

**A Matter of Choice:
Feminist Prostitution Debates and the Example of China**

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As the document 'A Matter of Choice: Critical Policy Studies of China' suggests, '[a] "critical" policy studies does not necessarily dictate the ultimate performance of "critiquing" policies. There are other means of critical thinking rather than simply critiquing literally'. Specifically, the Foucaultian concept of governmentality has enabled scholars of government to avoid 'global or radical' positions: that is, to 'eschew any position that claims that all the activity of government is bad or good', illegitimate or legitimate, and subsequently purports 'to show how humans can be liberated from' or, alternatively, by government (Dean 2001: 34). Instead, recourse to the concept of governmentality allows us to ask questions about government, authority and power, without promoting a general normative stance. Rather than appealing to the ideal of a 'value-neutral' social science, however, the objective of such an approach is to make explicit the forms of thought that underlie governmental programs and to highlight how things might be done differently. By raising selectively what Weber calls 'inconvenient facts', a governmentality approach illuminates the stakes that characterize specific policy programs, and opens the space for a more considered analysis of their implicit commitments and possible effects (Dean 2001: 34-6).

This paper broaches the utility of a governmentality approach for doing critical policy studies with reference to NGO criticisms of the PRC's failure to recognize prostitution as sex work. The first section of the paper problematizes the recent feminist turn to international human rights law. It suggests that feminist human rights activists construct their own participation in the processes of formulating transnational prostitution strategies on the basis of an idealized form of critique. The second section contends that

an analysis of Chinese campaign-style policing as an example of ‘governmentality in action’ undermines this particular mode of critique. It does so by highlighting the heterogeneous nature of sellers and buyers of sex in PRC, which suggests that it is not possible to unify ‘sex work’ under the rubric of one specific legally based policy. The paper concludes by summarizing the implications of this ‘inconvenient fact’ in terms of doing critical studies of prostitution policies in China and more generally.

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Prostitution is now identified as a transnational issue requiring global solutions in relation to its regulation and legislation, but the question of what constitutes a properly feminist response remains a matter of dispute. Ongoing conflicts within metropolitan feminist circles over the meanings of sex/uality for women, combined with the United Nation’s acknowledgment of women’s rights as human rights, have produced two divergent conceptions of prostitution as a legitimate target of governmental intervention. Extrapolating on the UN’s recognition of gender discrimination and violence as issues that stem from and reinforce the secondary status of women, non-governmental organizations (NGOs) associated with the feminist abolitionist lobby contend that prostitution constitutes a form of violence against women and hence a violation of human rights. As a result, they are currently lobbying within the UN, and other political forums, for nations to work towards the eradication of prostitution by decriminalizing and providing support for women in prostitution, whilst simultaneously criminalizing those who create the demand for, and profit from, the sexual exploitation of others. Conversely, NGOs who endorse the platform of the prostitutes’ rights movement maintain that abolitionist and prohibitory prostitution laws constitute a violation of the human rights of women to control their own bodies, lives, and work. In consequence, they are currently lobbying for nations to recognise all forms of ‘voluntary’ prostitution, by decriminalizing consensual commercial sexual practices, and placing ‘the sex sector’ under the jurisdiction of commercial and labour, as opposed to criminal, laws.

These competing constructions of prostitution notwithstanding, the feminist anti-prostitution and pro-sex work lobbies both operate on the basis of a common rationale. They similarly assume that the international legal system can be used to hold individual governments responsible for failing to prevent, prosecute, or punish, individuals and organizations that violate the rights of women. Hence, rather than endorsing the platform of either lobby as a matter of personal ethico-political preference, a fundamental issue that needs to be addressed is: 'What do metropolitan feminist theorists and activists have invested in the recent turn to international law?' As Coomaraswamy (1996: 18) explains, the rapid ascendancy of the language of women's human rights since the early 1990s owes much to the fact that the discourse of human rights offers a recognized vocabulary for framing political and social wrongs, and carries with it an air of universality and legitimacy. Additionally, it enables women's rights activists to claim access to the diverse machinery set up at the international level for the promotion of human rights and for taking action against nations that fail to meet international requirements.

