The ambiguous taxation of prostitution:

The role of fiscal arrangements in hindering the sexual and economic citizenship of sex workers

Abstract

This article explores the understudied and undertheorized role that fiscal policies play in shaping the relationship between the state and sex workers. It highlights the importance of looking at tax policy and its implementation to understand how inequality is reinforced against sexually marginalized populations. Drawing on the Italian case, it explores the ways in which ambiguous taxation arrangements operate to penalize sex workers, excluding them from the status of full taxpayer citizenship, and demonizing them as individuals who exploit the fiscal system at the expense of 'good' tax-paying citizens. Fiscal policies, I argue, need to be considered in the context of the governance of prostitution as social mechanisms that have the potential to contribute to the sexual and economic citizenship of this marginalized population, but which, when unequal and ambiguous, reinforce the social and political liminality of sex workers as lesser citizens, and add to the stigma, damaging stereotypes and violence already waged against them. The complex ways in which inequality against sex workers is maintained is revealed as a dynamic process that reflects the ever-shifting interplay of economics and morality.

Keywords: Taxation and sex work; citizenship; governance of prostitution; stigma; exclusion; economics and morality.

Introduction

Prostitution laws play an important role in forging the relationship between the state and sex workers. The institutional treatment of prostitution and of those who operate in it in any given national jurisdiction, however, is also shaped by a broad array of rarely homogenous measures, often pertaining to different regulatory frameworks (West, 2000). Employment, immigration, health and security measures, and criminal justice sanctions can have such profound impacts on the governance of commercial sex 'on the ground' that they may alter, sometimes almost completely, the ways in which this is meant to be regulated 'in the books' by national prostitution laws. Moreover, as forms of commercial sex have become more diverse and multiform in recent decades, Jane Scoular and Teela Sanders (2010, p. 3) note that so too have their associated modes of regulation which are now "more complex than simply a case of sexual commerce being either legal or illegal". Thus, we are reminded by a growing body of scholarship that when looking at the increasingly composite and dynamic ways in which prostitution is approached in any one country, a wide and multi-scalar examination of laws, policies, administrative sanctions and their application in practice is needed to gain a comprehensive understanding of the intended and unintended effects of prostitution governance (Crowhurst, 2012; Dewey & Kelly, 2011; Jahnsen & Wagenaar, 2018; Phoenix, 2009; Scoular & Sanders, 2010; Skilbrei & Holmstrom, 2012; Weitzer, 2012; West, 2000).

In line with this suggested approach, this article seeks to attend to the understudied and undertheorized nexus between taxation and prostitution and its governance. It sheds light on the role that fiscal policies play in shaping the relationship between the state and sex workers and it highlights the importance of looking at tax policy to understand how inequality is enforced and reinforced against sexually marginalized populations. More

specifically, drawing on the Italian case, it explores the ways in which ambiguous taxation arrangements operate to penalize sex workers, excluding them from the status of full taxpayer citizenship, and demonizing them as individuals who exploit the fiscal system at the expense of 'good' tax-paying citizens. Disjuctures between legal and fiscal systems and conflicting positions between elected officials, state agencies and the public about taxation policy and its implementation impact the citizenship status of sex workers in ways that go against courts' rulings establising that prostitution should be treated as a legitimate economic activity. Fiscal policies and their practical arragements, I argue, need to be considered in the context of the governance of prostitution as social mechanisms that may have the potential to contribute to the sexual and economic citizenship of this marginalized population, but which, when unequal and ambiguous, reinforce the social and political liminality of sex workers as lesser citizens, and add to the stigma, damaging stereotypes and violence already waged against them. The complex ways in which inequality against sex workers is maintained is a dynamic process that reflects the ever-shifting interplay of economics and morality.

The exploration of these issues is structured as follows: after briefly presenting the source material that forms the basis of the analysis of this article, I trace an overview of the body of work that has looked at the significance of taxation as a marker of social and civic inclusion and exclusion. This is followed by a review of the limited literature that has addressed the nexus between taxation and prostitution. The article then proceeds to present and make sense of the intricacies of the Italian case, the ambiguities surrounding the fiscal treatment of commercial sex, and how this negatively impacts sex workers in the country. The discussion of these dynamics and their significance leads to concluding reflections on their implications for understanding more broadly the role of fiscal policies in the governance of prostitution.

Source material

The article is based on analysis of a variety of documentary data. These include Italian statutory laws on fiscal arrangements and on prostitution, and judicial rulings issued by Provincial and Regional Tributary Tribunals and the Supreme Court of Appeals over the past three decades on aspects pertaining to the taxation of prostitution. Material was collected through internet searches and snowballing from the sources identified. Documentation portals powered by the Ministry of Economy and Finances (*The Portal of Tributary Justice*, https://www.giustiziatributaria.gov.it) and the Department of Finances (*Financial and Economic Documentation*, http://def.finanze.it/), as well as online databases of judicial decisions sourced from Italian Tributary Courts (eg DeJure, https://www.iusexplorer.it, and Iltributario, http://iltributario.it) were searched to retrieve as many rulings as possible on cases addressing the taxation of prostitution. Due to coverage limitations of these portals (for example, they do not include rulings issued by Provicial Tributary Tribunals, and only include a selection of Regional Tributary Tribunals documentations, mostly issued after 2015) it was not possible to retrive all relevant rulings issued in the past three decades. Relevant documents were also found through other online sources, including: tax lawyers' wesbites (amongst others, see Di Gennaro 2010; Prostituzione e Tasse 2010, Studio Cerbone e Associati 2018), jurisprudential commentaries (Capolupo, Compagnone, Vinciguerra & Borrelli, 2014; D'Agata, 2006; Il Foro Italiano, 1987) and in local media outlets (amongst others, see Falcone, 2017 and Formica, 2015). A total of 28 rulings issued between 1986 and 2017 by Provincial and Regional Courts and the Soupreme Court of Appeal were found and analysed, some of which look at the same case, appealed and addressed at a higher court level. Based on the documentation available, it is not possible to ascertain how many sex workers appealed the outcomes of the Revenue Agency's audits. Similarly, it should be noted

that the Revenue Agency does not provide data on the numbers, nature and outcome of fiscal checks it carries out. It is therefore not possible to appraise how many sex workers have been audited by the Revenue Agency and how many of them reached a settlement with the Agency. We know from Pia Covre, a former sex worker and co-founder of the Committee for the Civil Rights of Prostitutes (The Committee hereafter), that fiscal audits of sex workers' bank accounts are many more than those that are publicly reported, because many sex workers prefer to settle and pay the fines without appealing (Crisafi, 2018).

