

†GRAZ ABOLITIONIST CONGRESS PAPERS

No. IV.

CAN PROSTITUTION BE MADE A LEGAL OFFENCE ?

*An Extract from M. Minod's paper on "Abolitionist Principles."
(Translated from the French.)*

Certain other measures have been proposed with a view to prevention; one of them has been adopted in those countries which have made prostitution a legal offence, i.e., an offence which comes within the range of the penal law.

We know that in legal matters the Roman definition* "*Palam, sine delectu, pecunia accepta,*" has prevailed, which makes prostitution an essentially feminine practice, since the woman alone receives money and gives herself to whoever pays. This definition, which is precisely the Regulationist attitude, applies exclusively to the poor woman. Apparently the anxiety of the legislator has been to define prostitution in such a way that the man cannot be taken into account, although his rôle in every act of prostitution is as active as that of the woman. This act is the deed of two partners, the contract is bilateral, the responsibility is equal on both sides.

It remains to be seen where prostitution begins, what is the norm by which it can be decided whether a woman is or is not a prostitute? Does she just escape that definition by having some work that simulates a profession, or by making selection amongst those whom she solicits, or who solicit her?

It is difficult even to define prostitution and the difficulties are still greater as regards the legal offence of prostitution. In what does it consist? What is its essence? What shall be its legal formula?

To constitute a legal offence there must have been injury to the rights of others or a serious infraction of public order. Where is this injury or infraction of public order in the case of an act of prostitution freely accomplished in a private dwelling without a third person sharing in it? The partners, who have both attained their majority, have come to an agreement and have fulfilled their engagements—the woman in giving herself and the man in giving the price agreed upon. Of injury to others, there is none, nor any disturbance of public order. How can there be legal interference under these circumstances? Only on one condition, that is, where the law represses all sexual relations outside of marriage, and supposing such penal enactments could be made, we would find that we were face to face with an offence against marriage or the family and not with the offence of prostitution.

†These papers were printed for the International Abolitionist Congress in Graz, Austria, September, 1924.

*"The open acceptance of money without the exercise of selection."

But so long as the State refrains from the repression of every sexual act committed outside of marriage, it cannot punish the two accomplices, nor even the woman alone, when an act of prostitution is accomplished in a private place, and without the intervention of a third party. So, the impossibility of rendering a simple act of prostitution punishable, when accomplished under the conditions indicated, is proof that we are not faced with an act that is susceptible of being declared a penal offence *in itself*. From which we conclude that it is not prostitution itself, but prostitution considered under certain aspects that can be counted a legal offence.

Or, it may be held that the essential characteristic of prostitution is the money gain that is sought and that this gain is the feature which distinguishes prostitution from other sexual relationships. But we ask in vain in what way the fact of receiving money can have any influence on the nature of the act committed by the woman. If her partner had not paid her she would not have given herself to him and the act of prostitution would not have taken place. So the two co-authors of this act are exactly on the same level; the man pays and the woman receives, because the contract concluded between the two parties is, according to the very fair definition of M. Dolleans, "the exchange of a payment of pleasure for a payment of money." In the eyes of each of the parties there is a reciprocity of services rendered. In giving herself, the woman has used her right of disposing of her body, as the man, in compensating her, has used his right of disposing of his money.

And are we to consider the present a man makes to his mistress as "gain"? Does she commit an offence if she accepts a present from her lover? In this case, too, there is an exchange of payment.

The objection may be raised that there is a capital difference between the prostitute and her accomplice, because, it is said, the latter is yielding to a caprice which may not be renewed. He chooses the object of his passing regard, whilst the woman places herself at the service of the first comer who desires her, and makes prostitution her sole means of livelihood and her trade.

It is prostitution exercised as a trade, it is said, which explains and justifies the difference of treatment according to the sex in question, and it is here the characteristic of penal offence comes in. The woman is not punished because she commits an act of prostitution, but because she makes prostitution her trade. It is no longer prostitution in itself, but prostitution exercised in a permanent fashion that is here considered. Let us first make the remark that it is impossible to consent to reckon prostitution as a trade. All trades conduce to the general good, useful in the economic and industrial development of the nation, and contribute their quota to the public well-being, whilst prostitution acts in every respect as a disintegrating force. It is an abnormal thing and we should never think of prostitution, nor speak of it, nor treat it, as if it were something normal and beneficent.

Do not let us forget—prostitution exists because it supplies a demand, one that is voluntarily created by the man. We say "voluntarily" because the man who has recourse to prostitution yields less to a physiological necessity than to a simple impulse of desires or caprices which should not be indulged in when detrimental to others. Moreover, the harm done to the unfortunate woman is incalculable. Not only has the woman degraded herself, but has also rendered her economic position more precarious and has ended by losing the possibility as well as the desire for turning to work for a livelihood. The act which she has accomplished for the first time from necessity, from lightness, or for money, she repeats as a matter of routine, as occasion offers, from inability to climb the fatal slopes again. Society treads on this victim, declaring her contemptible and unclean, after having become an accomplice in her degradation through the indulgence with which it has ratified opinion that libertinism is excusable in the man! And it is on this victim of our morals that the avenging thunders of the law are called down.

It is the man who makes the prostitute, it is he who degrades the unfortunate woman, and when he has pushed her to the depths of the abyss, he has recourse to the secular arm to strike her. What a crying iniquity?

The multiplicity of the sexual relationships of a prostitute is of no importance from the legal point of view, as they have no bearing on the character of these relationships. Each of the acts is accomplished with the co-operation of a man, aware of what he is doing by his own consent. Therefore no rights are injured, and there is no infraction of public order.

But, it will be argued, there is the publicity of it. The prostitute is obliged to hunt her man if she is to live, that is, to have recourse to solicitation or provocation. In this country (Switzerland) prostitution shows itself by certain external acts which have been considered as constituting the foundation of the legal offence. But if the public solicitation is to be regarded as the legal offence we must accept one or other of the following positions: Either the act of provocation is sufficiently evident to come under the operation of the ordinary laws directed against such annoyance, by whomsoever committed; in which case no special law against prostitutes is needed, or, the act of provocation is so insignificant that it would be considered innocent if it were not, in fact, merely the pretext for the arrest of prostitutes.

So, considered from any point of view, to reckon prostitution a legal offence is an untenable position. It is fundamentally unjust because it only aims at the woman. That is sufficient to condemn it and the Federation rejects it entirely. In declaring that prostitution in itself should only be judged by the moral law, the Federation means private and personal prostitution, stripped of all circumstances which might cause some of its manifestations to come under legal penalties—cases in which it is no longer a question of simple prostitution, but of distinct criminal acts, provided against by the law, and committed by men as well as by women. These are especially enumerated in the statement of Abolitionist principles which form

the subject of this paper and to which the intervention of the State in matters relating to morals must be confined, viz., punishment of offences committed or attempted against minors, or against persons of either sex in the same position as minors according to the delimitations and conditions formulated by every legislation; the punishment of offences against decency committed or attempted by fraudulent or violent means against persons of all ages and of both sexes; punishment of public indecency. In regard to public provocation to debauchery, as well as to procuration, the Federation limits penal prosecution to criminal acts, which can be proved without arbitrariness and without re-introducing under another guise the regime of the Morals Police. The Federation is careful to specify that every time procuration comes within reach of the law, those who pay the procurers and profit by their industry shall be considered as accomplices.

It follows from this statement that the Abolitionist Federation claims as a fundamental principle of its action, the equality of the two sexes before the law and the clear and precise definition of every penal offence. Its whole programme is summed up in this.

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