By claiming the *right* to enter into and redefine the 'masculinist' terrain of international law, however, women's human rights activists have effectively revitalized the once beleaguered claim of Feminism to speak for all women, albeit this time in the name of multivocal, transnational feminisms, as opposed to univocal, 'White-Western-Feminism' (Howe 1995: 63–91). Despite repeated admonitions to the effect that transnational strategies must be viewed as interim measures, based on the provisional tactic of 'thinking globally, whilst acting locally', metropolitan women's rights activists evince an inordinate faith in the universal efficacy and transformatory capacity of *feminist* legally based strategies. This faith is justified by reference to the urgent need for remedial action regarding issues that harm and discriminate against women, and the unavoidable necessity of using the language of human rights because it is the only language that has the capacity to set legal remedies in operation. While these justifications may ring true, the underlying appeal to notions of an oppressed universal sisterhood, and hence commonsensical conceptions of 'real politics', has had the corollary effect of precluding theoretically informed attempts to disassemble the language of human rights, by intimating that such endeavours are purely academic, or even non-feminist, in the final

analysis. The recent turn to international law has thus lured many feminist human rights theorists into the trap of assuming that metropolitan feminist concerns can and *should be* translated into a universally applicable set of policy recommendations.

The ultimately ‘illiberal’ nature of feminist efforts to speak legally on behalf of women globally can be demonstrated with reference to recent NGO efforts to pressure the Chinese government into recognizing ‘voluntary’ prostitution. Drawing on the popular portrayal of the UN (1979) *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) as the ‘women’s human rights treaty’, various NGOs have cited the PRC’s failure to place the prostitution transaction under the jurisdiction of commerce and labour laws as yet another example of the Chinese government’s substandard record with regard to the observance of basic human rights. China’s implementation of CEDAW indubitably leaves room for improvement, even the Chinese representatives at the UN Review Committee admitted that ‘Chinese women had “a long way to go” before realizing full equality’ (‘International scrutiny in action’ 1999). However, the strategy adopted by the NGOs in question — to dismiss the Chinese delegates’ allusions to broader structural problems and entrenched cultural values as ‘political face-saving’ designed to obscure the PRC’s refusal to empower Chinese women via the implementation of a rights-based approach — simply underscores the Eurocentric bias of much human rights activism.

To begin with, the NGO report (Human Rights in China *et al.* 1998) highlights the Eurocentric predisposition of metropolitan activists to selectively focus on perceived instances of third-world resistance to positive feminist-political change, while eliding the fact that most developed countries were slow to ratify CEDAW and the USA still has not. It thereby demonstrates the problematic ways in which the hyperreal space of ‘Euramerica’ is naturalized and reified as the most progressive model to which developing nations must aspire. Since prostitution is prohibited in most North American states, and the legal recognition of prostitution in other developed nations has not resulted in a significantly more woman-centred (or even a more equitable) restructuring of ‘the

sex industry', it shows how developing nations are expected to live up to an idealized standard that few, if any, first-world nations have attained.

In addition, reference to the NGO report illustrates how adherence to this idealized form of critique can hinder rather than promote effective change. Proponents of the understanding of prostitution as 'sex work', for instance, maintain that the Chinese government has failed to meet its obligations as a signatory to CEDAW; by failing to place 'the sex sector' under the jurisdiction of commerce and labour laws, it has denied women the right to control their own bodies and lives. This line of argument is persuasive insofar as it appeals to liberal conceptions of civil rights and the popular conviction that the operation of power in China functions predominantly to repress. However, proponents of this position fail to register that the failure of China's governmental authorities to define prostitution as a legitimate form of work cannot be attributed solely to the presumed moralistic and authoritarian intractability of the CCP-led regime. It suggests that the specific amalgam of interests and forces that has enabled metropolitan intellectuals-cum-activists to categorize prostitution as work has not coalesced in quite the same fashion in China. Hence, placing the prostitution transaction under the jurisdiction of the PRC's labour laws may not produce the empowering effects that the introduction of a more 'enlightened' response is assumed to guarantee.