Documents publicly available on the website of the Committee (www.lucciole.org) also form part of the data collected, including emails exchanged by sex workers on the Committee's members-only email list and later published, with the senders' permission, on the Committee's website. Email exchanged on the email list that are quoted verbatim in this article are exclusively the ones that received authorization from their senders to be made publicly available on the Committee's website. My membership of the Committee's members-only email list since the early 2000s has enabled me to follow discussions on the issue of taxation compliance shared with members of this platform beyond the emails made publicly available. The content of these conversations is mentioned, but not directly reproduced in this article. Other data collected and analyzed consists of television programs broadcast on mainstream channels focused on the taxation of prostitution, as well as news reporting and comments posted on media outlets.[1]

Literature review: Taxation, citizenship and prostitution

[1] A more in-depth exploration of how prostitution taxation arrangements and their socio-cultural implications are understood, negotiated and responded to by sex workers themselves forms part of the ongoing project: 'Comparing the taxation of prostitution in Europe: experiences and negotiations with laws and fiscal arrangements', funded by the Independent Social Research Foundation (2018-19).

Whilst their role in the organization of society is often overlookd, taxes are a political tool which reflect and reproduce "the ever-changing structures of social, economic, and political life" (Henricks & Seamster, 2017, p. 169). Far from being innocuous bureaucratic procedures, taxation arrangements have been central markers of civic belonging across time and place, and taxation policy is one of the overt measures that governments can employ to impinge directly on the enjoyment of citizenship privileges (Martin, Mehrotra & Prasad, 2009; Turner, 2001). Taxpayer status is an identity that tends to elevate those who uphold it to a higher position with respect to demanding citizenship rights (Ventry, 2000; Walsh, 2017). In the US, for example, taxpaying is often "seen as evidence of one's worthiness for citizenship", as well as an act of civic commitment and a moral obligation (Williamson, 2017, p.2). In this context, those who cannot claim taxpayer status may be excluded and shamed as "parasitic dependents who place economic burdens on the state" (Henricks & Seamster, 2017, p.172). The concept of taxpayer citizenship is thus used to draw attention to the complex practices that not only differentiate but also create social antagonisms between those who enjoy political legitimacy through their taxpayer status and those who are unable to contribute to direct taxpaying and, for this reason, are treated as if they have no earned rights (Hackell, 2013; Walsh, 2017). Paying taxes, however, does not necessarily lead to and entail full and equal membership of a community and 'worthy citizenship'. As Abreu (2009) notes, taxes can empower individuals, but this usually applies just to *some* individuals – those who are already socially and economically privileged. Moreover, fiscal policies may benefit some taxpayers whilst penalizing others (Infanti & Crawford, 2009; Mumford, 2010). The normative values underpinning taxation, in other words, reflect the most fundamental arrangements in society wherein groups of people are not similarly situated and equally treated.

The workings of this unevenness have been the subject of the burgeoning fields of fiscal sociology and critical tax theory. Both have drawn attention to the fact that taxes are necessary to provide essential "resources for some of the most important functions that states provide" (Mumford, 2010, p. 1), but are nevertheless social mechanisms and instruments of social control that operate within, sustain, reinforce and formalize societal inequalities (Blumberg, 2009; Henricks & Seamster, 2017). At the core of this critical scholarship is the analysis of the ways in which categorical inequalities of gender, race, sexuality and class are structured in taxation arrangements. For example, women, gay, lesbian and transgender individuals, non 'traditional' families, and ethnic and racial minorities are disadvantaged in multiple ways by tax arrangments, and this may lead to the exacerbation of their marginalization, inequality and poverty (Henricks & Seamster, 2017; Infanti & Crawford, 2009; Martin & Prasad, 2014; Martin et al., 2009; Mumford, 2010; Sheffrin, 2013; Walsh, 2018).

The study of how the, often invisible (Abreu 2009), disproportionate taxation of subordinated groups contributes to their continued subordination is an aspect that is of relevance to the analysis of this paper. For example in relation to the fines that sex workers are required to pay in Italy for failing to comply with tax liabilities, when it is not clear how they should file tax returns in the first place. Related to this is the lack of recognition of the social and economic identity to which many (subordinated) individuals belong and the nagative impact this has on the payment of taxes and related benefits that this should entail. This is the case, for example, for same-sex couples and those in non-traditional families and relationships "who are the object of both overt and covert discrimination in the application of the tax laws" (Infanti & Crawford, 2009, p. 183), and undocumented migrants who, in the the US for instance, each year "add billions of dollars in sales, excise, property, income, and

payroll taxes, [yet they are] barred from almost all government benefits" (Lipman, 2006, p. 5-6), and, caught in a similar predicament, sex workers.

Interestingly, despite focussing on "what impact tax laws have on historically disempowered groups" (Infanti & Crawford, 2009, p. xxi) both critical tax theory and fiscal sociology have neglected to look at the taxation arrangements directed at the often disempowered groups who operate in the sex industry. It is not within the scope of this article to explore this omission in any detail. It is nevertheless worth noting that the study of commercial sex still rarely figures in literatures addressing economic activities, including employment, poverty, precariety, and, as seen here, taxation studies. This may be the case, as Diane Richardson notes, because both "economic analyses and sexuality studies often ignore the question of the relationship between sexuality and economic life" (Richardson, 2018, p.144). While the socio-economic forces and subjective experiences that shape the multi-dimensional citizenship (Halsaa, Roseneil and Sumer, 2012), or lack thereof, of lesbians and gay men have received increasingly more scholarly attention, the intersection of sex, money and labor, and all the complexities that this entails for sex workers, including their exclusions from sexual and economic citizenship, remain under-explored.

