

ROBERT LECKEY

Ottawa must view sex work through a bigger lens

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Today (Sept. 9), a Senate committee will begin studying the prostitution bill introduced last June by the federal government. Critics have raised many concerns but, to date, the debate has excluded crucial insights and concerns that the experiences of individuals who are gay, lesbian, bisexual, and transgender or transsexual should bring into the picture.

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The government intends to criminalize buying sex as well as selling it next to a school, playground, or daycare. Abolishing sex work is the ultimate goal stated for this heavy-handed use of the criminal law. This agenda draws inspiration from a strand of feminism that sees sex between men and women as always potentially exploitative. It doubts whether anyone could ever really consent to exchanging sex for money.

Whatever the insights of such feminism, its focus on sex work as an instrument of male power is too narrow.

From the view of sex work as inherently exploitative, the obvious parallel to laws against sex work are laws against sexual assault. The latter criminalize sex without consent. It's been a long time since our criminal law targeted consensual sex between a man and a woman, as criminalizing adultery once did.

Set aside this feminist lens and another parallel comes into view. I mean the unhappy history of criminalizing consensual sex to promote the majority's sexual morality.

Think of the ban against gay sex, lifted in 1969. Nobody suggests that ban really changed people's desire to engage in gay sex or reduced its incidence. Instead, it cast a stigma and criminal status over a class of individuals. It impaired their ability to participate as full and equal members of society. It

also made people who had gay sex vulnerable to blackmail and less able to seek police protection when threatened.

Current law criminalizes sex below the age of consent and without consent. The experience using the criminal law against same-sex desire raises the question: On what basis does the Harper government think its proposed law will achieve its stated aims, rather than reproduce similar harms?

When you broaden the scope, the other crucial point that becomes visible is who sells sex. The population working the streets is more diverse than the current debates acknowledge. Research indicates that male and trans individuals make up roughly one-fifth of street-based sex workers in Canada.

Complex factors lead people to engage in sex work, including the disproportionate number of trans individuals. My concern is that a law based on a questionable response to power imbalances between men and women risks harming groups that aren't its target. Moreover, nothing suggests that the law would address the root causes that lead people to sell sex.

If you are a trans person seeking access to identity papers, medical treatment, or protection from discrimination, many obstacles still face you in Canada. But if you are gay or lesbian and want to marry your partner, it's a good place to be. If you're gay or lesbian, it's also a good place for challenging workplace discrimination. These breakthroughs are the result of political and legal struggles over past decades.

The beneficiaries of these reforms have a responsibility to fight a law that flies in the face of our experience and will intensify the disadvantage of individuals whom their sexual orientation or gender identity marginalizes already.

As I see it, the commitment to sexual justice that underlay our earlier struggles entails fully decriminalizing adult sex work.

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