On the morality of commercialized sex

-moral issues on commercial sex from contractarian and feminist ethics perspectives.

Moral och kommersialiserat sex

-kontraktsetiska och feministiska perspektiv på kommersialiserat sex
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Abstract
The purpose of this study is to evaluate and problematize the moral aspects of commercialized sex as presented within examples of contractarian and feminist moral positions. I describe, define and compare the arguments and moral reasoning in relation to these moral positions. There are distinctive differences as to the analysis of causes and effects and the morally based actions needed to address them. Both the contractarian and the feminist moral positions contain notions that the gender related problems of commercialized sex is a cultural and societal problem dependent on structure and attitudes. I also show that some arguments share similarities between the moral positions and that there may be a few particular similarities as to fundamental moral values shared between moral positions. Commercialized sex culture can be seen as both a causal and effectual problem depending on moral position. The causal problems of culture share mutual similarities in the notion that commercialized sex become a kind of cultural indicator reflecting general societal inequalities. I also address the notions on alleged limitations in legislation and the alleged need for broader measures in order to create sustained attitudinal change.

Keywords: contractarianism, feminism, moral, commercialized sex, society, inequality.
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1. General introduction

1.1 Introduction

Prostitution and the different practices within the domain of commercialized sex are much debated issues and the question on the moral implications and moral legitimacy of commercialized sex is addressed within contemporary ethical perspectives such as social contract ethics and feminist ethics. There are opposing views within these perspectives on whether commercialized sex should be viewed as morally right or even legal. A key moral question could thus be raised whether commercial sex should be regarded as either desirable or undesirable? This thesis is a modest attempt at describing and evaluating some basic moral notions on commercialized sex from contractarian ethics and feminist ethics perspectives. My main goal is to present and evaluate a select choice of contributors to moral issues, each representing these moral perspectives, and describe their respective moral arguments, either defending or rejecting the social practice of commercialized sex.

First I will present some key arguments defending commercialized sex as proposed by Lars O. Ericsson representing a mainly contractarian perspective. Secondly I will offer moral arguments for and against commercialized sex within feminist ethics. I regard feminist ethics is particularly interesting due to its complexity and diverse opinions on these particular issues. Within the feminist tradition, Martha Nussbaum will represent a feminist stand mainly for commercialized sex and Debra Satz will represent a feminist stand mainly against commercialized sex. I will evaluate the different moral stands using argumentative analysis and a discussion on the moral content and moral tenability of the relevant moral issues at hand. I will and also touch upon possible moral implications that could affect current Swedish legislation.

In covering the practice of commercialized sex I will equate the term with the broad definition of sex work as provided by Ronald Weitzer:

Sex work involves the exchange of sexual services, performances, or products for material compensation. It includes activities of direct physical contact between buyers and sellers (prostitution, lap dancing) as well as indirect sexual stimulation (pornography, stripping, telephone sex, live sex shows, erotic webcam performances). (Weitzer, R., 2000, p. 1).
Commericalized sex can thus be described as a continuum of various sex work practices, including direct or indirect bodily services. However, the moral discourse seems mainly to focus on the practice of prostitution, hence forming the centre of gravity of this thesis.

1.2 Structure and purpose of the study

1.2.1 The purpose of this thesis
The purpose of this thesis is twofold: 1. First, I will try to describe and define some particular moral positions from contractarian ethics and feminist ethics perspectives regarding commercialized sex and how these moral positions can be motivated. 2. Secondly, I will compare and analyse the different moral positions in order to evaluate the moral tenability, divergences and possible convergences between the different positions.

Given the scope and complexity of the issues related to the chosen topic from a multitude of moral stands and intuitively based opinions, I have chosen to limit the scope by picking the particular moral stands of contractarian ethics and feminist ethics. I have chosen this approach due to contractarian ethics and feminist ethics apparently conflicting moral reasoning but also a notion that there might be some areas of interest to be revealed which could, perhaps, include some connoting moral views.

1.2.2 Method and methodology
I will adopt a descriptive, qualitative approach utilizing a methodology of critical and comparative literature analysis together with argumentative analysis.

1.2.3 Disposition/structure
Following the introductory content of chapter 1, I will proceed in chapter 2 by briefly describing the foundations and general outlines of the two major theoretical perspectives covered in this thesis. In chapter 3 I will more specifically outline the particular moral positions towards commercialized sex, specifically a contractarian position defending commercialized sex and also a feminist moral stand for and a feminist moral stand against commercialized sex. The descriptions of the moral positions will be based on specific examples where I will highlight some key moral arguments found within each perspective. In chapter 4, I will problematize and compare the different positions vis-à-vis each other in form of an argumentative analysis. In chapter 5 follows a discussion where I will expand the argumentative analysis into an evaluation of the content and plausibility in each position, also
utilizing additional moral theory references. I will also briefly address possible implications for the current Swedish sexual legislation. Finally I will summarize and conclude my findings in relation to the purpose and research questions of this thesis.

1.2.4 Delimitations

I will exclude commercialized sex befalling minors and/or child prostitution due to its clear legal and moral distinction. I will also exclude trafficking and sexual slavery issues. These issues could indeed be considered as related, interconnected and very serious problems. However, I must separate these issues due to the theoretical distinction, which exist in the parts of the moral discourse that I will cover. This distinction, separating consented voluntary commercialized sex and forced commercialized sex (often emanating from trafficking), is also discussed by Ditmore (2008). The moral and indeed legal problems within the areas of minors and/or trafficking cannot be defended and they cover social and criminal problems, which involve particular moral and legal implications that deserve proper discussion beyond the particular scope of this thesis.

1.2.5 Commercialized sex, a gender specific issue?

It could be questioned whether the topic of commercialized sex should be considered to be a gender specific domain and if moral issues within commercialized sex ought to be considered as “feminist exclusive”? By all accounts, the practices within commercialized sex are not gender exclusive in any way. There are both male and female commercialized sex workers within the continuum of commercialized sex practices (Satz, 1995). However, according to Hochschild (1983), there is a significant and more widespread expectation for women to engage in the field of commercialized sex than there is for men. Also, according to this author, the consequences for women are socially much harder than for men within commercialized sex. There is also a wider acceptance for men (both homo- and heterosexual) performing commercialized sex within the male gay community (Brewis & Linstead, 2000). Hence, the framework of this thesis is focused on women as generally being the sellers and men generally being the buyers of commercial sex services.
2. Theoretical perspectives

2.1 Social contract theory

The origins of social contract theory can be traced to the enlightenment era and the emergence of, predominantly male influenced, liberal political theory in the 18th century. The basic moral justification in social contract theory can be described as: the justification actions are right when they adhere to fundamental societal rules for behaviour and cooperation that free, equal and rational individuals could agree to live by, the sole provision being that the prerequisites for such actions, be respected and complied to by all (Shafer-Landau, 2012).

The collective agreement, be it formal or informal, could thus be described as a social contract, where collaboration and cooperative actions are performed under particular conditions, stipulated in an abstract social agreement. One fundamental element of the social contract, regardless of perspective, is the notion of a hypothetical initial situation where the conditions of the contract are constituted. Rawls calls this situation the original position, Gauthier calls it the initial bargaining position and Scanlon refers to it as the proviso (Gauthier, 2014; Rawls, 1999 & Scanlon, 1998). Another fundamental element of social contracts is that all contain characterizations of the nature of the contractors and the conditions for interaction with other contractors. A common denominator is the appeal to human nature, which includes definitions of rationality and motivation.

Social contracts could be described as double-edged; they contain committing duties and rights with equal shares of concessions as well as obligations. A contractual set-up could include a commitment that not only includes certain social sacrifices but also promises cooperation in return for expected benefits (Shafer-Landau, 2012). The basic moral construction of such arrangements could be said to be resting on the moral commitment of keeping promises. The moral construct could thus be summarized as this; since we have a moral obligation to keep our promises, we also have a moral obligation to maintain the moral construction and not only abide to, but also maintain the terms of the social contract. Other contractual setups emphasize an institutional context and advocate institutionally based mechanisms in order to create and maintain a contractual framework for developing and defining the moral scope and constraints of societal human relations.

The core of social contract theory can thus be summarized as forming agreed societal systems of moral duties and rights resulting in individual concessions and commitments. The
presumption being that the moral rights be entitled to any moral agent, as defined within the contractual set-up and as such, legitimately included within the social contract based society.

Within contemporary social contract theory, there are two major contractual traditions; the contractarian and the contractualist. The contractarian tradition of social contract theory emanates from Hobbesian principles and defines a de facto bargaining equality between moral subjects. The key rationale forming the foundation within this tradition is the recognition of the importance of rational self-interest and how it is considered to be the prime motivator in moral consideration. The contractarian social contract would typically include moral constraints necessary not only in order to subjugate self-interest but also to promote just behaviour. These constraints also entitle us to certain, agreed upon benefits. Notable contractarians include John Locke, Jan Narveson, James Buchanan and David Gauthier.