In the limited body of work that has considered the taxation of prostitution, the reproduction of social norms and biases vis-à-vis commercial sex by and within fiscal systems is only partially explored. Instead, one of the main issues that has been addressed with respect to the taxation of prostitution pertains to the discomfort governments experience when facing the fact that they extract revenues from what is mostly viewed as a problematic activity. As O'Connell Davidson (1998, p. 193) explains, "governments are rarely willing to acknowledge that they profit from the taxation of prostitution and/or from the fines levied upon sex workers and their clients." This reticence is partly due to the fact that prostitution is generally viewed by the state and the public as a social and/or moral problem rather than a

legitimate and accepted/acceptable economic activity. Fiscal scholars explain that taxes levied from activities that are socially condemned, such as prostitution, gambling, or the consumption of alcohol and tobacco, are deemed 'ill-gotten gains' and can themselves become stigmatized – indeed they are often referred to as 'sin taxes' (Carruthers, 2015-16; Lorenzi, 2004). This attribution has not halted the levying of such taxes, attracting controversy over the fraught question of whether a state should extract revenues from what are viewed as the less than socially desirable behaviors and activities of its citizens. It should be noted however that nowadays "the public and policy makers have managed to arrive at a pragmatic consensus" over activities such as gambling (Wagenaar & Altink, 2012, p. 281) and the benefits of their taxation (Brents, Jackson & Hausbeck, 2010; Paton, Siegel & Williams, 2004). This is especially the case when 'sin taxes' are justified as a way of discouraging problematic activities, or when they are earmarked to be used to fund public expenditures, thus ultimately contributing to the common good (Carruthers, 2015-16; Lorenzi, 2004).

In contrast to this growing pragmatic consensus over the taxability of various socially problematic activities, the taxation of prostitution remains highly contested and thus more politically problematic for governments to tackle. Prostitution, as Wagenaar and Altink (2012) point out, is a particularly complex case of morality politics over which deep public and political conflicts persist, often articulated around diverse and clashing positions, including whether the activity should be taxed and how. For those who view the selling of sexual services as a form of labor, when it comes to taxation, "[n]o special taxes should be levied on prostitutes or prostitute business. Prostitutes should pay regular taxes on the same basis as other independent contractors and employees and should receive the same benefits" (from the 1985 World Charter for Prostitutes' Rights, as reproduced in Scoular, 2015, p. 92). Taking a different approach are those who consider prostitution to be a form of violence

against women and therefore liken states that tax it to pimps who capitalize on the exploitation of women (Barry, 1996; Cheney, 1988). From yet another perspective, prostitution is a social problem in need of containment and special policy measures, hence prostitution-related occupations should be subjected to higher taxation and levels of institutional regulation than other forms of labor (Phoenix, 2009). Socio-economic arguments about sex work as labor thus conflict with positions condemning prostitution as a form of violence and with others which aim at containing it as a social problem. Each of these positions have different implications for how the revenues of prostitution may be approached by the state, whether and how they should be taxed, and what social security benefits taxpaying sex workers should receive. In light of this complexity of views, it is often the case that a clear position on the taxation of prostitution is avoided in statutory laws and fiscal rules, with sex workers having to pay taxes without recognition of their activity as legitimate and falling significantly short of the 'full membership' ascribed to other taxpayers.

Susan Edwards, for example, presents the paradox whereby "earnings from prostitution are taxable but the British government will not condone prostitution as a lawful trade for the purpose of registration" (Edwards, 1997, p. 77). In Austria, Birgit Sauer (2004) explains that when in 1985 a new law came into force levying taxes on prostitution, sex workers were not granted access to the state social security, nor were they eligible for a business licence or for many of the benefits granted to taxpayers within other forms of labor. It was only in 1997 that Parliament rectified some, but not all, of these restrictions (see also Wagenaar, Amesberger & Altink, 2017). In the Netherlands, since the ban on brothels was lifted in 2000, "there has been major confusion about working relationships in brothels and tax rules" (Pitcher & Weijers, 2014, p. 6). Moreover the Dutch tax office identification of sex workers as self-employed "had the unintended effect of removing the issue of working conditions from the political agenda" (Pitcher & Weijers, 2014, p. 7). These few examples

reveal some of the ambiguities in taxation arrangements and requirements in place for prostitution-related revenues, and the ensuing absence of full recognition and access to economic and social rights for sex workers.

The case of Nevada, the only state in the USA where prostitution is legal and regulated (albeit under specific and restricted conditions), is also worth mentioning. Here, as Barb Brents and co-authors explain, neoliberal politics and the economic interests of the consumer and booming leisure industry have "put regulations that protect a free market ahead of policies that regulate moral behaviour" (Brents et al., 2010, p. 89). The dominant market morality and Nevada's approach to value politics have thus enabled and supported the existence of the brothel industry in a country where prostitution is otherwise entirely criminalized (Brents et al., 2010). However, and importantly for the discussion here, brothels, which pay county and/or city taxes including business licensing fees, room taxes, and liquor taxes, do not pay state taxes and are exempt from the entertainment state tax imposed on other leisure businesses, and the sexual transactions that take place on the premises are not subject to state sales taxes (Richards 2017). Attempts to reverse this situation in 2009 through the imposition of a state tax on brothels were promptly halted by legislators "because they feared the national attention that would result from yet again appearing to legitimize prostitution" (Brents et al., 2010, p. 223). Similarly, as Richards (2017) notes, all sides of the argument agree that what is at stake here is an issue of legitimacy. As was written in the Reno Gazzette-Journal,

> for the brothel industry, it's not about the money. Rather it's about the legitimacy that comes with being involved in a state-recognized taxpaying business. As much as the state needs the additional money, Nevada cannot afford to give the brothel industry the legitimacy it seeks (Reno Gazzette-Journal, 2009, quoted in Richards, 2017, p. 313)

The choice of words in this passage is significant. Whilst prostitution is legal in Nevada, within the parameters of strict but implementable regulations, the state does not wish to be seen as *legitimizing* it by taxing it, which would imply validating prostitution as an acceptable and mainstreamed economic activity, such as it has done with gambling. "Even the recent unparalleled state budget crisis, in which Nevada struggled to close a total fiscal year 2011 budget shortfall equal to half of the state's general fund, did not soften state legislators' attitudes" (Richards 2017, p. 312). In this respect, the case of the 'state of sex' (Brents et al., 2010) highlights the cultural and symbolic meaning of taxes whereby, as Carruthers's (2015-16) explains, fiscal imposition imparts meaning to tax revenues by attributing a social status to the taxed market transaction. Through its system of taxation, the state "renders the private economy legible, recognizes some of its moral features, and enacts with precision both approval and disapprobation" (Carruthers, 2015-16, p. 2579). By not imposing a state tax on brothels, Nevada has been avoiding assigning full recognition and social and political legitimation to the sex trade (despite having legalized it), thus eluding unwanted public and political attention to its unique situation.

