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**PROSTITUCIJA, TEMELJNI
I INCIDENTNI ASPEKTI:
Libertarijanski argument za
legalizaciju**

**PROSTITUTION, ESSENTIAL
AND INCIDENTAL ASPECTS:
A Libertarian Argument for
Legalization**

SAŽETAK: Prostituciju se često prikazuje agresivnom i prisilnom aktivnosti, pri čemu imamo uvjerljive empirijske dokaze da ponekad i jest tako. Međutim, to nije dovoljno da bi bila nezakonita. Naš je argument da bi aktivnost trebala postati nezakonita ako i samo ako je u svojoj suštini agresivna i/ili prisilna. No, prostitucija sama po sebi nije nasilna, samo incidentno. Zaista, prostitucija se može definirati kao čin pružanja, iz perspektive mušterije, ne-reproduktivnog spolnog odnosa za novac (Edlund and Korn, 2002). Ni agresija ni prisila nužno ne ulaze u ovu sveobuhvatnu definiciju. Zbog toga prostituciju treba legalizirati, a zakone koji je zabranjuju ukinuti.

KLJUČNE RIJEČI: prostitucija, sloboda, libertarijanizam, feminizam

JEL kategorija: J46, K14

ABSTRACT: Prostitution is often depicted as an aggressive and coercive activity. We have convincing empirical evidence that sometimes this is indeed the case. However, this is not sufficient to make it illegal. We argue that an activity should be outlawed if and only if it is essentially aggressive and/or coercive. But prostitution is not inherently violent, only incidentally. Indeed, prostitution could be defined as “the act of rendering, from the client’s point of view, non-reproductive sex against payment” (Edlund and Korn, 2002). No aggression and/or coercion necessarily enters this all-inclusive definition. This is why prostitution should be legalized laws to the contrary repealed.

KEY WORDS: prostitution, freedom, libertarianism, feminism

JEL category: J46, K14

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UVOD

U ovom radu pokušat ćemo opravdati praksu prostitucije na temelju libertarijanske filozofije. Također, koristimo ekonomska razmatranja kako bismo argumentirali naš stav. U dijelu (1) razmatramo razmjenu i temeljna počela ekonomike; dio (2) tereti diskusija o libertarijanizmu i načelu neagresivnosti. Dijelovi (3), (4) i (5) redom analiziraju temeljne karakteristike prostitucije, njezine incidentne aspekte te pitaju može li siromaštvo biti prisilno i natjerati ženu da se bavi ovim najstarijim zanimanjem. Zaključak donosimo u dijelu (6).

1. RAZMJENA I TEMELJNA POČELA EKONOMIKE

Jedna od najvažnijih lekcija temeljne ekonomike jest da je svaki oblik dobrovoljne razmjene uzajamno koristan uključenim stranama, barem u *ex ante* smislu, u protivnom se razmjena ne bi dogodila¹. Na primjer, Frank kupi dva jajeta za pet dolara. Možemo zaključiti da i Frank i prodavač *ex ante* vjeruju da će im biti bolje nakon razmjene². To je točno, jer prema Rothbardovim (2009., str. 85) riječima ova dva dobra imaju reverzibilno vrednovanje na svakoj od vrijednosnih skala dviju strana prema razmjeni. Drugim riječima, Franku dva jajeta vrijede više od pet dolara, a prodavaču pet dolara vrijedi više od dva jajeta. Budući da se dva subjektivna vrednovanja razlikuju, Frank i prodavač bit će u “boljoj poziciji” (Alchian and Allen, 1972., str. 38) nakon razmjene. Ovaj koncept poznat je kao dobiti od trgovine.

2. LIBERTARIJANIZAM I NAČELO NEAGRESIVNOSTI

Libertarijanizam se može pojmiti kao pravna i politička filozofija koja se temelji na načelu neagresivnosti, koje nalaže da je agresija, i prijetnja koja iz nje proizlazi, prema nedužnim ljudima

INTRODUCTION

We shall in this paper attempt to justify the practice of prostitution on the basis of the libertarian philosophy. We also utilize economic considerations in an attempt to make our case. In section (1) we consider exchange and basic economics; the burden of section (2) is to discuss Libertarianism and the non-aggression principle. Sections (3), (4) and (5), respectively analyse the nature of prostitution, its incidental aspects and ask if poverty can be coercive, and compel a woman into the oldest profession. We conclude in section (6).