An example of modern contractarianism is David Gauthier. He is perhaps one of the most prominent modern contractarian proponents and offers an ambitious and, to a degree, pragmatic framework for a modern contractarian society. Gauthier (2014) argues that in a perfect market, there would be no need for morality. The clean parametrical\(^1\) mechanisms within in a fully-fledged, ideal market, with perfect competition, would make morality superfluous, the author argues. The perfect market would be a moral free zone. However, due to the existence of an imperfect world with asymmetrical conditions, Gauthier offers a contractarian solution, which is based on self-interest and rational choice. Gauthier’s contractarian morality could be viewed as a kind of cooperative and relational tool in order to promote conditions for an ideal market situation. In Gauthier’s view, morality equals the setting up of a general agreement to regulate interaction and negotiation terms for any given party within an imperfect market. The presumption is that the market should work as de-regulated as possible but when it comes to terms for negotiation and constraints for the negotiating parties, these should serve as a moderating force, working to facilitate long-term conditions in order to promote as an ideal market as possible. Ultimately, morality and moral considerations will form constraining mechanisms, creating a kind of market justice, regulating cooperation, negotiation and market freedom.

Gauthier’s (2014) view on morality seems particularly biased towards regulating market conditions and he has not much to say about other areas within society where morality could be seen as disconnected from monetary and distributional imperatives. Thus, it could be

\(^1\) Parametrical choice situations presuppose choice independency between agents.
argued that the prime focus for Gauthier is monetary capital and the market of goods and property. According to Gauthier, the contractarian agreement regulating such a societal moral framework would create necessary conditions for overall cooperation and justice within society and forms necessary conditions for fostering social, cultural and human capital (Gauthier, 2014). Unfortunately, the development of these latter and particular forms of societal and relational capital are not specifically elaborated and discussed in Gauthier’s contractarian solution.

The contractualist tradition of social contract theory is founded on notions that there should not only be rights and obligations bestowed upon the moral agents but it should also include moral foundations and working social and economic mechanisms in order to promote reasonable fairness between moral equals. The concept of fairness is usually constituted as combined notions of individual freedom and distributional constructs, such as justice and/or fairness. Notable contractualists include John Rawls and Thomas M. Scanlon. Scanlon (1998) proposes a contractualist idea that we all have a social responsibility towards each other, as human beings and moral agents. We owe something to others. He describes what we owe as certain basic key duties; we must not harm, we must not kill and we must not lie to other people. Reflected in these key duties are the assumptions that we must always consider our moral judgements by a standard that can be universalized and acceptable to everyone.

Scanlon (1998) formulates his model for contractualism as: an action is permitted according to moral principles, which no one can reasonably reject. The element of reason and reasoning is a key element in his model. The process is the crucial component. Sound moral reasoning must prevail and we must not ground our moral motivation on passions and affective components. Scanlon emphasises that what ought to motivate us to act should always be considered through rational reasoning. According to Scanlon reason is so important in moral considerations that it could be regarded as a kind of benchmark for the definition of objectivity. Through moral principled reasoning Scanlon suggests that we may reach a kind of general inter-subjective consensus, reaching beyond cultural and social differences in achieving true and universal moral standards (Scanlon, 1998)

In this thesis, Gauthiers contractarianism will constitute the basic contractarian perspective in discussing commercial sex on moral grounds and in the discussion I will also add fundamental contractualist concepts, based primarily on a Scanlonian perspective.
2.2 Feminist ethics

A key concept within feminist ethics is that the history of ethics and ethical theory development is dominated by male experience and male contributors (Rachels & Rachels, 2007). The feminist reaction to this historical claim is to question the gender bias in what feminists claim constitutes the prevailing ethical discourse. This gender bias leaves out and devalues large social areas within society, traditionally dominated by women and women labour, such as child caring, domestic work and family. In questioning the legitimacy of this social order, feminist ethicists raise issues why the experience of women does not have the same impact as men’s experiences on ethical theory and moral reasoning (Rachels & Rachels, 2007). The moral response by feminist theorists is that care and caring should have natural place in ethical theory and should form its own moral tradition, standing besides traditional male influenced moral traditions such as utilitarianism, Kantian deontology and also social contract theory.

Feminist ethics is diverse. It is difficult to universally label feminist ethics as a coherent theory. Instead it could be described as a general label, focusing on four general moral issues (Shafer-Landau, 2012). First of all that women should be viewed as moral equals to men and should have the same moral status and right, regardless of gender. Second, the moral discourse should be proportionate as regards to the experiences of both men and women. Third, the moral traits, traditionally ascribed to women, should have the same moral status and carry the same moral weight on moral considerations as traditional male traits. Fourth, and last, that moral reasoning, traditionally ascribed to women should be recognized and evaluated by the same standards as traditionally ascribed male moral reasoning. According to Shafer-Landau (2012) the overall ambition of feminist ethics could be described as an effort for feminist moral approaches and perspectives to be equally considered vis-à-vis male moral approaches and perspectives.

Another important note is that feminist ethicists do not consider feminist ethics as exclusive for women. Hence, feminist moral values and reasoning aims at providing a moral framework, regardless of sex or gender (Shafer-Landau, 2012). Within feminist ethics there is also a particular reaction against liberal morality and proponents of a social contract moral view. Baier (2013) describes this critique as a need to move beyond social contract notions of justice and points out three critical issues that calls for feminist ethical answers. First of all, the record of liberal moral theory and social contract ambitions has not been successful in recognizing feminist arguments and the need for true gender equality. Second, she claims that,
at best, liberal and social contract theory has failed in its attention to equality; at worst it is only pretence of true social equality. Thirdly, the exaggeration of the concept of choice within liberal morality and the failure of recognizing the lack of choice inherent in social relations, regardless of contractual foundations. She argues that contractual moral constructions cannot survive without a redefinition of justice, also incorporating moral issues founded on care and social responsibility (Baier, 2013).

One of the areas of morality within feminist ethics with diverse opinions concerns commercialized sex. There are indeed strong disagreements within the feminist discourse as to the moral (and indeed legal) issues on commercialized sex which could be described as two general and opposing moral views on commercialized sex (Green, 1989); either for or against. According to Alexander (1997) this has led to a contentious debate with strong feelings and vitriolic argumentation as part of what is also called feminist sex wars. An on-going conflict that is dividing the feminist movement (Duggan, 1995).

3. Moral positions

3.1 A contractarian based argument for commercialized sex

One key line of arguments used by proponents of social contract theory in favour of morally legitimizing commercialized sex stems from market liberal perspectives and a strong emphasis on rights. Lars O. Ericssons (1980) attempt at evaluating the philosophical grounds for prostitution contains social contract arguments in favour of prostitution. Although Ericsson (1980) does not view the commercialized sex practice of prostitution as unconditionally desirable, he argues that prostitution may be an effect due to our imperfect (but actual) societies, and must, as such be regarded as unavoidable. Ericsson argues that problems of prostitution can be traced in societal attitudes. According to the author, we need to provide conditions for sound prostitution, devoid of prejudice and stigmatization. Such change in general attitudes must, in part, rest on the advancement of gender equality issues, sex roles and sexual expression, where notions of inferiority and superiority must be rooted out. In Ericsson’s view we need to re-evaluate the concept of commercialized sex in general and prostitution in particular and rid society from its cultural tendencies to condemn commercialized sex on biased grounds (Ericsson, 1980).

According to Ericsson (1980) the general view that prostitution is undesirable should be critically evaluated and the reasons for this view should be questioned. Reconstituting our
moral view on commercialized sex and also institutionalizing the provisions for the commercialized sex practices would elevate the status and legitimacy of commercialized sex, eliminating morally founded hostility in the process. Ericsson provides some critical arguments against the supposed general undesirability of prostitution, which all share the common notion of separating commercialized sex from traditional moral conceptions and re-evaluating commercialized sex into becoming an accepted and normal societal activity. First of all he attacks the argument for conventional morality, where traditional views on family values and the role of sex is culturally burdened. Without such moral grounds for condemning prostitution, there would be nothing intrinsically morally wrong with consented sexual activity, performed within a economic arrangement, Ericsson (1980) argues.

Next, he attacks the culturally founded notion of sex as necessarily connected to care, romance and emotions. In criticizing against the sentimentality charge, Ericsson argues there is no rational reason to regard sex as strictly belonging to the domain of emotional relations and that marital and mercenary sex should not, on moral grounds, be dichotomized with mercenary as sex being morally shunned (Ericsson, 1980). He claims that the sentimentalist charge rests on emotional prejudice and as such, seller-customer sex should be viewed as just as normal as any other seller-customer relation. In a further charge against sentimentalism, Ericsson offers a contractarian view that the prostitute is actually using his/her body for sexual services (and not his- or herself, an important distinction) and so adheres to a liberal social contract view that, the bodily commodification is unproblematic as long as it is based on, and expressed in, voluntary consent between the agents (Ericsson, 1980). The sexual seller and customer relationship is thus completely separated from the rest of the seller personality, he explains. In this sense, the author compares sexual services to any kind of commodity necessary to provide for our basic needs such as food or clothes. Should such a consented arrangement on the exchange of sexual services be reached, there should be no restrictions limiting what the seller may do with her/his own body, Ericsson implies. According to Ericsson, this view does not even override the risk for potential harm in contractual agreements if, and only if, there is a voluntary consented agreement on behalf of the agents (Ericsson, 1980).