This latter contention may be illustrated by noting that the NGO report itself points to the multiple problems associated with female employment, the lack of independent trade unions, and the limited access of individuals to civil redress *vis-à-vis* occupational health and safety issues, in China. In view of these structural and legal limitations, it is difficult to see how recognizing prostitution as work is supposed to empower Chinese women in prostitution, or even enable the more effective administration of 'the sex sector', in the immediate future. In fact, if the arguments of the All-China Women's Federation (ACWF) are given any credence, it could well lead to the creation of another female job ghetto, whilst simultaneously generating more profits for the predominantly male-run hospitality and tourist industries. This is because, as in many other countries, prevailing social mores will continue to militate against female sex workers being treated as

equivalent to any other wage labourer. Bearing these considerations in mind, and given the virtual absence of sophisticated and recognized prostitute unions in developed first-world countries, metropolitan human rights activists might be better advised to focus on the kinds of changes that can be rendered both ‘thinkable’ and ‘operable’ in China for improving the situation of women in prostitution, rather than attempting to turn the PRC into a replica of our own ‘idealized self’.

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A focus on Chinese campaign-style policing as an example of ‘governmentality in action’ exposes the impracticality of adhering to this idealized form of critique (Jeffreys 2004). Contrary to the popular dismissal of policing campaigns as punitive and ineffective crackdowns, campaign-related investigations have done much to highlight the diversity of prostitution businesses and practices that exist in China today, by demonstrating that forms of selling and buying of sex range from the practices of men with money and influential positions who keep ‘second-wives’ to those who demand the services of ‘hostesses’ in commercial hospitality venues, to the practice of migrant rural workers who offer women temporary shelter and basic subsistence in exchange for sexual services. In doing so, such investigations not only point to the practical difficulty of unifying the forms of selling and buying sex that exist in China under the rubric of ‘sex work’, but also undermine the liberal construction of prostitution as a ‘private and unremarkable transaction’ by exposing the links between certain forms of selling sex and government corruption (e.g., in the form of expropriating public funds to keep a ‘second wife’ or to buy the services of ‘hostesses’).

An examination of the Chinese case thus calls into question the tendency of pro-sex work activists to homogenize all female sellers of sex as ‘sex workers’ and to treat male buyers of sex as ‘private consumers’. Given the controversy that currently surrounds the first two tiers of China’s so-called ‘prostitution hierarchy’ (namely, the practices of ‘keeping a second wife’ and ‘hiring a short-term mistress’), the act of legally recognising prostitution, if such an option were socially acceptable and politically feasible in the

PRC, would oblige the Chinese government to determine which particular forms of 'selling sex' could be legitimately defined as 'work' and which could not. Likewise, the tendency of the pro-sex work lobby to elide the male side of demand, on the grounds that male buyers of sex are individual citizens participating in an unremarkable as in 'private' transaction, is seriously challenged in the context of China by the demonstrated link between the demand for prostitution and the expropriation of public funds.

These 'inconvenient facts' call into question the recent feminist insistence that the international community should oblige national governments to legally recognize 'the sex sector' and hence 'sex workers'. While not disputing the validity of concerns about prostitutes' rights, a consideration of the Chinese case suggests that such concerns are not only underpinned by liberal conceptions of the sexual-political subject, but also presume that the organization of modern societies is to all intents and purposes identical. Certainly, arguments concerning the perceived benefits that will accrue to sex workers, flowing from a legal recognition of 'the sex sector', effectively assume that all nations possess an established commercial business sector, with equitable and enforceable labour laws, into which the 'prostitute-as-(rightful)worker' can somehow be slotted. This is demonstrably not the case in China, as both the arguments put forward by the ACWF and the criticisms of China's labour market raised by the NGO report would suggest.

An examination of the Chinese case thus brings into focus the constant reliance of pro-sex work activists upon a meta-discourse bounded by Western liberal conceptions of 'the individual', 'the state', 'the law', and ultimately 'the UN', in order to resolve a series of historically and culturally specific problems with moral dimensions. For all of the aforementioned reasons, we need to resist the popular association of the concept of 'sex work' with theoretical and political 'correctness'. Even more importantly, we have to question the recent tendency of metropolitan commentators to mobilize the concept of 'sex work' as a means to demonstrate the assumed (i.e., 'already known') inadequacy of the PRC's response to prostitution. Exponents of this approach claim all the kudos that accrues to those who speak with moral indignation against the Chinese government, and on behalf of the 'downtrodden, subaltern prostitute subject', without the accompanying

ethical burden of investigating whether the strategy they want adopted can be operationalized in different cultural contexts in a way that is unambiguously better than the strategy which they want replaced.