Elizabeth Remick (2003), in one of the few studies of the ways in which the relationship between the state and prostitution has been mediated and shaped by taxation arrangements, presents another example, this time a historical one, of the discomfort of governments with respect to taxing prostitution. In early republican China, Remick (2003) explains, prostitution was viewed as morally distasteful, however, its revenue-generating potential trumped any moral arguments at a time when local states were craving economic and political modernist expansion. At the turn of the twentieth century, most places chose to licence and tax prostitution "both as a way of controlling prostitution and as a way of harnessing a potential revenue stream" (Remick, 2003, p. 43). This approach was met with strong opposition and to overcome it government officials modified the language used to

identify such taxes. They started calling them ‘regulations banning prostitution’, “although they actually consisted of a schedule of the tax rates that brothels would be charged” (2003, p. 43). A change of name allowed the authorities to avoid the dishonor of prostitution-related ‘sin taxes’ by altering their symbolic and public meaning, and thus concealed the material contributions of prostitution to the building of their modern local states. This historical example introduces the scenario whereby the economic benefits that come with the taxation of prostitution are exploited by a state, leading at the same time to some form of recognition and legitimation of commercial sex and sex workers. Whilst this legitimation was eventually not accomplished in Remick’s example due to widespread moral opposition, the Chinese case sheds light on the link between sexual politics, morality and economic life which is at the core of the taxation of prostitution. As Richardson emphasizes, “assumed links between sexuality and the economy have been a significant aspect of claims for recognition of sexual diversity via the argument that this is good for business and the national economy” (Richardson, 2018, p. 158). Nevada, Brents et al. (2010) argue, is a case in point, although it did not go as far as introducing state taxes on brothels, a decision which sheds light on how the interplay between tax policy and morality politics might ascribe or hinder sexual and economic citizenship.

In sum, drawing on critical taxation studies this section started by outlining a framework of understanding that positions taxation as a social practice that is embedded in and tends to reproduce structures of inequality. It then proceeded to explore the limited scholarship that has considered the nexus of taxation and prostitution and its focus on the reluctance of states to confront this issue publicly and unambiguously. Overall, a key theme that emerged from this contextualization is how taxation arrangements until now have contributed mainly to reinforcing the outsider status and lesser citizenship of sex workers. Also central to the analysis presented here is the dynamic relationship between sexual and

economic concerns, morality and politics – an aspect that needs to be explored further with regard to prostitution, the taxation of which can represent a useful analytical angle to doing so.

Prostitution must be taxed, but sex workers cannot pay taxes: The Italian case

Prostitution is not illegal in Italy but the abolitionist law that regulates it, the so-called Merlin Law of 1958, criminalizes most prostitution-related activities including loitering, kerb-crawling, soliciting, third parties' involvement in the recruitment, aiding and abetting of prostitution, and profiting from the prostitution of others (Crowhurst, Testaì, Di Feliciantonio, Garofalo-Geymonat, 2017). Despite being an activity that generates revenues, prostitution is not recognized as a legitimate form of labor, nor is it explicitly regulated under civil law or under fiscal measures (Capolupo et al., 2014). Can it therefore be taxed? The answer to this question remains shrouded in ambiguity. The definitive 2010 court ruling stating that prostitution should be taxed in principle, has not been translated into practical fiscal arrangements. These arrangements, to this day, do not contemplate prostitution as a recognized economic activity, as identified in the court rulings, making it very difficult for sex workers to be able to fill in their tax returns, pay taxes and social security contributions as sex workers and claim the benfits that this should entail. In what follows I trace the evolution of this complex situation, starting with the most relevant jurisprudential developments on the matter in recent years.

Prostitution must be taxed: The intricate developments of a recent judicial ruling

Even though it did not specifically address the taxation of prostitution, a ruling issued in August 1986 by the Italian Supreme Court of Appeal (ruling n.4927, August 1st 1986, section III civil) represented for some time a landmark decision on the matter. The case under scrutiny had been brought to the Provincial Court of Florence in 1982 by an actress who, having suffered injuries during a car accident, claimed compensation for the loss of revenues on her "normal activity as a prostitute"[2] (Il Foro Italiano, 1987, p. 494). The court ruled against the woman, stating that revenues generated from prostitution could not be compensated because prostitution is not acknowledged and protected as a legitimate activity under Italian law. Some financial compensation was nevertheless granted to the woman by the court, calculated on the basis of the average income of a housewife – a notably inferior sum compared to the one the claimant had requested. The woman challenged this decision, but when her case reached the Supreme Court of Appeal her appeal was rejected. Compensation, the Supreme Court reiterated, can only be guaranteed if what has been damaged is a good which is guaranteed by the law. The ruling stated that

> prostitution is an activity contrary to public decency, since it is perceived by most people as violating common morality; based on the moral rules representing the patrimony of our civilization, [the idea of] a woman selling her body is […] rejected by common morality (D'Agata, 2006, p.89).

Prostitution, the Supreme Court concluded, may not be a crime by law, but it is "morally illicit" and is therefore "absolutely irreconcilable" with self-employment or dependent employment (Il Foro Italiano, 1987, p. 496). Although the ruling did not address taxation explicitly, the pronouncement that prostitution-related income could not be treated as

[2] All documents originally written in Italian have been translated into English by the author.

legitimate revenue on moral grounds was referred to in the first court cases that started addressing the taxation of prostitution almost two decades later, in the early 2000s.

Indeed, only relatively recently has the taxation of prostitution become a matter of legal and public debate in the country. For many years, since its foundation in 1982, the sex worker-run Committee for the Civil Rights of Prostitutes has been a solitary voice in its demands for the recognition of prostitution as labor and for the right to pay taxes on it as a fully recognized economic activity and to receive the social security benefits that come with it (Comitato, 2012; Senato della Repubblica, 2009).