1. EXCHANGE AND BASIC ECONOMICS

One of the most important lessons of basic economics is that every form of voluntary exchange is mutually beneficial to the parties involved, at least in the *ex ante* sense, otherwise it would have not taken place¹. For instance, suppose that James buys two eggs for five dollars. We can conclude that both James and the seller *ex ante* believe that they will be better off after the exchange². This is the case because, in Rothbard’s (2009, p. 85) words, these two goods “have reverse valuations on the respective value scales of the two parties to the exchange.” In other words, Frank values two eggs more than five dollars and the seller values five dollars more than two eggs. Since the two subjective valuations differ, Frank and the seller will be in a “more preferred position” (Alchian and Allen, 1972, p. 38) after the exchange. This concept is known as gains from trade.

2. LIBERTARIANISM AND THE NON-AGGRESSION PRINCIPLE

Libertarianism can be viewed as the legal and political philosophy based upon the non-aggression principle (NAP), which states that, aggression, or the threat thereof, against innocent people

i privatnom vlasništvu zakonski nedopustiva³. Agresiju se definira, prema Rothbardovim riječima, kao uporabu prijetnje fizičkim nasiljem prema osobi ili nečijoj imovini.⁴

Libertarijance ne zanimaju direktno moralna pitanja, već pravna i politička. Kao što je Block rekao: libertarijanizam nije pravna teorija, ni analiza prava, a štoviše ni etike. Radije, to je pokušaj razumijevanja što bi stvarno pravo trebalo biti.⁵ U ovom radu pokušavamo dovesti načelo neagresivnosti do njegovih logičkih zaključaka⁶ te na taj način doseći društvo temeljeno na uzajamnom pristanku. Prema filozofiji prava, svaka nenasilna aktivnost, bez obzira koliko gnjusna bila, trebala bi biti zakonita⁷. Ukratko, libertarijanizam pokušava što je dosljednije moguće primijeniti načelo da bi ljudima trebalo biti dopušteno voditi vlastiti život kako god žele (sve dok nisu agresivni prema nikome).⁸

Zašto uopće spominjemo libertarijanizam? Zato što ćemo pokušati opravdati legalizaciju prostitucije na temelju ove filozofije.

3. KARAKTERISTIKE PROSTITUCIJE

Prije nego što izložimo argumente za legalizaciju, trebali bismo jasno izložiti koji su temeljni a koji incidentni aspekti prostitucije. Temeljni su sastavni dio ove aktivnosti, a incidentni su samo blago s njom povezani. Ako je nešto u svojoj suštini nezakonito – odnosno prisilno – u samoj suštini prostitucije, ona bi trebala zakonom biti zabranjena. U suprotnom smislu, ako ovaj posao ima incidentno nezakonite karakteristike, tada ne postoji ni jedan opravdani razlog za njezino zabranjivanje zakonom. U tom slučaju, njezini nezakoniti elementi trebali bi biti zakonom zabranjeni, a ne sama prostitucija.

Iz libertarijanske perspektive, određena aktivnost trebala bi biti nezakonita ako i samo ako nužno uključuje agresivno nasilje bez pristanka. Stoga, da bismo se pozabavili pitanjem nezakonitosti prostitucije, trebali bismo odgovoriti na jednostavno pitanje: uključuje li ova aktivnost nužno primjenu

or private property is legally impermissible³. Aggression is defined, in Rothbard's words, as "the initiation of the use or threat of physical violence against the person or property of anyone else."⁴

Libertarianism is not directly concerned with moral issues, but only with legal and political ones. As Block put it: "Libertarianism is not a theory of law, nor is it an analysis of rights, nor, yet, ethics. Rather, it is an attempt to discern what the proper law should be."⁵ In this paper we attempt to push the NAP to its logical conclusions⁶, thus leading to a society based on mutual consent. Every non-violent activity, no matter how repugnant, should be legal according to this philosophy of law⁷. In a nutshell, libertarianism tries to apply as consistently as possible the principle that people "should be permitted to run their lives as they wish (as long as they do not aggress anyone, else)."⁸

Why do we even mention libertarianism? It is because we shall attempt to justify the legalization of prostitution on the basis of this philosophy.