This anti-sentimentalist argument could be described as resting on the contractarian, market-oriented concept of contractor liberty in exercising freedom and autonomy in recognizing equal rights to engage any kind of enterprise. The merchandise of sexual services could, in a contractarian sense, very well be described as falling within the same moral boundaries as the
merchandise of any kind of goods. In this respect commercialized sex could be regarded as a kind of rental service agreement where bodies are voluntarily used in order to supply sexual services. Much like the builder provides his/her body in order to supply the merchandise of building services. The body of the commercialized sex (like the builder) could therefore be described as “private property” as to which the owner has full rights. The uncontroversial stance on bodily commodification in societal professions is further shared by Moen (2012) and Panitch (2013), both comparing different forms of physical labour as morally equal to sexual and/or reproductive labour. Within traditional contractarian theory, the rights of property holders go very far which would naturally extend even to the practices of commercialized sex, sharing in basic similarities with the traditional liberal contract-based view, such as the Lockean “commodification of bodies” (Davidson, 2002).

The next attack on the hostile moral conceptions of morality, aims at, what Ericsson (1980) labels as inherent paternalism. Much in line with pro-autonomy, contractarian notions of classical social contract theory, Ericsson problematizes why there seems to be paternalist tendencies particularly singling out and condemning commercialized sex practices. In discussing potential risks for harm, there seems to be no difference between other potentially hazardous, but nonetheless morally accepted professions within other areas of society Ericsson argues. The author begs the question why the rights to enter the profession of commercialized sex should be more controversial than any other hazardous profession and why there are moral considerations as to the value that professions contribute to society? We need to recognize the value of commercialized sex, like any other work, the author suggests (Ericsson, 1980).

In attacking the Marxist charge Ericsson (1980) questions the validity of the Marxist analysis. According to Ericsson, commercialized sex is not a distinctively capitalist (or working class) phenomenon. This claim makes the Marxist analysis at best faulty and at worst, more or less irrelevant.

In countermanding the feminist charge, Ericsson at first recognizes the serious feminist charges of the commercialized sex practice of prostitution as creating gender-based oppression with social, and gender based inequalities (although there are male commercialized sex workers as well). The roots of these inequalities in the feminist charge are described as inequalities of benefits and burdens in society. He admits that the current societal situation, indeed, admits and even supports provisions for inequalities and he abides
to the notion that the majority of commercialized sex workers in today’s society may certainly be exploited. However, Ericsson questions whether this implies that commercialized sex per se, is morally wrong, or if we should level our charges towards society as a whole and the societal conditions as the key issue for these apparent inequalities? Ericsson is convinced that we need to seek the causal reasons beyond the particular practices of commercialized sex and offer a perspective that the feminist charges against commercialized sex may “miss the target”. He claims these charges should be aimed at the institutional and moral foundations of society instead of the particular sexual practices within it (Ericsson, 1980).

Addressing and removing structural gender inequality in society will de-stigmatize commercialized sex and elevate the practice into a morally accepted profession, much like any other profession. Another feminist charge consists of the objectification and reification of the commercialized sex workers body. Ericsson argues that such charges can be questioned on similar grounds as the critique of the sentimentalist charge. According to this rationale, the seller of commercialized sex is no more (and no less) objectified than the any professional in society who mainly uses the body in work (Ericsson, 1980). The question to be asked is why only commercialized sex is questioned on grounds of implied reification and objectification?

Another line of arguments in connection with this feminist charge is on what grounds it is an issue of exploitation? Ericsson argues that it may not be the case that the buyer is merely using the seller as means to an end; it could very well be the opposite, that the seller is using the buyer as means to an end. He goes further in suggesting that the treatment of means to ends may even be considered as mutual, like business relations within many other service professions, so why should commercialized sex be different, the author questions. Ericsson concludes that the feminist cause regarding commercialized sex might be ill conceived since it may be directed at the wrong causal factors for inequality. The needed shift in moral discourse need to start in a liberation of sex roles, not attacking and limiting one of the sex roles that need to be liberated (Ericsson, 1980).

Next, Ericsson (1980) takes on the alleged commercialization of society argument. In his argumentation, Ericsson questions the causal connection between prostitution and commercialization where he offers the view that commercialized sex, such as prostitution, might not actively contribute to capitalist commercialization. Prostitution may merely be a kind of lackmus indicator of human dissatisfaction and not the cause of societal problems per se. He also addresses the traditional charges against prostitution and the alleged causal
connection between possible emotional disturbances and the practice in itself (Ericsson, 1980). The author poses the question if it might not be the culturally based attitudes in society that create emotional harm rather than the actual practice per se? Ericsson compares sex drive to other natural drives and how excessive indulgence in other, less morally judged, natural drives, such as hunger (turning to insatiable appetite) may lead to emotional problems. He admits the difficulties in concluding particular causal chains for potential emotional disturbances, however, he supports the notion that the ability to separate one self from the work, like any professional service provider using bodily capacities does [sic!], may work in favour of limiting emotional disturbances. Clearly, the demarcation between self and body, regardless of profession or circumstances, seems to be a simple procedure for Ericsson (1980).

The basic line running through Ericsson’s arguments, in defence of commercialized sex and prostitution, aims at levelling the practice of commercialized sex and the moral status of commercialized sex workers with any other profession in society. We need to rid society of the moral prejudice burdening commercialized sex and open up possibilities the promote the practices of commercialized sex into becoming as morally accepted and valued as any other profession in society.

3.2 A feminist based argument for commercialized sex

The feminist moral approach in favour of prostitution is conditionally rooted in the fundamental differentiation between consented commercialized sex and forced commercialized sex. As such, autonomy in order to make informed decisions could be viewed as crucial to the particular feminist perspective, which morally favours commercialized sex. Pro-commercial sex feminists question the pre-supposed link between commercial sex and negative effects such as coercion, exploitation and domination (Bromberg 1997) and argue that prostitution need not be an exclusively negative experience.

As a feminist proponent of commercialized sex, Martha Nussbaum extends the discussion on commercialized sex, addressing the general issues of sex and social justice and argues that feminism and social justice have common interests. Nussbaum (1998) revolves around legal issues, and as such, has a legal perspective in defending decriminalization of prostitution but also addresses some important moral considerations connecting feminist views with a moral stance in favour of commercial sex. I will try to extract the moral content in her defence of decriminalization of prostitution. She goes at length to analyse the similarities and differences
between a commercial sex worker (a prostitute) and a range of other professions; the factory worker, the domestic servant, the nightclub singer, the philosophy professor, the masseuse and the colonoscopy (!) artist. Nussbaum argues that generally speaking, the biggest difference between commercial sex and the compared professions is that commercial sex, in the form of prostitution, is stigmatized on grounds that are not applicable to the other professions. She makes a claim that the particular stigmatization of prostitutes depends on two critical reasons: intrinsic immorality (prostitution is immoral, in itself), and gender hierarchical reasons. Nussbaum dismisses the former reason on grounds that non-reproductive sex, not dependent on prostitution, is morally accepted or is at least not as morally stigmatized as prostitution. The latter reason stems from a masculine cultural idea of the female sexuality as dangerous, in need of control. The prostitute, on the other hand, is in control of sexuality and female desire, which is a threat to male control. The stigmatization could thus be explained as a method of exercising male moral control over predominantly female practitioners within the practices of commercialized sex.

Certain radical feminists in favour of commercialized sex also address the reasons for social stigma and the status of commercialized sex. These feminists target what they see as contradictions within liberal moral theory and conventional feminist attitudes (Green, 1989). This more radical feminist position considers stigmatization of commercialized sex as the key moral issue, not commercialized sex, per se. The target of this radical feminist critique consists of traditional family conceptions and considers the commercial sex worker as being a victim of an immoral societal structure, a structure that can be changed. The radical feminist rationale for this stance can be summarized as: if commercial sex was elevated to enjoy the same moral status and set of rights as any other profession, the female commercial sex workers would be empowered and morally positioned on par with employees in any other profession (Nussbaum, 1998). The argument is built on notions that commercial sex is not significantly different from any other profession and recognizing commercial sex as a “regular job” would also acknowledge right for individual autonomy by the commercial sex worker. Advocates of this argument equate female sexual choice and bodily control with established female rights of abortion, a notion that also reverberates contractarian views on individual rights. As soon as we succeed in levelling negative conceptions of commercialized sex and succeed in elevating commercial sex workers to the same status level as any other worker in society, the patriarchal structures would desist and the subjection and perceived exploitation of commercial sex workers in society would end.
Nussbaum (1998), targets several arguments in favour of criminalization of prostitution and in the process, covers some key moral issues. First of all she problematizes the argument that commercial sex, as prostitution, involves health hazards and risk of violence. In an analogy with certain sports, which include health hazards and risk of violence, she argues that professions are generally better served by regulation than banning, in order to protect the professionals. Health hazards and risks do not automatically imply immorality, she argues. Next, Nussbaum argues against allegations of commercial sex workers losing their autonomy. She argues that there are an abundance of other professions where autonomy is not imperative to the work being performed. Such professions often share common problems of lack of control on behalf of the worker, problems that are usually addressed by promoting more control, often through legislation and structural change within the professions. Autonomy can be restored through active measures supporting the commercialized sex workers, she argues. Nussbaum also addresses the argument that prostitution is an invasion to a person’s intimate bodily space. She problematizes the notion of choice and taste on how one chooses to use one’s own body and on what grounds this argument has any moral qualities. Consenting to invasion of ones intimate bodily space seems like an act that has no moral significance at all to Nussbaum. The matter of taste as a foundation for consideration has more to do with preference and aesthetics than moral consideration, which makes it irrelevant as to the morality of prostitution, she argues (Nussbaum, 1998).