What brought public and political attention to the issue, however, was not a commitment by the state to take a clear position on the status of prostitution in the country, but rather the unplanned outcome of new fiscal controls. Following the establishment of the Revenue Agency and of the Customs Agency in 2001, and with a view to achieving a newly set plan to fight tax evasion and ensure tax compliance (OECD 2016), in the early 2000s, the Italian Revenue Agency started carrying out stringent fiscal checks. The economic crisis played a role in renewing attention to tax avoidance in the country as a measure to counter the financial and economic crisis (European Commission, 2010; OECD, 2012), and the collection of tax debt peaked in 2010 and 2011 (OECD, 2016). As a result of increased fiscal checks, the Revenue Agency came across a number of individuals who had accumulated capital and assets from their activities as sex workers without declaring them in their tax returns. As the court cases that followed reveal, also confirmed by emails exchanged on the Committee's email list and later published on the Committee's website (Comitato 2011, see also later section on this), many of the sex workers identified and penalized by the Revenue Agency had not declared their commercial sex-related income based on the understanding that prostitution is not recognized as a legitimate economic activity in Italy, and therefore it cannot be taxed. The Revenue Agency followed its standard procedures in cases of tax non-

compliance, i.e. it requested that the individuals identified pay the amount of taxes that it had calculated, often in addition to hefty fines. The Agency operated according to the principle that financial movements that are not recorded on tax returns are proof of an undisclosed activity, and it is up to the audited individual to demonstrate that any un-recorded income should not be subject to taxation (a procedural approach later supported by the Supreme Court of Appeal in rulings 9573/2007 and 18111/2009).

When a settlement was not reached with the Revenue Agency, some sex workers appealed against the legality of these fines and tax bills and how they had been calculated and, when they were successful, the Revenue Agency appealed in return (as shown in the summaries of the court cases analyzed, for examples see footnote 3). Appeal after appeal, some of these cases very slowly moved through the Italian judicial system, from Provincial to Regional Tributary Courts. In 2010 one of them reached the Supreme Court of Appeal (ruling 20528, 1st October 2010), where a decision was made in favor of the taxation of prostitution. Before looking at this final and definitive ruling, it is useful to review briefly the contrasting evaluations that were issued at the local-level courts during this first decade of legal disputes.

Until the mid 2000s provincial and regional tributary judgements on the matter had mostly made reference to and followed the 1986 ruling mentioned earlier. In other words, they excluded the possibility that prostitution-related income should be taxed due to its immoral nature[3]. In ruling XLVII, for example, the Tributary Commission of Milan established that until the law intervenes to clearly regulate the 'selling of one's self', proceeds from prostitution cannot be counted as 'income', but rather as compensation for the damage it causes to human dignity, and therefore cannot be taxed (D'Agata, 2006).

[3] For example, ruling XXX of the Tributary Commission of Sondrio 22nd September 2004, ruling 272 of the Tributary Commission of Milan Sez XLVII 22nd December 2005, and ruling 35/31/05 of the Tributary Commission of Lombardy 31st March 2006.

In the second half of the 2000s local and regional tributary tribunals' rulings started taking a different approach. In 2007, for example, the Provincial Taxation Commission of Florence (in ruling 146, May 8th 2007) made reference to Law 537 of 1993 which had established that revenues generated from illicit activities should be taxed. In this court case the judges made reference to a provision in the civil code which prohibits the selling of body parts (a provision originally intended to address the commercial exploitation of body organs). This allowed them to establish that prostitution is an illicit activity and therefore that prostitution-related income should be taxed as 'other income'. Without getting into too much detail, some clarifications are needed here as to how income is variously categorized in the Italian tax system. In Italy taxes are levied on income generated from: subordinate employment; self-employment (i.e. autonomous employment carried out on a regular basis); capitals; properties; commercial activities; and on what is classified as 'other income', i.e. a broad category that includes occasional subordinate employment, occasional self-employment, and importantly here, illicit gains. The 2007 ruling of the Florence Provincial Taxation Commission identified prostitution as an illicit activity whose revenues should fall under 'other income' and therefore be subject to taxation. Contrastingly, in 2009 the Tributary Tribunal of Reggio Emilia (ruling 131, 11th June 2009) established that when prostitution is carried out as a habitual profession and when this is done autonomously and freely, as in the case of the woman who appealed against the Revenue Agency in the case under review, the financial income deriving from it should be classified and taxed as the income of self-employed professionals. Importantly, in contrast with what had been deliberated in 2007 by the Florence Taxation Commission, this ruling and similar others

issued after 2009[4], detached prostitution from the sphere of the illicit and categorized it as a form of self-employment.

The lack of consistency in these decisions and the confusion they generated had already been noted by the Committee which in 2007 issued a press release stating:

> ever more frequent are cases of sex workers asked by the Revenue Agency to pay taxes on their income. […] Many [sex workers] ask us what they should be doing, naturally they should appeal because it is not clear whether sex workers, who are not legally recognised as workers, should pay [taxes] or not. (Comitato, 2018)

In an attempt to resolve such ambiguity, in 2008 two MPs from the Radical Party submitted a parliamentary interrogation to the government on the matter. In it, a query was raised about the fact that, whilst a duty, paying taxes should also guarantee the taxpayer both protection and assistance, in compliance with labor rights. The Italian legislation, they claimed,

> does not regulate in any way the fiscal treatment of prostitution as this is not recognized as a profession. Therefore [… we] ask here if it is not opportune to ensure a uniform interpretation to which the Revenue Agency will have to comply on the fiscal treatment of the revenues of prostitution (Poretti 2008).

The interrogation was never addressed, and the government has yet to take a position on the matter. It was two years later, in 2010, that some clarity on the issue was shed in a Supreme Court of Appeal's definitive ruling on one of the first cases that had been brought to court in 2004 (ruling xxx of the Tributary Commission of Sondrio, 22nd October 2004), and which had since gone through a series of appeals. In it, the Supreme Court stated that "even if the activity of prostitution is debatable on moral grounds, it certainly cannot be viewed as illicit", and therefore it should be subject to taxation (no. 20528, October 1st 2010). A few

[4] For example rulings: 109/10/2010 of the Tributary Commission of Rome 25th March 2010 and 82/04/10 of the Tributary Commission of Ravella 30th April 2010.

months later, another ruling of the Supreme Court of Appeal (no. 10578, 13th May 2011) further specified that even if prostitution is against common morals and it transgresses "shared ethical norms that normally reject the commerce of one's own body for money, the activity here described is not a crime" and consists rather of services provided in return for remuneration. As such, when it is performed regularly and autonomously, prostitution should not only be subject to income tax, but also to VAT. As the Tributary Commission of Savona (ruling 389/01/2016, 21st June 2016) stated in a ruling supporting the 2010 Supreme Court of Appeal's decision, 'pecunia non olet' – money does not smell – i.e. the source of income should not matter for fiscal purposes.