3. THE NATURE OF PROSTITUTION

Before arguing for its legalization, we should clearly state what are the essential and incidental aspects of prostitution. The former necessarily belong to this activity, the latter are just loosely connected with it. If there is something inherently illegal – i.e. coercive – with prostitution qua prostitution, then it should be outlawed. On the contrary, if this job has incidentally illegal features, then, there would be no just reason to prohibit it. In that case, its illegal elements should be outlawed, but not prostitution itself.

According to the libertarian perspective, a certain activity should be illegal if and only if it necessarily involves aggressive and non-consensual violence. Therefore, in order to establish if prostitution should be made illegal, we have to answer a simple question: does this activity necessarily imply the exercise of aggressive and non-consensual violence? Our response is a loud and clear "No."

agresivnog nasilja bez pristanka? Naš glasan i jasan odgovor je: “Ne”. Sasvim suprotno, suština prostitucije jest dobrovoljna razmjena. Ne postoji prisila koja je izravno povezana s ovim činom. Iskreno, ne postoji konceptualna razlika između prostitutke i njezine mušterije i Franka i prodavača jaja. U principu, oni se ne mogu razlikovati. Dok Frank kupuje dva jajeta za pet dolara, prostitutka kupuje X dolara za seksualne usluge, a njezina mušterija kupuje tu uslugu za određeni iznos novca. Pretpostavimo, na primjer, da John ima spolni odnos s Marie za sto dolara. Iz njihovog sastanka možemo zaključiti da su oboje u dobiti *ex ante*⁹. Dogodila se komercijalna razmjena, jer su i John i Marie vjerovali da će biti u boljoj poziciji nakon razmjene, te možemo zaključiti da je ovo samo primjer dobrovoljne interakcije koja dovodi do dobitaka od trgovine.

A što je s ekonomskom dobrobiti *ex post*? Profitiraju li obje strane ovog kapitalističkog čina između dvoje odraslih ljudi koji su dali svoj pristanak (Nozick, 1974., str. 163) u tom smislu? Žale li jedan ili drugi što su sudjelovali u ovom činu? To je empirijsko pitanje te sve ovisi o uključenim osobama i njihovom zadovoljstvu tim iskustvom. No ista je situacija kao i s kupnjom jaja. Obično, no ne uvijek, sve razmjene koje uključuju pristanak jednako su korisne u *ex post* smislu kao i *ex ante* smislu.

4. INCIDENTNI ASPEKTI PROSTITUCIJE

Raspolažemo velikim brojem empirijskih dokaza da mnogo prostitutki doživljava fizičko nasilje, da su zlostavljane u djetinjstvu te pate od simptoma disocijativnih poremećaja. Na primjer, istraživanje provedeno na 130 prostitutki u San Franciscu 1998. godine pokazalo je da su mnoge pretrpjele fizički napad (82%), prijetnju oružjem (83%) ili ozbiljne ozljede (82%)¹⁰. Od onih koje su doživjele fizički napad, 55% je napala mušterija. Štoviše, prema istraživanju Bagleya i Younga provedenom s 45 bivših prostitutki, 73% je seksualno zlostavljano u djetinjstvu¹¹. Osim toga,

On the contrary, the essence of prostitution is that of a voluntary exchange. There is no coercion inextricably linked with this act. To be blunt there is no conceptual difference between a prostitute and her client and Frank and the egg-seller. In principle, they are indistinguishable. While Frank buys two eggs for five dollars, a prostitute buys X dollars for sexual services, while her client purchases these amenities for that amount of money. Suppose, for example, that John has sexual intercourse with Marie for one hundred dollars. We can deduce from their meeting that both John and (Marie) gained *ex ante*⁹. The commercial exchange took place because they both believed they would be in a more preferred position afterward than before. In conclusion, this is just an example of a voluntary interaction leading to gains from trade.