Next she addresses the argument that prostitution makes it harder to form intimate and committed relationships. In Nussbaums (1998) counter argument she compares with other intimate professions, which she considers not to be stigmatized in the same way. There seems to be something normative in a presumption that sex and intimacy cannot be separated and that sex for pure enjoyment and pleasure therefore is impossible (and therefore immoral), she argues. The next line of arguments Nussbaum attacks is the commodification argument. She targets a central premise in this argument that commercial sex, in the form of prostitution is an act of giving up one’s sexuality and the general presumption that sexuality forms an essential core of what constitutes an identity and character. She counter argues that a general view is that other service providing professions, who commodify their bodies, do not give up their identity and personality. Of course, the Marxist notion of alienation is commonly known and could be applied to commercial sex just as much as to other professions. Improving social conditions rather than banning professions ought to be the solution, she argues. Other
commodification issues which Nussbaum address includes the moral arguments stemming from the commodification of bodily services in return for monetary compensation or goods of equivalent value. This argument has no real moral value according to Nussbaum since selling things (including bodily services) has no inherent moral content. The issue of intimacy has no real importance since it could be argued that other professions sell intimate services without moral considerations. Also, if intimacy can be detached from the commodity on sale, there is no real difference in selling sex than it is selling anything else, she argues (Nussbaum, 1998).

Nussbaum (1998) also problematizes the traditional feminist abolitionist notion that prostitution shapes and perpetuates male dominance over women. She argues that the purported male dominance cannot form a sole reason for banning prostitution. She offers the “male dominance”-analogy between prostitution and marriage. If we think that prostitution ought to be banned due to its promotion of male dominance, we have every reason to question the moral legitimacy of marriage as a concept. Nussbaum turns the original argument around in stating that it may not be the institution of marriage in itself that is causal to male domination, it may be the culturally and normative development of marriage that needs to be reversed. Banning institutions such as marriage or prostitution might have a larger negative impact on individual freedom than active regulation and legislation of the practices within the institutions. Reformation is the key to counter act male domination and empowering female actors in order to create equality within these institutions, she argues (Nussbaum, 1998).

The question of choice of profession in life is also addressed by Nussbaum (1998) by stipulating three “choice-less” options. The first two; forced prostitution and child prostitution are clear legal issues that she considers as important, but nevertheless questions not in focus for her debate due their specific, clear-cut legal implications. The third choice-less option is a bit more complex; entry into commercial sex work because of bad economic options. However, Nussbaum argues that the choice between prostitution and any other profession due to such reasons hardly qualifies as a moral consideration. The options of either working long hours in a low-wage factory, under bad working conditions or working as a prostitute appear as equally infringing on autonomy. In either way, free choice and autonomy could be argued as having been transgressed but is it really a relevant moral issue Nussbaum argues? The argument seems less targeted at prostitution as an institution per se but more to the general conditions of labour, education and equal, fair chances of opportunities in society. According to Nussbaum the remedy is not to abolish prostitution, which can be seen as more of a
symptom than a cause, instead reform, regulation and organisation of education, employment, working conditions and wages aimed at improving overall gender equality in society must form the nucleus of progressive societal transformation (Nussbaum, 1998).

3.3 A feminist based argument against commercialized sex

Debra Satz (1995) offers a view, which encompasses some key feminist arguments against commercialized sex. The general construct for this feminist view is the importance of creating and promoting mechanisms for gender equality within society. She levels her arguments towards the pervading assumptions about females and female opportunities in society. Satz describes, and discusses, the particular moral view of the practices in buying and selling sexual services as inappropriate and not fit to be equalled with practices within any other labour market. The fundamental difference and distinction between commercialized sex market and other markets is labelled as the “asymmetry thesis” (Satz, 1995). Although Satz speculates about how we, in a utopian world, riden of the gender inequality structures, might not have any moral problems with prostitution per se, she points out that such hypothetical speculations do not solve current societal problems. The author is convinced that commercialized sex is in itself, a social institution that thwarts conditions for societal development promoting gender equality. Commercialized sex is thus detrimental to gender equality within an egalitarian societal development and so she attacks commercialized sex and the practice of prostitution in itself, as forming a major obstacle in the process of developing an equal society (Satz, 1995).

Satz (1995) describes her disagreement with two traditional charges against commercialized sex; the economic approach and the essentialist approach. The economic approach holds that, in theory, commercialized sex can be equalled to any other form of physical labour in society. According to this view, what justify transactions are not particular moral concerns inherent to practices, but only rational cost/benefit analysis. In this view, sexual labour can be reified and treated as a commodity on par with any other commercial commodity. The economic approach would claim that any wrongness of commercialized sex could only be justified if the net social costs for commercialized sex were greater than the net social costs of any other reified labour (Satz, 1995). Certainly, such cost/benefit analyses has been offered, including both parties and third parties costs, offering critical arguments against commercialized sex, Satz claims. The essentialist approach holds that commercialized sex is morally wrong because it is essentially detrimental and damaging to human happiness. However correct and
valid these points may prove to be, she argues that they are, at best, only secondary effects to the key problem with commercialized sex, which Satz describes as the undermining of any sustainable and realistic concept for equal social provisions. Satz directs her criticism mainly at how commercial sex results in gender inequalities and she targets current contractual deficiencies, which she claims actually result in structural (and thus gendered) inequalities. The problem, according to Satz, is that commercialized sex promotes societal inequalities and we should focus our moral attention at prescribing appropriate egalitarian principled conditions for society, eliminating possibilities of including mechanisms that contribute and/or instantiate institutionalized inequalities (Satz, 1995).

Satz (1995) addresses the economic approach by first discussing its traditional cost/benefit rationale. Proponents of the asymmetry approach usually point out the problems of quantifying costs in trying to prove that the cost to society, as a whole, is a larger than the potential benefits. Satz accepts this utilitarian argument but addresses, what she labels, a more crucial problem concerning contractual arrangements. First she questions whether commercial sex could have any kind of relevance as compared to traditional market functions. She questions if we, at all, can describe commercial sex as having the same properties concerning property rights and entitlements as other market entities and does it even belong to the same moral realm? Secondly Satz defines goods as intrinsically different as compared to anything related to persons. She claims we should simply not discuss value in terms of monetary cost/benefit rationale when it comes to human capital (Satz, 1995). Thirdly, commercial sex cannot compare to other economic functions due to its fundamental difference in its ability to transform the prerequisites for the sold services. In other market areas, the sale of goods does not significantly alter the meaning of the goods. According to Satz commercialized sex works in the opposite way, where the actual sale of sex destroys the meaning of sex in itself. I.e. the goods on offer will destroy the goods in itself, which seems to show a fundamental difference to any other market. These three arguments are aimed at the heart of the economic approach, and questions the whole economic rationale for and against prostitution by addressing fundamental social contractual and equality issues (Satz, 1995).

In her evaluation of the essentialist approach Satz (1995) problematizes the intrinsic problems due to the inherent capacity of prostitution in inflicting and indeed constituting harm. According to the essentialist approach, commodification violates the intimate relation between sex and the self and also between sex and human flourishing. Feminists argue that
the bodily commodification cannot be separated from the commodification of the self (Pateman, 1988) and that commercialization of sex creates inferior forms of personhood. In this view, bodily commodification would damage the possibilities for human dignity, human intimacy and intimate relationships. Such damage is not only individually related. Collectively, such damage could also be instrumental in creating societal attitudes and prejudicial biases. Prostitution might then foster attitudes that justify instrumentalization of certain categories of people. Commercialized sex, in the form of prostitution, might thus be generally counterproductive to human development and flourishing in the whole of society (Satz, 1995). Though she regards these arguments as important, the question what can and cannot be commodified may pose a major issue conflicting with the commonly accepted and spread liberal tradition of personal freedom and autonomy. Satz concludes that the essentialist approach raises important feminist arguments against prostitution, pointing out very real issues, which have serious consequences in current society. However, in order to rectify the situation she argues that we need further analysis, beyond our cultural and historical experience in order to address the roots of gender inequalities and negative effects of prostitution and as a reply to the economic and the essentialist approach, she offers the egalitarian approach (Satz, 1995).