To support its decision, the Supreme Court referred to a ruling of the European Court of Justice (ECJ) (n.268, 20th November 2001) which, in reviewing the case of the Netherlands, had stated that the activity of prostitution when pursued in a self-employed capacity can be regarded as a service provided for remuneration and should therefore be subject to VAT. This ruling was specific to the Netherlands where prostitution is regulated and explicitly treated as an economic activity, including for fiscal purposes. This legal and fiscal context is notably different from the Italian one, hence the problematic applicability of this Supreme Court ruling, as further discussed in the next section. Also worth noting is that this same ECJ ruling had been referred to, but challenged by the Tributary Commission of Milan in the 2005 ruling mentioned earlier (XLVII, 22nd December 2005) because, the Milan Commission had stated, the conclusion reached by the ECJ is contrary to Italian law's commitment to guaranteeing human dignity (D'Agata 2006).

Sex workers cannot pay taxes: The problematic application of the law 'on the ground'

Apart from issuing hefty fines to sex workers and demanding that they pay taxes on the income calculated by the Revenue Agency, the application of the 2010 Supreme Court decision has not been followed through in the practical arrangements of tax returns procedures. As a result, sex workers find themselves in a situation where they are told that they must pay taxes, but they face a number of institutional obstacles which make it very difficult to practically do so. "If escorts wish to file tax returns", explains Pia Covre, "the Italian Revenue Agency forbids it to them because there are no rules that allow them to" (Crisalfi, 2018). To understand why this is the case, a brief overview of the ways in which the tax return system operates in Italy is herewith outlined.

Self-employed workers who carry out regular professional services must register with the Italian Revenue Agency and obtain an individual registration number to be able to fill in and submit their yearly tax return forms. Since the 1st January 2008, in order to register with the Revenue Agency and fill in their tax return forms at the end of the fiscal year, self-employed taxpayers are required to specify to the Revenue Agency the economic activity they carry out. In order to do so, they must select from a long list of activities provided by the Italian Statistics Office, each of which is attached to a code, the so-called ATECO code, that needs to be indicated on the tax return form. The Revenue Agency states that:

> the classification of economic activities represents an *indispensable instrument* to understand and therefore manage the world of business [in the country]. It is only by *defining with precision* the typologies of activities carried out [by those submitting tax returns] that it is possible to understand their economic behaviours and their fiscal requirements. Being able to *classify one's activity correctly* is therefore of mutual benefit both to the contributors *who will see their specific activities recognized*, and for the administration which will be able to manage better their fiscal needs by taking into account this specificity (Agenzia delle Entrate, 2017, emphasis added).

Emphasis is placed here on the Revenue Agency's explanation of the importance of the fiscal classification system on tax return forms, because one of the obstacles that sex workers still face is the lack of a specific ATECO code for the activity of commercial sex. This makes it impossible for them to comply with the requirement to clearly and accurately identify such a code in their tax returns, and therefore for the Revenue Agency to recognize and better manage their specific activity.

The situation for sex workers who, on one hand, are told they have to pay taxes and are fined if they do not do so, whilst, on the other, having to navigate a system which is not prepared to recognize them as self-employed taxpayers, has been revealed in two secretly filmed videos produced and broadcast by two popular Italian television programmes in 2013 and 2016. Both videos show the conflicting, uncertain and often inaccurate responses given to individuals who asked to submit their tax returns as sex workers at their local Revenue Agency offices (La7, 2016; Le Iene, 2013). Feedback given out to these enquiries by Revenue Agency employees varies from suggesting the continuation of 'working in black', to double checking with an accountant and a solicitor whether prostitution is actually legal and taxable in Italy, to using alternative ATECO codes even if they are not accurate. As a despondent Revenue Agency employee stated in one of the videos: "we run after those who don't pay taxes, but we abandon those who want to pay them. It's a manifestation of the Italian spirit which never deals with problems and is therefore unable to find solutions" (La7, 2016). What is striking about this statement is that, in the 'Kafkaesque' situation in which they are caught, as the same Revenue Agency employee characterizes it, sex workers are *both* 'run after' and abandoned by the state.

Between 2011 and 2013 analogous encounters were shared on the Committee's email list. Some sex workers reported that their queries with the Revenue Agency about registering to pay taxes had been met with a lack of knowledge as to what procedure to

follow, or with the advice of doing nothing and hoping not to be found in the case of fiscal checks, or to use alternative ATECO codes which are inaccurate. Those who had consulted accountants or lawyers explained that they received conflicting advice and were even more confused about what to do. In a 2014 article, the British newspaper *The Guardian* covered the paradoxical predicament faced by sex workers in Italy citing the story of two sex workers with similar experiences to those described above. Carol "said she had been treated like an 'extraterrestrial' and sent packing when she offered to pay taxes at her local tax office only to receive a bill for €70,000, based on a year's earnings" (Kington, 2014), and Sandra Yara "said she had been surprised to receive a bill for €50,000 after being told by her local chamber of commerce that her work could not be categorised" (Kington, 2014).

Online commentaries written by tax accountants on this issue claim that there are ways in which sex workers can pay taxes. Many suggest that they should use the ATECO code 'Other activities related to the provision of services to other people and which are not possible to classify' (see for example, La Legge Per Tutti, 2017; Prostituzione Tasse, 2016). The ATECO description of this code includes astrologists and psychics, genealogical research, shoe-shiners, parking attendants, management of various slot machines, lifeguards, domestic services carried out by self-employed people (e.g. cleaning, cooking, etc.) – activities that are clearly very different from the provision of sexual services. While using a generic code is indeed possible if necessary[5], there are further procedural difficulties related to, for example, what economic activity should be specified in the compulsory registration with the National Institute of Social Insurance, or the lack, to this day, of the average income of a sex worker calculated by the Revenue Agency and upon which regular fiscal checks are

[5] As clarified in an email exchange (19th April 2018) with an Italian fiscal accountant, the ATECO code used in tax returns should be as precise as possible. However, when an activity cannot be clearly categorized under an existing code, it is indeed possible to utilize a generic code. In the end, the accountant stated, it should always be possible to find a code.