What about economic welfare *ex post*? Do both parties to this “capitalist act between consenting adults” (Nozick, 1974, p. 163) gain from it in that sense? Does one or the other regret participating in this event? This is an empirical question, and it all depends upon the persons involved, and whether or not the experience was satisfactory. But precisely the same situation occurs with the egg purchase. Usually, but not always, all consensual trades are beneficial in the *ex post* sense as well as, certainly, the *ex ante*.

4. INCIDENTAL ASPECTS OF PROSTITUTION

We have substantial empirical evidence that many prostitutes experience physical violence, got abused in their childhood and suffer from dissociative symptoms. For example, a survey conducted on 130 prostitutes in San Francisco in 1998 found that many of them had been physically assaulted (82%), threatened with a weapon (83%) or seriously injured (8%)¹⁰. Of those who suffered physical assaults, 55% had been assaulted by customers. Moreover, according to the study of Bagley and Young on 45 former prostitutes, 73% of them were sexually abused in childhood¹¹. In

zahvaljujući informacijama koje je Potterat prikupio o osobama identificiranim putem sustava nadzora policije i ministarstva zdravstva u Colorado Springsu of 1967. do 1999., utvrđeno je da je stopa smrtnosti prostitutki mnogo viša od one ostatka populacije (Potterat et al., 2004.), a umorstvo, nasilje i zlouporaba droge glavni su uzroci njihove smrti. Naposljetku, zbog često bolne prošlosti ili pritiska koje osjećaju kako bi preživjele iz dana u dan, prostitutke mogu patiti od disocijativnih poremećaja. Na primjer, Ross i partneri proveli su istraživanje s 236 osoba koje pate od poremećaja višestruke ličnosti te utvrdili da ih je 19% prethodno radilo u prostituciji (Ross et al., 1990.).

Naša je pretpostavka da su ove prezrive činjenice samo incidentni aspekti prostitucije. Ustvari, one nemaju nikakve veze s definicijom – koja obuhvaća samo temeljne elemente *definiendum* – prostitucije kao čina pružanja ne-reproduktivnog spolnog odnosa za novac. Prema Blockovim (2008., str. 4) riječima: ovi odvratni aspekti nemaju mnogo zajedničkog s intrinzičnim svojstvima prostitucijske karijere. Postoje bolničari i doktori koji su oteți kako bi pružili svoje usluge bjeguncima pred zakonom; postoje stolari koji su ovisni o drogi; knjigovođe koji su pretrpjeli fizičko nasilje uličnih pljačkaša. Teško bismo mogli zaključiti da su ova zanimanja ili karijere sumnjive, ponižavajuće i podrazumijevaju izrabljivanje.¹²

Ne može se poreći da legalizacija prostitucije¹³ vodi do mnogo humanijeg postupanja s radnicima u toj profesiji. Nisu podložni fizičkom zlostavljanju svojih poslodavaca. Mogu računati na zaštitu pravnih službi i zakona. Sto je prošlo ne može se promijeniti: povijest mladih djevojaka koje se sada bave prostitucijom ne može se promijeniti. No legalizacijom se barem s njima može puno bolje postupati.

5. IMA LI SIROMAŠTVO PRISILAN KARAKTER?

Postoje ljudi koji vjeruju da se mnoge prostitutke ne bave svojim poslom dobrovoljno nego ih

addition, thanks to the information collected by Potterat on subjects identified by police and health department surveillance in Colorado Springs from 1967 to 1999, it is established that the mortality rate of prostitutes is far higher than that of the general population (Potterat et al., 2004), with homicide, violence and drug use being the main causes of death among them. Last but not least, prostitutes, due to their often-painful past or the pressure they have to handle on a daily basis, can suffer from dissociative symptoms. For instance, Ross and associates conducted a study on 236 people with multiple personality disorder and found that 19% had previously worked as prostitutes (Ross et al., 1990).