In her egalitarian approach, Satz basic argument is founded on the wrongness of commercialized sex (i.e. prostitution) due to it’s causal relationship to gender inequality. She describes structural inequalities in income, opportunity and status. These structural inequalities in society provides fertile ground for a range of inequality effects which lead to male dominance, poverty, coercion, domestic violence and violence against women. According to Satz, structural inequalities in income and opportunity can be described as a sort of framework, providing the means to shape attitudes and cultural values and gender dominated power structures in society. Attitudinal signs of female inferiority include negative gender stereotyping, unequal gender power, gender marginalization and gender stigma. Satz thus offers the possibility that commercialized sex could be considered as an active enforcer in institutionalizing societal gender biased inequality. Although she cannot claim a direct causal chain between particular inequalities and commercial sex, she claims that commercial sex can have an effect on labour-market inequality due to commercialized sex association with gender degrading stereotypes. As such, commercial sex may be causally linked to the creation of female inferior status in society, as a whole, Satz argues. The influence of commercialized sex on inferiority based gender stereotypes can be described as stemming
from two basic reasons; first, the class of individuals in society connected to commercialized sex are females. It is part of a deeply rooted cultural assumption (“the worlds oldest profession”) that it is women who provide sexual services for men. Thus, it is only women who can be labelled as sexual servants, not men, Satz claims. This reason can also be connected to the prejudiced bias towards prostitution compared to other female dominated occupations. Pervading societal attitudes encompassing particularly objectionable views on prostitution thus reinforces the inferiority of women. Satz argues that this source of stigma also spreads to all other women, including other female occupations. The second reason for female inferiority concerns the relatively high levels of violence against female prostitutes, which can be connected to objectification, and de-humanization, which also influences the general view of females in society (Satz, 1995). This goes to show that commercial sex and prostitution can be described as “a theatre of inequality” (Satz, 1995).

Satz (1995) feminist argument against commercial sex can thus be summarized as forming a case aimed at a phenomenon, which she claims constitutes, reinforces and perpetuates gender inequality in society. She does not categorically dismiss the economic and essentialist arguments against prostitution but problematizes the levels of analysis within these approaches. They may form valid, important and relevant feminist arguments against commercialized sex, but Satz aims still further, at the central problems of commercialized sex. Although Satz she does not advocate the banning of commercialized sex, she mirrors Carol Pateman’s view that the commercial sex practice of prostitution is one of the fundamental examples of male domination in society. Satz takes the feminist arguments against the commercialization of sex to the very core of the feminist cause, the issue of societal gender equality. Her egalitarian approach is an attempt to strike at commercial sex at the heart of its inherent problem; that of gender equality and the need for egalitarian societal principles to create true gender equality (Satz, 1995)
4. Argumentative analysis

4.1 Key arguments

In evaluating the moral positions outlined above there are certain key arguments that deserve further analysis. There are several points of interest, which interconnect the positional arguments, albeit from different perspectives. I do not pretend to offer a complete display of relevant arguments; the space within the scope of this thesis forbids it, however there are four key arguments that encapsulates the most important moral content and might deserve an attempt at argumentative analysis. The commodification argument touches on both feminist and contractual issues in its connection to exploitation. Also I address the issue on what constitutes goods and rights that can be commercialized. The danger argument relates to potential risks for physical and psychological harm and hazards addressed by both moral positions. The autonomy argument covers individual rights and liberties, such components often forming the forefront of contractarian arguments but also connected to feminist arguments on individual rights in general and female rights in particular. The male dominance argument can be found in all of the above moral positions on commercialized sex and covers alleged gender objectification and the question if commercial sex creates cultures of inequality that breeds and perpetuates attitudinal notions of female inferiority. In the next section I will evaluate and discuss the arguments using the three different moral positions as outlined above.

In order to simplify the analysis I have chosen to formulate the arguments according to one perspective, i.e. against commercialized sex. This must not be considered as a bias on my behalf, it is only intended to simplify the analysis and avoid confusion.

4.2 The commodification argument

The commodification argument against commercialized sex can be formed like this:

P1: Any professional occupation, which commodifies and exploits people is morally wrong since it violates the intrinsic values and rights of human beings.

P2: Commercialized sex commodifies and exploits human beings

C: Therefore commercialized sex is immoral

From both a feminist and a contractarian view it would appear that a discussion is necessary on what really forms the foundations for the first premise. Questions in such a debate might include what actually constitutes intrinsic values and rights of human beings and also what
constitutes “goods”. One of the crucial differing points seems to be if it is at all possible to separate sexual services from one self. Indeed, the comparison with other professions including the offering of bodily services, from both Ericsson and Nussbaum, forms a strong argument. Prostitution as a profession, is no different from the profession of a voluntary medical test subject, the argument goes.

The strict contractarian would thus go far in defending the free use of the property at hand (=body) and the rights of the property holder (=commercial sex worker). The demarcation between self and service seems quite easy for contractarians and feminists defending prostitution. The feminist argument against prostitution relies on the inseparable connection of service, body and sense of self and that bodily integrity and security can be seen as a kind of a safeguard to facilitate the development of selfhood (Satz, 1995). This makes for an interesting comparison to the contractarian argument against paternalism. Should the alleged need for body and self-hood protection go so far as to include paternalistic measures? Contractarians seems to think not, feminists seemingly do. The notion of what constitutes the concept of goods can also be problematized from the contractarian perspective as the selling of “services”. If services can be extended to include the “consented service of gender submission”, would this have an impact on contractarian notions of individual (and indeed collective) rights, liberty and freedom?

The factual content of the second premise can also be questioned from the perspective of alleged exploitation. The contractarian position questions if exploitation is a general fact, which can be verified. It is a strong claim, perhaps applicable in many cases but certainly not all, a contractarian and, indeed a pro-commercial sex feminist would counter argue. Ericsson problematizes the notion of exploitation with a discussion on what defines exploitation in itself. Certainly, any contractual gain, such as profit or other advantages could be viewed, as potential exploitation and it seem a very difficult task defining what kind of exploitation is acceptable and what is not. The exploitation issue also applies to an individual and collective perspective. Ericsson seems focused on the typical contractarian perceptions of individual rights where Satz and feminist arguments, on the other hand, are inclined to include the view that exploitation is also collective and indeed structural issue in society as well. The commodification argument also includes notions of degradation inherent in commercial sex.
Regarding degradation, neither Ericsson nor Nussbaum can accept any principal moral difference between commercialized sex and other bodily labour like cleaning. The feminist counter argument on degradation contains reference to freedom and subjection. Satz (1995) describes this with the notion that within commercialized sex, the inherent cultural view on the inferiority of women and how commercialized sex is firmly connected to the role of women is firmly rooted. Hence there seems to be a fundamental distinction between female professions in general and commercial sex in particular. The professions of commercial sex needs to placed in the correct cultural and social context according to feminist views against commercial sex work. Comparing intimacy and self-issues to professions like writers, artists and actors, is at best an academic venture, according to the feminist argument and it fails to address the cultural and social components inherent in commercialized sex. Comparing cleaning to commercial sex would thus be similar to comparing apples and pears, the feminist would argue.

4.3 The danger argument

The danger argument against commercialized sex can be formed like this:

P1: A professional occupation, which leads to physiological and/or psychological harm, is morally wrong.

P2: Commercial sex leads to both physiological and/or psychological harm.

C: Therefore commercialized sex is immoral

Both Ericsson and Nussbaum quickly dismiss this argument making analogies with other professions that include potential risks for harm and danger. This dismissal questions why some professions can be seen as immoral and some not, only on grounds of potential danger and risk. From these perspectives, premise one can thus be argued as untenable. However, most (if not all) legitimate professions, which include potential risks and danger, also include extensive regulations and safety considerations in order to avoid actual danger and actual harm. Maybe a restatement of premise one as “A professional occupation lacking safety considerations and regulations preventing psychological and/or psychological harm is morally wrong.” Indeed, professions according to this restated premise might not only be considered as morally wrong but also legally wrong. Aside from that, it would seem that Ericssons and Nussbaum’s comparison with other high-risk professions could be refuted. The vast majority of commercialized sex workers are not covered by regulations or safety rules providing safety and security, which is not addressed, by Ericsson and Nussbaum. Indeed, as Satz (1995)
points out, prostitutes run an acutely bigger risk of getting harmed when practicing commercial sex.

Harm is also addressed by Ericsson in the form of possible emotional disturbances, which I equate to psychological harm. This particular subject share similarities with both feminist positions in that it admits that societal attitudes may shape attitudes that harm commercial sex workers. Although Ericsson seems to admit the possibility of individual psychological harm, unfortunately, he makes no effort in elaborating what the attitudes in society consists of and how these attitudes are formed. Such an analysis comes in abundance in Satz feminist description on how gender stereotyping, specifically the inferiority of women can be claimed as firmly institutionalized within a society that accepts commercial sex. The danger argument also relates to the commodification argument in that a contractarian response includes a conviction that the separation between sexual service, body and sense of self can be clearly differentiated, thereby lessening the risk of psychological harm. A claim anti-commercial sex feminists would refute as false, which would need to be further explained by contractarians and pro-commercialized sex feminists in order to address the danger argument.

