND THAT FINES WOULD NORMALLY BE PAID OUT OF THE EARNINGS OF PROSTITUTION)?

REPLY

If a prostitute should happen to commit an aggressive act against a fellow human being, we would recommend the same form of punishment as for the same offence committed by a violinist or welder. In general we hold that where possible "punishment" should take the form of being forced to make restitution to the victim. Naturally we would expect this restitution, where it is financial, to be paid out of earnings, and the fact that they are earnings of prostitution is a matter of complete indifference.

19. ARE THERE ANY OTHER PROBLEMS CONCERNING PROSTITUTION WHICH NEED TO BE CONTROLLED BY THE CRIMINAL LAW?

REPLY

The outstanding problem is that prostitutes are routinely victims of aggression, by the police and other functionaries of the state, and by the prostitutes' landlords, employers and clients. But we do not call for special laws

against these attacks. We contend that removal of discriminatory legislation against prostitutes will suffice to give them the same legal protection as everyone else.