Our thesis is that these despicable facts are just incidental aspects of prostitution. In fact, they have nothing to do with the definition – which captures only the essential elements of the *definiendum* – of prostitution as the act of rendering nonreproductive sex against payment. As Block (2008, p. 4) remarked: "... these sordid aspects have little to do with the intrinsic career of prostitution. There are nurses and doctors who are kidnapped and forced to perform for fugitives from justice; there are carpenters who are drug addicts; there are bookkeepers who are beaten by muggers. We would hardly conclude that any of these professions or vocations are suspect, demeaning, or exploitative."¹²

It cannot be denied that when prostitution is legalized¹³ the sex workers are treated far more humanely. They are protected from unruly customers. They are not subject to physical abuse from their employers. They can avail themselves of protection from the legal authorities. Sunken costs are sunken; the past histories of young girls who are now prostitutes cannot be changed. But, at least, they can be treated far better, under legalization.

5. IS POVERTY COERCIVE?

Some people believe that many prostitutes ply their trade not voluntarily, but since they are

siromaštvo na to prisiljava. Ovo stajalište izaziva mnoge dileme. Prije svega, ne ulaze sve siromašne žene u profesiju prostitucije. Mnoge postaju krojačice, konobarice, čistačice i peračice suđa. A opet, mnogi se ne bi usudili reći da ih je siromaštvo *prisililo* na odabir tih zanimanja. Nadalje, smisao prisiljavanja podrazumijeva postojanje onoga koji prisiljava. Silovatelj, ubojica, otimač zaista tjeraju ljude da djeluju protiv svoje slobodne volje. Osim toga, teško se može poreći da se neke prostitutke bave ovim poslom jer su otete ili su im djeca pod prijetnjom itd. No i s bogatim se ženama može tako loše postupati. Siromaštvo, u svojoj suštini, ne može se smatrati izvorom prisile.

6. ZAKLJUČAK

Aktivnost X trebala bi postati nezakonita ako i samo ako je X u svojoj suštini nasilna, agresivna ili prisilna aktivnost. Kako smo mogli vidjeti, prostitucija u svojoj suštini nije drugo no dobrovoljna razmjena koja dovodi do *ex ante* dobitaka od trgovine. Stoga ne bi trebala biti proglašena nezakonitom. Naprotiv, zakoni kojima se prostitucija zabranjuje trebali bi se ukinuti te bi se prostitucija trebala legalizirati. U svezi rečenog, ne bi se trebalo zaključiti da podržavamo prostituciju. Kao libertarijanci ne zauzimamo nikakav položaj o tome. Na osobnoj razini, oba autora na ovu profesiju gledaju s negodovanjem: ne bismo željeli da se naše majke, sestre, kćeri itd. bave ovim zanimanjem. Ali čak i više sada kao libertarijanci ne bismo željeli da budu uhićene zbog vlastitog izbora baviti se njime, ako su tako odlučile.

coerced by poverty. There are grave difficulties with this stance. For one thing, not all poor women enter the oldest profession. Many take jobs as seamstresses, waitresses, cleaners, dish washers. And, yet, no one would be so bold as to say that poverty “coerced” them into those occupations. For another, true coercion implies the existence of a coercer. The rapist, murderer, kidnapper, does indeed compel people to act against their freely made choices. And, it is difficult to deny that that some prostitutes engage in these activities because they were kidnapped, or had their children threatened, etc. But even rich women can be so ill-treated. Poverty, in and of itself, cannot be considered as guilty of coercion.

6. CONCLUSION

Activity X should be made illegal if and only if X is essentially violent, aggressive or coercive. As we have seen, prostitution *qua* prostitution is nothing but a voluntary exchange leading to *ex ante* gains from trade. Therefore, it should not be outlawed. On the contrary, anti-prostitution laws should be repealed and prostitution should be legalized. From this, it should not be inferred that we favour prostitution. Qua libertarians, we may take no position on that issue whatsoever. On a personal basis, as it happens, both authors look askance at this occupation: we would not want our proverbial mothers, sisters, daughters, etc., to enter it. But, even the more, again, now, as libertarians, we would not want them arrested for making this choice if that is what they did.