4.4 The autonomy argument

The autonomy argument against commercialized sex can be formed like this:

P1: Any occupation, which decreases individual liberty and infringe on the capacity to make informed, autonomous choices is morally wrong.

P2: Commercial sex derives human beings of autonomy.

C: Therefore commercialized sex is immoral.

Both Ericsson and Nussbaum offer arguments that would claim the first premise to be false. According to them, there is an abundance of occupations (perhaps all professional occupations) that, more or less, infringes on the autonomy of the worker. In a claim for universalization, the contractarian/pro-commercialized sex feminist would perhaps raise the question why full autonomy is relevant and a requirement within commercialized sex but not within any other profession. A counter-argument on the possible transfer of moral qualities between practices could be to question why something accepted within one profession automatically has to be accepted within any other profession. It would seem that such an exchange in arguments relates more to factual differences and definitions of conditions within different practices. But do such views on differences in professional conditions necessarily
relate to questions on morality and autonomy? The anti-commercial sex feminist’s answer seems to be yes. The pro-commercialized sex contractarian Ericsson seems strangely detached from this kind of autonomy perspective. His contractarian defence would claim the second premise as false. Indeed, the choice to do whatever one feels like with your own body ought to be a contractarian right. In this respect, Ericsson seems more concerned about rights infringements, particularly the liberal right to property (=the body constituting property). A discussion on the dilemma that the exercise of this right might, in itself, constitute violations against the sacred contractarian autonomy, as the second premise state, is unfortunately absent. The autonomy argument surely comes double edged which poses a problem for a contractarian view in favour of commercialized sex.

Nussbaum’s feminist answer to the autonomy argument would be to modify the first premise by adding elements of reform and regulation in order to strengthen commercial sex workers. Regulated sex markets might affirm women’s rights and welfare, hence, commercial sex workers must be empowered and also enjoy more control in order to secure reasonable autonomy. The question of autonomy also connects to the distinction, within pro-commercial sex feminists, between forced commercialized sex and consented commercialized sex. According to this view, consented commercialized sex is an individual choice, supported by the right to autonomy. The anti-commercialized sex argument seems divided in that a ban of commercial sex would condemn the sex workers to even less autonomy. This would come down to a classic “damned if you do and damned if you don’t” situation. Satz offers a middle way: Even if we ban prostitution as illegal, we are still responsible for the victims and thus have a moral responsibility to empower commercial sex workers. This should be done through regulation and a Bill of Rights for women (Satz, 1995).

4.5 The male dominance argument

The male dominance argument against commercialized sex can be formed like this:

P1: Male dominance in society is morally wrong since it upholds gender inequality and creates and enhances cultural attitudes of female inferiority.

P2: Commercialized sex objectifies females, which contributes to male dominance.

C: Therefore, commercial sex is morally wrong.

The contractarian would question the factual grounds of the second premise. As Ericsson points out, objectification may not be exclusive to commercialized sex. It may be a
phenomenon that could be observed in a lot of professions within society and not exclusive to commercialized sex. As Ericsson (1980) argues, in his “means to an end” discussion, the treatment of parties within commercialized sex as mere means to ends may be mutual, but that is also an generally accepted element in business relations within many service professions, so why should commercialized sex be any different? However, just as in the autonomy argument, the claim for universalization between different practices may be questioned. There might be factual and conditional differences that affect moral issues between seemingly similar practices.

Anti-commercialized sex feminist also argue that issues of objectification not only apply to individuals. These feminists claim that the objectification of women also has collective implications and just as the second premise states, such objectification contributes to male dominance, in turn leading to a general attitude of female inferiority in society. Curiously enough, this collective approach seems to be shared by Ericsson. He does not grant individual objectification any bigger importance, however he refers to societal attitudes, including gender oppressive attitudes, towards females on cultural and structural grounds. Leaving the individual factors aside, within the male dominance argument there seems to be convergent views as to the causal grounds for inequalities and the status of commercialized sex within society. Although Ericsson lacks a clear-cut gender analysis and does not seem to share notions of institutionalized patriarchy, he nevertheless admits that commercialized sex is at risk at creating social and gender based inequalities.

In his arguments, Ericsson converges towards both Nussbaum and Satz in his analysis of current status of commercialized sex. He admits that commercial sex workers are exploited today and that the current societal situation indeed admits and promotes gender inequalities. Ericsson, Nussbaum and Satz reach very similar conclusions in that the problems of male domination, gender inequalities and exploitation of commercial sex workers may perhaps be an intrinsic problem of commercial sex. It may prove difficult to trace inherent causal mechanisms within the practices of commercialized sex leading to male dominance and more importantly; it may even be a pointless and counterproductive venture. The possible convergence between the moral positions may imply that there could be deeper and more profound cultural and social constructs that create miserable conditions for women within the current field of commercialized sex. Adopting such a moral stance, the convergent moral view could be defined as an effort towards changing the cultural and moral foundations of
society and solve the problems, which stigmatize women and create inequalities on a structural level. From a societal perspective all three moral positions thus seem to agree on the general premises within the male dominance argument, albeit from different perspectives.

A contractarian would argue that the commercial sex, per se, is not morally faulty, it is the societal structures and the attitudes towards commercialized sex that create stigma and gender inequalities. A pro-commercial sex feminist would argue that we must trace the problems in cultural and historical factors, which shape societies and societal attitudes. Banning commercialized sex would only create even more abusive conditions for commercial sex workers. The only way is to try to change the society by regulation and reform in order to elevate the status and remove the stigma of commercialized sex. The anti-commercial sex feminist would see commercial sex as constituting structural inequalities in society. As such it contributes and reinforces gender negative stereotyping, which spreads and multiplies within society. However banning commercial sex might be one way, a more effective way is to try and change society in its foundations. Both contractarian and feminist ethics proponents might reach some sort of consensus in creating alternative models and promoting structures built on egalitarian relations between males and females within society.

5. Discussion

5.1 Differences and similarities

In the following discussion I will try to compare and analyse the different moral positions in order to evaluate the moral tenability, divergences and possible convergences between the different positions. To further exert the discussion I will also incorporate other notable ethical theorists who have contributed to the particular topic of commercialized sex. They include Scott A. Anderson, Susanne Dodillet, Charles Mills, Ole M. Moen, Christine Overall, Carole Pateman, Igor Primoratz, Laurie Shrage, Anna Westin and Petra Östergren.

5.1.1 On commodification and harm

A fundamental difference between contractarian and feminist moral positions relates to the objectification component in the commodification argument. There appears to be an irreconcilable difference concerning the possibility to differentiate between selling a body, per se or selling bodily services, i.e. a separation between self and body. Though the different positions seem far from each other, perhaps some fundamental moral values might be argued
as commonly shared. It could be argued that within the contractarian argument the body, in itself, does not constitute the object of commodification since the contract is assumed to be specified according to particular services, agreed and consented by the contractual parties, each under provision that they enjoy freedom of choice (Ericsson, 1980). Any hypothetical agreement including actual bodily sales would, according to contractarian (and indeed feminist) rationale, result in complete or partial subjugation, serving only the interest of the buyer. Such contract would not constitute any contract within the realms of contractarian social contract theory and might be related to slavery more than anything else. The contractarian would claim that commercial sex does not form slavery-based arrangements (Ericsson, 1980). So, the contractarian view that bodily sales are equated with slavery seems to be shared with the feminist position against commercial sex, thus both perspectives seem to agree on the moral wrongness of selling bodies as commodities. The crucial differences between the moral positions seem to relate to the conception of the moral value of bodily services and if there are important moral distinctions to be defined within such services. According to the contractarian and pro-commercialized sex feminist position the demarcation between body and self seems unproblematic, a view not shared by the anti-commercialized sex feminist position where no such demarcation seems possible.

Contractarians also question the validity of the degradation component. The question may be raised about the connection between the self and the sex service and if the feminists claim that the cause of degradation can be traced to an alleged inseparable connection between self and sex in the sexual act. Ericsson (1980) argues that this feminist stand may risk relativizing the perceived values in society. Primoratz (1993) underscores this argument by claiming that the depersonalisation of sex does not qualify as any valid argument for degradation. Impersonal sexual acts does not imply as having intrinsic moral values per se. For instance, Ericsson (1980) claims that other impersonal sexual acts are not morally deemed as intrinsically wrong. A common feminist argument focuses on the Kantian objection towards treating of individuals as mere means. Following the Kantian rationale, treating individuals as mere means is intrinsically degrading since it offends individual autonomy. In a contractarian response, Primoratz (1993) makes a comparison between prostitution and rape, an act that can be argued as purely transforming the rape victim into becoming mere means to the perpetrators sexual ends. Surely, there must be a differentiation between coerced sex, in the form of rape, and consented commercialized sex? Such a differentiation seems difficult for anti-commercialized sex feminists to recognize, thereby, contractarians could argue that anti-
commercialized sex feminists equate rape with prostitution, which may seem simplistic and problematic.