based, or as seen, the reluctance by Revenue Agency employees to allow sex workers to register with them, even with a generic code. Worth mentioning also is the refusal of tax lawyers to help sex workers with tax returns (as noted in the Committee's email list exchanges), also openly admitted to by a lawyer representing a sex worker on an appeal case: "if an escort asked me to register with the Revenue Agency and file tax returns, I would reply that I am not in the condition to help her [sic]" (Formica, 2015). There is also lack of clarity on what might be counted as allowable expenses when filing tax returns and whether accountants would feel competent enough to ascertain this without incurring penalizing mistakes for their clients (an issue raised by a lawyer representing a sex worker who appealed to the Revenue Agency, see Radio Radicale, 2008). But the problem with using a generic code is also related to the lack of recognition it entails for sex workers. If all procedural obstacles were overcome sex workers could perhaps manage to pay taxes, but prostitution would still not be treated as an economic activity equal to others, given the many limitations that the current prostitution law imposes on sex workers, including not being able to advertise their services nor to work in the same premises with other co-workers.

The fundamental faults of the system have deeply negative effects on the lives of sex workers, as revealed in the emails exchanged on the Committee's list. Sex workers explain that they find themselves in a frustrating and distressing situation for which they see no viable solution, nor any interest from the government in unambiguously addressing it. They feel hopeless, fear losing their earnings and lament being treated like criminals whose rights as citizens are ignored by the state. Other emails exchanged on this same list and published on the Committee's website further emphasize the lack of understanding of the legal status of sex workers and the apprehension this causes:

> I am very worried about the strict fiscal controls, also because our positions as prostitutes is not clear at all. But what should we do? We cannot fill in our tax return

> forms and as far as I know it is not possible to tax prostitution-related income because the Merlin Law [the 1958 prostitution law] is still in place. I am fearful […] I am terrified, also because people talk about sending tax evaders to prison and I have no idea of what to do (Comitato, 2011).
>
> I think that what holds more value is the law of the State [the 1958 prostitution law], which is there […] and defends us from pimps, including the Fiscal-pimp. Can the Supreme Court of Appeal change, ignore, brush off the laws of the State!? (Comitato, 2011)

Here sex workers make reference to the 1958 national law on prostitution which they have come to know well, with its many restrictions and the limited protections it offers. This law forbids profiting from the prostitution of others, and sex workers believe it should also protect them from the state (the 'fiscal-pimp') profiting from the taxation of their revenues. The judiciary, they claim, should not be able to 'brush off' what the law states. Underpinning these comments is a deep-seated sense of uncertainty as to who is going to uphold the law when state agencies themselves are disregarding it. What are we to make of courts' rulings which nobody knows how to implement? As discussed above, Revenue Agency employees are not even clear about what the law on prostitution is and whether it is a crime or not, nor do they appear to have been informed about the Supreme Court's decisions and how to execute them. This status of ambiguity keeps many sex workers in what is experienced as a trap and an inescapable and vulnerable state of social liminality wherein they are only acknowledged, and punished, as criminals.

Contributing further to such marginalization is widespread ignorance of the intricacies of the paradoxical situation faced by sex workers. A diffused belief is that sex workers are in a fiscally privileged position because, unlike other citizens, they are allowed to earn and not pay taxes. This, for example, emerges from threatening emails received by the Committee,

and then discussed with its email-list members. These messages reveal the deep-seated anger and spite of some towards sex workers for not paying taxes and getting rich at the expense of the state while all other law-abiding taxpaying citizens, with honest lives and occupations, are struggling financially. Although not systematically reviewed, other examples of similar beliefs and sentiments can be found in the many comments posted online in response to articles in national and local news reporting on the court cases mentioned earlier. Here, spiteful and verbally violent claims abound about Italian sex workers having gotten away with not paying taxes for too long, and now finally being 'caught' by the state. And indeed, headlines of local and national newspapers such as: *Rimini [city]: The Revenue Agency nails also a prostitute: "She has to pay taxes*" (Nanni, 2017), *Ferrara [city]: Prostitutes should pay taxes like all of us* (LanuovaFerrara, 2016), *Tributary justice in Savona [city]: Are you a prostitute? Then you have to pay taxes* (SavonaNews, 2016) contribute to misrepresenting the predicament in which sex workers are caught by depicting them as unscrupulous tax avoiders finally 'nailed' by state interventions.

Discussion: The ambiguous taxation of prostitution and its implications

The developments outlined above show that a significant shift took place in courts' rulings in the mid 2000s, perhaps best exemplified by the different approach taken towards the ECJ decision, first rejected on account of Italian human dignity standards, and then embraced to support the qualification of prostitution as an economic activity. When sex workers started appealing against the outcomes of the Revenue Agency's audits and their cases reached the Provincial Tributary Courts in 2004 and 2005, deliberations on such cases had been unprecedented. The decisions taken to treat prostitution as an un-taxable immoral activity and its proceeds as compensation for damage rather than compensation for services reflected the

decades-long tendency (since the passing of the 1958 prostitution law) in the country to ignore prostitution as an economic activity and to rather treat it as public indecency contrary to national morality. The opposite rulings that started being issued by the courts in 2007 reflect the more stringent application of new fiscal measures put in place in the 2000s, and a 'pragmatic' stance whereby prostitution, albeit still identified as morally dubious, is also clearly identified as an economic activity. Pressure to ensure tax compliance in the context of the unfolding economic crisis might have played a role in the tributary judges' decision to supplant the 'moral argument' and come to the financially favorable conclusion that 'money does not smell'.