Certainly, although the practice of listening to the ‘voices’ of women-in-prostitution has quite convincingly shown that prohibitory regimes produce a restructuring of prostitution practices and businesses in ways that disadvantage the female prostitute, supporters of the pro-sex work lobby tend to assume that this problem will somehow disappear once ‘voluntary’ prostitution is recognised as a legitimate form of work. In Australia, however, decriminalisation policies have actually resulted in the expansion of legal definitions of prostitution and the development of a new bureaucratic machinery to extend official control over illegal and legal prostitution practices and businesses. Specifically, decriminalisation has led to the elaboration of criminal law and harsher police crackdowns on illegal brothels and street prostitutes, often at the behest of legal sex workers, on the grounds that ‘illegal operators’ are law-breakers who undermine the profitability and/or professional credibility of legitimate providers of sexual and other health/leisure services. This hierarchical restructuring of prostitution practices and businesses, flowing from the adoption of a more tolerant legal response not only highlights the need for more localised studies of the varied effects of introducing decriminalisation policies in different cultural and temporal contexts, it suggests that prostitution cannot be regarded as a stable or consistent object of law reform. Decriminalisation strategies — just like the much maligned systems of prohibition and licensing — may also lead to a restructuring of prostitution practices and businesses in ways that exacerbate the very inequalities and problems which the adoption of a more tolerant response is supposed to redress (Sullivan 1997: 12).

As a corollary, therefore, we need to be wary of dismissing the platform of the feminist anti-prostitution lobby out-of-hand. Radical feminist theorizations of sexuality may be institutionally outmoded, but this does not mean that the strategy advocated by the feminist anti-prostitution lobby possesses no practical utility. There can be little doubt that the ‘learned’ cultural memory of the CCP’s successful eradication of brothel-

prostitution in the 1950s, combined with growing international concerns over transnational crime and women's human rights, has meant that the PRC's prostitution laws bear a *surface* resemblance to the strategy advocated by the feminist anti-prostitution lobby. This commonality could offer feminist activists on both sides of the 'prostitution/sex work divide' a means to agitate for improvements in the PRC's prostitution controls, not by demanding the socially and politically 'unthinkable', but rather by following the ACWF's tactic of exploiting the interstices created by the historical and legal indeterminacy of the prostitution transaction in China as neither a 'crime' nor an 'accepted social practice', and also by encouraging the recent shift of China's governmental authorities towards problematizing the male side of demand. Concomitantly, an examination of the diverse ways in which China's governmental authorities have sought to transform the ethical milieux of recreational business ventures could open the theoretical space for inventing other possible practicable alternatives to the governance of prostitution.

In sum, the professed aim of metropolitan human rights activists vis-à-vis the governance of prostitution — namely, to stop the exploitation of women in prostitution — might be better advanced by examining the complex governmental landscape in which sexual-political subjects such as 'sellers and buyers of sex' have been both created and positioned in China, rather than measuring the apparent imperfections of the PRC's prostitution controls with reference to an 'idealized' transnational response. The adoption of such a reading tactic would allow for different kinds of questions to be asked and different local responses to the governance of prostitution businesses and practices to be envisioned. Moreover, it would enable us to analyse and politically engage with the operation of government in present-day China without assuming that sexual-political, legal categories such as 'sex worker' refer to universal 'givens' and subsequently resorting to the prescriptive dead-ends of morally impelled criticism.

Indeed, as reference to the example of China would suggest, the very diversity of prostitution businesses and practices that exist in different cultural contexts makes it impossible to unify 'sex work' under the rubric of one specific legally based policy. Until

this 'inconvenient fact' is acknowledged, there will be no end to the feminist 'sex wars' and the current 'prostitution war'. Instead of working towards disaggregating prostitution practices and specifying the nature of their organization and regulation in different cultural and temporal contexts, feminist prostitution activists will continue to fight over what constitutes the best transnational response. In the process, the question of whose interests are best served by doing so — apart from the assumed interests of women-in-prostitution — will also continue to be elided.