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- ¹ Vidi, na primjer, Alchian, A. and Allen, William, 1972., poglavlje 4; Heyne, Boettke and Prychitko, 2014., poglavlje 2; Rothbard, 2009., str. 85.
- ² Očito, ekonomski akteri *ex post* mogli bi misliti da bi drugačiji pristup bio profitabilniji. O tome vidi, na primjer, Hülsmann, 2000.
- ³ Vidi, na primjer, Hoppe, 1989., 1993.; Huemer, 2013., str. 177; Kinsella, 1992.; Rothbard, 1998., 2006., str. 27.
- ⁴ Rothbard, 2006., str. 27. Pripadnici libertarijanske škole podijeljeni su po pitanju je li agresivno nasilje apsolutno nedopustivo ili ne. Drugim riječima, jedni vjeruju da pribjegavanje nasilju može biti dopustivo u ekstremnim slučajevima. Za apsolutističke obrane libertarijanizma, vidi Hoppe, 1989., 1993.; Rothbard, 1998., 2006. Za ne-apsolutističke, vidi Friedman, 1989.; Huemer, 2013. Za kritiku libertarijanskog apsolutizma, vidi Zwolinski, 2016.
- ⁵ Block, 2015. Dobar uvod u libertarijanizam pružaju, na primjer, Brennan, 2012.; Rothbard, 2006.
- ⁶ Načelo neagresivnosti također ima svojstvo da je intuitivno vjerojatno. Block, 2015., to naglašava. Huemerova obrana libertarijanskog anarhizma je potpuno temeljena na intuitivnoj privlačnosti načela neagresivnosti. Vidi Huemer, 2013.
- ⁷ Za obranu likova kao što su svodnik i prostitutka s libertarijansko anarhističkog stajališta, vidi Block, 2008., 2013.
- ⁸ Friedman, 1989., uvod.
- ⁹ Ovo je svakako slučaj ako pretpostavimo da se preferencije ljudi razabiru kroz njihove radnje. Vidi Rothbard, 1956.
- ¹⁰ Vidi Farley and Barkan, 1998. Za više informacija, vidi Farley et al, 2004.; Parriott, 1994.; Silbert and Pines, 1992.
- ¹¹ Vidi Bagley and Young, 1987.; Farley and Barkan, 1998.; Silbert and Pines, 1983.; Simons and Whitbeck, 1991.
- ¹² Također vidi Brennan i Jaworski, 2016., str. 151-152.
- ¹³ U mnogim zemljama u Nevadi i diljem većine Europe. Za više informacija vidi Bhattacharya, 2015.; Jacobs, 2017.; Procon, 2018.

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- ² Obviously, the economic agents *ex post* could find that another course of action would have been more profitable. On this point, see, for example, Hülsmann, 2000.
- ³ See, for example, Hoppe, 1989, 1993; Huemer, 2013, p. 177; Kinsella, 1992; Rothbard, 1998, 2006, p. 27.
- ⁴ Rothbard, 2006, p. 27. Libertarian scholars are divided on whether aggressive violence is absolutely impermissible or not. In other words, there are those who think that initiating violence can be permissible in extreme circumstances. For absolutistic defences of libertarianism, see Hoppe, 1989, 1993; Rothbard, 1998, 2006. For non-absolutistic ones, see Friedman, 1989; Huemer, 2013. For a criticism of libertarian absolutism, see Zwolinski, 2016.
- ⁵ Block, 2015. Good introductions to libertarianism are, for example, Brennan, 2012; Rothbard, 2006.
- ⁶ The NAP has the virtue of being intuitively plausible, as well. Block, 2015 stress this point. Huemer's defence of libertarian anarchism is entirely based upon the intuitive appeal of the non-aggression principle. See Huemer, 2013.
- ⁷ For a defence of figures such as the pimp and the prostitute from a libertarian anarchist point of view, see Block, 2008, 2013.
- ⁸ Friedman, 1989, introduction.
- ⁹ This is necessarily the case if we assume that people's preferences are revealed through action. See Rothbard, 1956.
- ¹⁰ See Farley and Barkan, 1998. For more data, see Farley et al, 2004; Parriott, 1994; Silbert and Pines, 1992.
- ¹¹ See Bagley and Young, 1987; Farley and Barkan, 1998; Silbert and Pines, 1983; Simons and Whitbeck, 1991.
- ¹² See also Brennan and Jaworski, 2016, pp. 151-152.
- ¹³ In many counties in Nevada plus throughout most of Europe. For further information see Bhattacharya, 2015; Jacobs, 2017; Procon, 2018

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