What needs to be considered, however, is whether the change of discourse in the courts' ruling has contributed to, or at least facilitated claims for the recognition of sex workers' rights as workers, and an improved sexual citizenship status. According to Formica (2015) "after decades of failed battles fought by politicians and pressure groups, finally it is the atavistic hunger of the Revenue Agency that might lead to a change the Merlin Law [the current 1958 prostitution Law] and to make prostitution a lawful job, fully recognized and regulated". Such a positive view, however, has not materialised. The Supreme Court's decisions were not followed through in the practical fiscal arrangements of the Revenue Agency, thus leading to a disjuncture between rules 'in the books', in this case court rulings, and their actual application. This resulted in further uncertainty as to whether or how prostitution-related revenues should be taxed in practice. Such a landscape of ambiguity has profound material consequences for sex workers who face the constant threat of losing their earnings, uncertainty about their future, and further social stigma for being identified as tax evaders. As Covre explains, "these are not rulings that grant rights, they only grant the duty to pay taxes […], we need a law that recognised our job with related social benefits, only in that scenario it is right for us to pay taxes" (Crisafi, 2018). Ultimately, due to the obstacles

they face in actually filing tax returns, and in light of the the 2010 Supreme Court rulings, sex workers find themselves in a situation whereby they are acknowledged by the state and pursued as tax non-compliant, and for this they are punished with hefty fines. At the very same time they are ignored by the state as citizens who want to pay taxes as sex workers, and are thus denied the rights and protection that taxpayer citizenship and full recognition of their activity should entail. A possible solution to avoid this situation and remain law abiding is to become invisible as sex workers, and file tax returns by selecting a different activity.

In discussing the social and political relevance of taxation, Martin et al. (2009, p. 3) claim that "paying taxes is one thing that everyone has to do, whether they are consumers, homeowners, wage earners, or investors. This generality makes taxation a crucial element in the development of the 'imagined community' (Anderson 1983) of the modern nation-state". By effectively denying sex workers the right to pay taxes, the system in place reinforces their historical exclusion from the 'imagined community' of the nation-state. This systemic exclusion from taxpaying and from the recognition and rights that this should entail, is compounded by the limited, and often conflicting, knowledge about the ambiguity surrounding the taxation of prostitution in the country and the damaging and vulnerable position into which sex workers are forced as a result. Even when the issue has been raised and debated publicly, the narrative of sex workers as unscrupulous tax evaders continues to dominate. In a country where the debate on taxation and its distribution stirs sanguine discussions and strong resentments against tax evaders (Guano, 2010), sex workers have become an easy target for frustrated citizens who, ignoring the predicament in which sex workers are caught, blame them for their woes and for the country's troubled public finances fuelling already strong anti-sex worker resentment and aversion. As Teela Sanders (2016) argues, the status that sex workers are given in society is shaped by broader structural and cultural factors which often contribute to violence against sex workers: social status and

stigma have "significant effects on social attitude towards sex workers and how they are treated" (2016, p. 104). Thus, public and official discourses and practices which "position sex workers as non-citizens, as rubbish, not to be cared about" 'other' them as separate from 'normal' individuals, reinforcing "ideas which perpetuate associations with criminogenic offenders, immoral and dangerous sexuality, disease, incivility, and disgust" (Sanders, 2016, p. 104). These processes can be observed in Italy, where the maintenance of the ambiguous taxation of prostitution contributes to reproducing damaging stereotypes about sex workers, associating them with criminality and social deviance, and reinforcing both their social and systemic exclusions.

Giuliana Zincone explains that in Italy "laws can easily be trespassed since they tend to be vague and contradictory" (1998, p. 76) – this facilitates the flourishing of a messy patchwork of policies and of inconsistency between proclaimed principles embodied in legislation and their actual, often discretionary and arbitrary, implementation. This "propensity for 'self-contradiction'", Zincone also argues (1998, p. 45), is part of a structural ambiguity which is particularly convenient where 'hot matters' are concerned, i.e. "matters that cannot ignore opposition views" (Zincone, 1998, p. 45). This is an important point to consider in making sense of the broader structural context of the specific Italian case. The inconsistences and contradictions that compound the ambiguous treatment of the taxation of prostitution in Italy are partly an outcome of a structurally dysfunctional relationship between state institutions, and specifically, in this case, fiscal instruments and legal frameworks, and between what they state on paper and how they are implemented in practice. We saw that in 2008 some politicians asked the government to intervene and bring some clarity to the issue. No government has since done so, as this is likely a matter too 'politically hot' for unambiguous consideration. As discussed earlier with respect to the contemporary example of Nevada and the historical one of China, fiscal impositions are not neutral but give social

status to the market transactions they tax. “Governments cannot tax an activity and claim an indifference towards the occurrence of the taxed behaviour. They can’t avoid moral judgements in taxation” (Lorenzi, 2004, p. 64). Changing the legal status of prostitution in Italy has so far proven too politically contentious to result in any more than inconclusive and ‘never ending debates’ (Danna, 2004). As a result, an ambiguous state of affairs remains in spite of the courts’ rulings that prostitution should be treated as a legitimate economic activity.

Conclusion

This contribution started from the premise, already brought forward in much research on the governance of prostitution, that in order to understand the complex factors that shape the relationship between the state and sex workers in any one country it is essential to move beyond a narrow focus on prostitution laws and policies in order to explore a much broader variety of regulatory frameworks, measures and practices. The article showed that, albeit still under-researched and often overlooked, the fiscal treatment of prostitution is an important dimension to consider given its role in the formalization and legitimation of the exchange of sexual services, or indeed its opposite, the exclusion of sex workers from the equal treatment and recognition of their activities. Taxes are social mechanisms that reflect political interests and broader social inequalities, and it should come as no surprise that in a field of moral politics such as prostitution the taxation of commercial sex-related revenues represents a highly contentious issue, one that governments try to avoid confronting.

A final point worth reciting pertains to the possibilities that the taxation of prostitution might offer. In an article on a rather different topic, Michael Ross (2004) asks if their need for greater tax revenue force authoritarian governments to democratize. Along these lines, in

the context of shifting global economic (mis)fortunes, we may ask if the enhanced economic need for taxation offers opportunities for sex workers to claim a right to taxation with representation and recognition. It remains to be seen if, as has been pointed out by scholarship engaging with the intersection of sexuality and the economy (Brents 2016; Grzanka, Mann and Elliott 2016; Richardson 2018), the neoliberal marketization of political issues, sexuality and sexual practices will advance in any ways sex workers' rights, or whether, perhaps more likely, it will ignore their demands for full sexual citizenship. The interplay of economics and morality is a dynamic and ever-shifting process which might offer opportunities but it might also reinforce obstacles to advancing sex workers's rights.

Closer attention to these issues by critical tax theory, fiscal sociology and sex work and prostitution studies has the potential to shed light on the under-explored interconnection between economic politics and sex work, and specifically on how taxation can be implicated in the reproduction of violence and exclusion against sex workers or, possibly, also in sex workers' improved recognition and rights, and if so, under what socio-economic conditions.

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