Feminist arguments focus on degradation both in an individual sense but also makes a strong connection to collective effects and societal consequences. According to Pateman (1983) commercial sex is intrinsically degrading since it affects not only individuals but also how the entire social context and structure of sexual relations are conceived in society. As such, she claims commercial sex epitomizes female degradation. Pateman argues that the key degradation issue within commercialized sex is related to power issues, where males claim individual and societal power over females. Degradation, as a societal problem is thus constituted by the institutionalized inequalities defined by the status of buyer domination and seller subjection (Pateman, 1983). With this perspective, the social practice of commercialized sex would serve to perpetuate structures of gender biased subordination and dominance (Pateman, 1988). Commercialized sex could thus be viewed as incremental in maintaining societal gender biased structures that both reflect and fuel male dominance in society (Overall, 1992).

Shrage (1989) claims there to be gender biased cultural beliefs embedded within commercialized sex, revealing prevailing social forces. She also argues that mere demand for commercial sex in a society reflects significant social and cultural sentiments in society. Due to the gender roles within commercialized sex, the author claims that commercial sex can be seen as a kind of indicator on how gender roles are valued within society. Shrage claims that commercialized sex, transformed into a non-suppressive practice, would almost certainly disappear. The feminist stand is thus that gender, and in turn gender inequality, is basically an inequality creating social institution, which has the capacity either to be perpetuated or terminated through cultural practices in society. One of the clearest illustrations of this social construct is the institutionalized practice and perceptions of commercialized sex (Shrage, 1989).

The contractarian perspective of commercial sex does not directly dismiss the potential for physical or psychological harm as negative effects from commercialized sex (Ericsson, 1980). However, the contractarian argument insists that this cannot form moral reasons for society to condemn the practice of commercialized sex. Quite the contrary, the contractual foundation of society should not consider the risk of harms being identified by the agents (=contractors).
The contractarian view on autonomy and individual responsibility would not allow this. Also, Ericsson describes a perception that the harms being connected to commercial sex might not be intrinsic to the particular practices of commercialized sex, but might be explained as causal to the prevailing cultural views and social values, which create stigmata in society (Ericsson, 1980; Moen, 2012). Thus, contractarians would repudiate charges on the need for paternalism on grounds that such needs would target the wrong causal chains for risks of harm. In defending the crucial component of agent autonomy within society, contractarians claim that paternalistic measures endanger the core of contractarian ideals. Instead contractarians advocate measures to minimize risks for potential harm through other approaches than paternalistic measures (Ericsson, 1980; Moen, 2012).

5.1.2 On autonomy and control

The feminist perspective on the importance of autonomy is also addressed by Anderson (2002) in his critical elaboration on the liberal, social contract theory concept of autonomy. According to Anderson, autonomy, in a traditional view, cannot be applied in a context where sexual practices are commodified. He points out how society actually grants the protection for sexual autonomy for the majority of people in society and that this protection is not institutionally extended to prostitutes as commercial sex workers. Anderson claims that social contract theory’s stands on individual autonomy cannot be interchanged with the notion of sexual autonomy. The author claims that in the case of commercialized sex these different values collide, which might promote individual autonomy at the expense of sexual autonomy. This is a problem due to the inherent risk of commercialized sex leading to the surrendering of sexual autonomy in order to exert individual autonomy. The author claims this dilemma to be unjustified since a just and fair society cannot simultaneously promote justice and equality, at the same time as it allows practices, which protects sexual autonomy for some individuals at the expense of others, inflicting harm in the process. Society ought to have a prior moral responsibility in ensuring every individual’s negative right to sexual autonomy first and foremost. Since commercialized sex allows the violation of sexual autonomy, commercialized sex is thus immoral (Anderson, 2002).

Anderson offers a predominantly feminist view, highlighting claims of inherent moral problems, including injustice and inequality issues within commercialized sex, which forms a particular contractual related argument against contractarian notions of equating commercialized sex with other professions in society. But what is so special about sexual autonomy, one may ask? From Anderson’s point of view it seems that sexual autonomy has
special status due to it’s potential to affect gender biased culture and gender biased equality, which in turn affects the whole society. According to Anderson, the concept of autonomy within other kinds of professions seems unable to match up to the possible effects of sexual autonomy. The causal chain within commercialized sex as regards to sexual autonomy could thus be understood as: If there are institutionally accepted expectations for sexual services in return for financial compensation, then individual, and indeed societal control would be impaired which will lead to changed cultural perceptions on gender sexual rights which will affect gender sexual equality and thus overall gender equality. Once set in motion (which is of course already happening, according to this particular theses), then the corporate and marketing powers set in motion will be difficult to stop or even regulate which, in turn, will affect and reinforce biased gender perceptions within society even more (Anderson, 2002).

Though the concept of sexual autonomy, as separated from other forms of autonomy seems like a different perspective, I ask myself if it necessarily needs to be viewed as having such special status? Firstly, Anderson does not problematize or specify the causal chain that leads to gender inequality. Why would it not be possible to break the causal chain with institutional control and regulation? Such an idea is not even mentioned by Anderson. It seems overly simplistic to accept the notion that society would be unable to create legislation, control and rights within the domain of commercialized sex. Though both alcohol and tobacco usage is firmly rooted in culture and corporate interests, most countries have instated institutionalized regulations and control in order to reduce individual and societal harm and suffering due to the negative effects of the substances. Though there is certainly much more that can be done, few people could argue that many lives have been saved and improved due to such actions during the last decades. As such, I find the “slippery slope” rationale in Anderson’s reasoning as having perhaps an overly ineluctable approach.

Secondly, I argue that maybe the concept of sexual autonomy could be regarded as a superfluous concept that merely complicates any basic human right to self-possession in an unnecessary way. I believe Anderson fails to properly explain what specifically singles out sexual autonomy from other forms of autonomy and the few reasons he offers might be considered as ill conceived. Anderson (2002) argues that sex has a special status since it plays such a pivotal role in most people’ adult lives, and that sex has a crucial role in the development of a general sense of autonomy. I question the validity of this statement. Are we not shaped by other influences and does not this shaping occur much earlier in order in to develop our sense of autonomy? Though sex might indeed be important, I question the claim
that sex has specific causal role in developing sense of autonomy as described by Anderson. By this, I am not arguing in favour of commercialized sex, I just problematize the implied role of sexual autonomy and why sexual can be considered as controversial. Indeed, all the issues that Anderson present can just as easily be addressed by the ordinary concept of autonomy as the right to bodily self-possession. Within the domain of commercialized sex, I ask why there really is a need to introduce a fairly abstract concept that might be supererogatory to address the issues of autonomy that the concrete and straightforward right to bodily self-possession might already do?

### 5.1.3 On agency

Westin (2013) raises the issue whether a contractarian view on commercialized sex really qualifies as valid due to its assumption that commercialized sex presupposes that the actors could be viewed as rational capable agents. If it could be said that if the choice of practicing commercialized sex would be truly rational, informed and consented, there would be no grounds for the accusation of exploitation. Inherent within the contractarian moral perspective lies the notion of assumed actor equality between the contractual agents. Proponents of the contractarian view, vis-à-vis commercialized sex, also seem to ground their arguments on the presumption that buyer-seller relations and status constitute notions on equality in opportunity in a free market-environment (Ericsson, 1980; Primoratz, 1993; Moen, 2012). Primoratz (1993) motivates the mutuality of the contract in assuming a kind of equal opportunity situation due to claims that of autonomy and rationality on behalf of the agents. These contractarian notions seem somewhat idealistic and although Gauthier promotes the ideal of a perfect, competitive market, his contractarian notion also includes pragmatic and realistic moral components addressing the need for regulation. Ericsson’s contractarian view pays little, if any, tribute to such views and seems to turn a blind eye as to the dynamic and asymmetric realities of markets in general and commercialized sex markets in particular.

The status and equality between the agents can also be discussed from a buyer-seller cost-benefit perspective. In a contractarian sense, the commercialized sex seller would be seen as benefitting from the economical compensation and the buyer would be benefitting from the sexual services provided. According to a contractarian view, this cost-benefit balance finds perfect equilibrium in the presumed consent and acceptance by both parties. In a Gauthierian sense, the actual loss and gains are part of the contract and thus would have no moral value. However feminist critics of this moral view raises the issue that empirical studies goes to show that buyers (men), in general, act from a stronger economical position than sellers
(women) and that differences in social status have important functions in the contractual relations between seller and buyer (Pateman, 1983). Critics, such as Pateman, argue that these institutionalized contractual conditions make such contractarian rationale extraneous. In this respect, the basic feminist presumption would be that the social contract includes fundamental issues of inequality, which make any contractual conditions irrelevant. Elevating individual moral considerations to a collective and societal level, Pateman & Mills (2007) criticize the entire concept of social contract theory as morally flawed due to the built-in mechanisms that risk creating societal inequalities.

Pateman (1983) argues that the intrinsic qualities of commercialized sex, resulting in individual and societal domination and subjection disqualify contractarianism as a moral foundation for society. She claims that the raison d’être for contractarianism, the fundamental appeal to self-interest, would out-rule any notion of a truly free contract concept and it may be the case that contractarian proponents actually perpetuate the utopian vision of an “idealized contract”. Trying to implement components of the idealized contract into a reality where the conditions for such a contract are absent is futile, Pateman (1983) argues. But maybe the aversion to the self-interest rationale would still allow for social contract-based societies, which are built on other imperatives?

I claim that the social contract theory may not be as inherently flawed as some feminists argue, if built on principled conceptions of justice and equality rather than self-interest and market conditions. Though not the precise focus of this thesis, there could be a conceptual approach within contractualism that would appeal to these feminist notions. If we adopt contractual mechanisms that actually work to promote justice and equality, why should we rule out the social contract as such, one might ask? Indeed, concepts of justice as fairness, social responsibility and equality seem like core feminine concepts that share big similarities within classic contractualist theories as those of John Rawls and Thomas M. Scanlon.

Maybe the demarcation line does not run exactly between social contract ethics and feminist ethics as such, but rather between contractarianism and feminist ethics. As such, the collective argument by Satz (1995) and Pateman (1988), in that commercial sex is one of the big societal institutions maintaining, enforcing and perpetuation patriarchal control, could be resolved by a more egalitarian approach to a social contract based society? By using egalitarian principles and morally principled ways of reasoning, we may reach a kind of Scanlonian general inter-subjective consensus (or perhaps a kind of Rawlsian reflective
equilibrium) in achieving moral values reaching beyond cultural and social differences, thus achieving true and universal moral standards, including truly egalitarian values.

5.1.4 On convergence and divergence
It would appear that though there are crucial differences between contractarian and feminist moral stands on commercial sex, it nevertheless seems that some very basic moral values might be mutually shared at least in two cases. First it would seem that the fundamental view on autonomy and the right to exercise control over one’s own body is a moral value shared by both moral positions. Another area of possible convergence seems to be the views on the causality between cultural and historical development and inequalities within society. It would appear that the main differing opinions mainly concern the interpretations of the social consequences and the means and methods to create change. Do these different interpretations reveal factual disagreements concerning cause and effect issues rather that genuine moral disagreements within the realms of commercialized sex?

There seems to be no explicit inherent patriarchal values contained within contractarianism, although the appeal to self-interest and rational choice could be problematized from a gender and feminist ethics perspective. A key issue with the featured contractarian notion of Ericsson seems to be the contractual settings for an equal society. Without a clear notion on how to create conditions for equal justice, based on kind of “clean slate” (like Gauthier’s initial bargaining position) it appears unavoidable to incorporate cultural, gender-biased factors within social contract theory. The social contract idea of a hypothetical starting point for the social contract seems absent in some contractarian interpretations, such as Ericssons. Without a discussion on the contractual foundations, the idea of contractarian morality might run the risk of being fundamentally misunderstood and misinterpreted. Ericsson’s account might miss out on the important foundations of contractarianism, a negligence that might also be misinterpreted as overly gender biased?

5.2 Implications for legislation?
The Swedish legislation regarding commercial sex is called The Sex Purchase Act (SPA). SPA was entered into force in 1999, as a separate law, and was later incorporated in the sexual crime section in the Swedish Penal Code in 2005, reformed in 2010. SPA criminalizes the act of obtaining, or attempting to obtain, casual sexual services for compensation. The implications and effects of the SPA have mostly been evaluated through quantitative measures and studies. The Swedish police and other legal authorities have mainly been
responsible for performing such statistically based studies. The social effects of SPA seem somewhat under-researched, especially on the societal level. Two influential researchers within this area, Susanne Dodillet and Petra Östergren, seem to be an exception. According to them, Sweden has been at the forefront in enforcing legislation that criminalizes buyers, but not sellers of commercialized sex (Dodillet & Östergren, P., 2011). Also, according to the authors, the legislation can be said to be unique, perhaps not regarding its content (several countries nowadays share similar legislation) but the uniqueness maybe traced to its justification. The introduction of the SPA was based on two fundamental reasons; an ambition to target male violence against females and an ambition to achieve conditions for gender equality.

According to the authors, the SPA manifests a symbolic gender equality effort, which is aimed at contributing to an egalitarian societal development. However, the authors discuss the discrepancies that can be seen between the ambition of the legislation and the proven effects. They claim that there are definite positive effects that can be accounted for but the main issue of contributing to societal gender equality is questioned by Dodillet and Östergren (2011). Much in line with Satz and other feminist anti-commercial sex advocates, the authors see the ideological and cultural domain as the most important arena for sustained and significant change. According to the authors, the SPA effects have little to show for, as regards to such change. They claim that it can be argued that minor legislative success; as such, the authors argue that the SPA has had little impact on the structural processes that needs to be changed according to feminists opposed of commercialized sex. This particular conclusion seems somewhat farfetched and it seems a strong claim, especially since it appears very difficult to unanimously prove the legislative impact on structural processes in either way.

The authors do not offer any conclusive proof or support other than circumstantial allegations based on own conclusions. One of the key problems addressed by Dodillet and Östergren concerns the foundations for society where they imply that liberal notions on how to constitute the framework of society, such as contractarianism, may pose bigger obstacles than particular legislation. As such, the authors claim that legislation of this kind risks being more symbolic than truly progressive and the need for more education, information and debate to create bigger awareness and knowledge must, perhaps, be even more emphasized in order to achieve real change. Though this might be possible, and certainly credible by any standard, it
remains a question whether their claims really correspond to the factual social development in society.

5.3 Conclusion

5.3.1 The purpose and research questions of this study

The central question of this thesis has been to describe, compare and evaluate specific moral positions within contractarianism and feminism on commercialized sex. I have shown that a more thorough analysis of the different moral positions may reveal a few particular similarities as to the fundamental moral values. However, there are distinctive differences as to the analysis of causes and effects, factual issues and the morally based actions needed to address them. Both the contractarian and the feminist moral positions contain notions that the gender related problems of commercialized sex is a cultural problem. However, there are differences in the view on cause and effects in a cultural sense. In the contractarian view, culture is viewed as a cause in the sense that culture furnaces the stigmatization mechanisms of commercial sex, thus commercial sex could only be instrumentally justified if the negative cultural influence was removed.

From the feminist, anti-commercial sex perspective, commercialized sex culture is both a causal and effectual problem. The effectual problems can be found in that the effects of commercialized sex, encompass intrinsical mechanisms that perpetuates and augments gender inequality in society. The causal problems of culture share similarities with the contractarian view in that commercialized sex becomes a kind of indicator reflecting general societal inequalities. Feminists argue that the causal and effectual problems of culture tend to reinforce each other and that the institution of commercialized sex, in itself, effectively functions as upholding gender biased attitudes that tend to spread to the rest of society. A problem of liberal pro-commercial sex contractarianism seems to be its apparent inability to recognize unjust effects and structural problems created by commercial sex. Solving such unjust conditions and structural problems through legislation might not be the most effective way, as empirically shown in the Swedish example. Perhaps a more egalitarian approach would serve better purposes? Maybe real change happens by raising and discussing moral issues on what constitutes commercial sex in order to increase the awareness and general knowledge about the issues at hand? Maybe the pathway towards increased gender equality lies in neither contractarian, nor radical feminist views on morality but must start in problematizing the basis for cultural and ideological attitudes in society? Further legislation
might not form a complete solution, we may, to a greater extent, perhaps need to re-evaluate the factual grounds for our assumptions and prejudiced biases

5.3.2 Some critical remarks

With an explicit end of addressing the purpose and scope of this study I have tried to engage in analysis of the different arguments and factual foundations for the different moral positions. I believe that the conflict between contractarian and feminist approaches is interesting and revealing and I hope that my analysis has shown that scrutinizing these different moral stands might show areas for both moral divergence but also for some slight moral convergence, if allowing a critical approach to the factual claims. I believe it is a valid posture to delimit the discussion to matters of consented sex, however this delimitation may be considered as an overly theoretical construct without enough connection to reality. Indeed, the alleged social consequences and impact of commercialized sex on serious crime, including interrelated domains such as drugs, slavery, child abuse and trafficking can be discussed and further evaluated. Maybe even a faint connection between the liberalized view on commercialized sex and these problematic areas is enough to condemn commercialized sex as such?

The choice of focusing on single representatives for each moral position can be discussed. There are certainly other proponents within each position, having slightly (or significantly) different positions. Maybe a more collective approach within each moral position would have given a more elaborate and detailed view within each position? On the other hand, the choice in narrowing down the theoretical contributions may have had some positive effects on keeping the focus on the specific issues at hand. I certainly do not offer a complete view, turning every argumentative stone within each moral position. The space and time available limits such ambitions. This latter notion also applies to the discussion on legislative implications. This area is certainly worth commenting within the scope of this thesis but also presents opportunities for a whole new research approach, adopting a more legal and/or sociological perspective, in more thoroughly evaluating the legislative effects on society. I also feel that an analysis of the egalitarian approach within feminism should be worthy a more elaborate consideration. Influence and effects of contractualist thinking and the theoretical foundations of contractualist ethics as opposed to virtue ethics and care ethics within feminist moral theory may prove an interesting topic in further evaluating feminist and social contract positions on commercialized sex.
Bibliography


