

Encyclopedia of Law & Society: American and Global Perspectives

Prostitution, Criminology Of

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Book Title: Encyclopedia of Law & Society: American and Global Perspectives

Chapter Title: "Prostitution, Criminology Of"

Pub. Date: 2007

Access Date: December 08, 2014

Publishing Company: Sage Publications, Inc.

City: Thousand Oaks

Print ISBN: 9780761923879

Online ISBN: 9781412952637

DOI: <http://dx.doi.org/10.4135/9781412952637.n560>

Print pages: 1220-1223

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<http://dx.doi.org/10.4135/9781412952637.n560>

The legal options used to address prostitution include criminalization (which makes the act or practice illegal and open to penal sanctions), legalization (which permits behavior when it complies with specified regulations), and decriminalization (which makes the behavior permissible and unregulated, save for regulations that apply to all businesses, for example, fair hiring practices or sales taxes). Prostitution is criminal in forty-nine U.S. states (and two counties in Nevada), legal in thirteen Nevada counties, and decriminalized or noncriminal in most western European nations.

Criminalization

Support and Justifications

Those who would criminalize prostitution usually cite one of two justifications. First, they argue that criminalizing prostitution can eliminate or at least decrease it. Humanitarian or moralistic concerns generally motivate the desire to abolish prostitution. Prostitution often results in significant harm to prostitutes (for example, unwanted pregnancies, assaults, and so on) and puts prostitutes and clients at risk of contracting venereal diseases. This, in turn, places other sexual partners of both the client and the prostitute at greater risk. In addition, some clients become dependent on (or addicted to) sex with prostitutes. Some prostitutes and clients experience religious, moral, or economic guilt. Finally, areas of a city with (visible) prostitution often suffer economically. Wherever streetwalking is prevalent, more family-oriented businesses often do not survive. Visible forms of prostitution often increase other criminal activity in the neighborhood and decrease the overall appearance of the affected area.

Second, those who would criminalize prostitution argue that prostitution is immoral and that society must use the law to take a public stance on its immorality. Two discordant concerns can motivate this position. The *traditional* (conservative) position usually arises from religious or traditional moral convictions. Christianity, Judaism, and Islam, among other religions, maintain that prostitution is a sin. For those who accept legal moralism, criminalizing prostitution is not only permissible: it is a moral obligation.

Indeed, moralists often cite prostitution as the paradigmatic example justifying legal moralism, as illustrated in Patrick Devlin's book, *The Enforcement of Morals* (1965). Support for criminalization occasionally emerges from a *feminist* perspective. Although the vast majority of feminists reject criminalization, a few hold that failure to make prostitution illegal communicates societal acceptance of the treatment women suffer as prostitutes and the view [p. 1220 ↓] that women are merely sexual objects who can be purchased.

Objections

In response to the argument that the state should criminalize prostitution to decrease or eliminate it, opponents note that criminalization has never achieved those ends. Indeed, rates of prostitution are relatively unaffected by the adoption of differing policies. Criminalization of prostitution has failed: although prostitution is illegal in forty-nine U.S. states, the practice in the United States, and globally, appears to be on the rise.

On the other hand, criminalization clearly harms prostitutes. Arresting prostitutes often only serves to heighten their isolation and estrangement, from not only friends, family, and the community, but also from the social services they may need to leave prostitution. Criminalization strengthens the prostitutes' dependence on pimps, who post bail, arrange child care, and obtain legal counsel when prostitutes are arrested. Arresting prostitutes permanently and officially stigmatizes them, also often resulting in the loss of child custody and housing and deportation. Criminalization makes it difficult for prostitutes to organize for political rights, occupational safety, protection from corrupt police or exploitive bosses, and so on.

Criminalization has a negative impact on both prostitutes' and clients' health. The more nefarious and marginalized a behavior, the more likely it is to be transacted hastily, thereby discouraging the use of condoms and other time-consuming safety measures. Fear of legal repercussions makes it unlikely that prostitutes will access medical treatment for job-related illnesses or assaults or report assaults to the police. By driving prostitution underground, criminalization makes it nearly impossible to obtain information on prostitute abuse and trafficking. Nor does criminalization prevent

either sexual addiction or clients' moral guilt. Because criminalization does not lessen prostitution, neither of these concerns is addressed.

Although most forms of prostitution do not affect neighborhoods in which they are located, streetwalking sometimes causes significant harm to the surrounding neighborhood. Law enforcement has historically directed itself toward containing streetwalking—that is, moving it out of public view—usually into poorer and more marginalized neighborhoods. Such containment only serves to further marginalize the neighborhood, resulting in increases in the crimes that often accompany streetwalking.

Feminists argue that criminalization perpetuates gender discrimination, along with racial and economic class discrimination. Research discloses that not only does the Madonna-whore bifurcation of women significantly affect the criminal justice system, but that it also effectively reinforces and perpetuates it. Historically, females have received far more severe treatment for immoral conduct than men have. Criminalization thus only serves to encourage the criminal justice system to continue their gender bias.

Criminalization also harms the community at large. The economic costs alone are staggering. In 1985, the sixteen largest cities in the United States spent an average of \$7.5 million enforcing antiprostitution policy. The community also suffers significant loss of tax revenue for unclaimable prostitute income.

In response to the argument that criminalization gives the right message by communicating and reflecting appropriate values, opponents argue that sexual activity between consenting adults should be beyond the reach of the law. Minimally, consistency requires that the state treat for-profit sexual acts in the same way as the state treats not-for-profit sex, unless it provides an argument to explain the difference in their moral status. Most importantly, supporters of legal moralism hold that the moral values that the state codifies into law must reflect a genuine community sentiment. Criminalization of prostitution, in fact, does not reflect the preponderant perspective.

Many feminists argue that the values and standards that criminalization communicates support the continued stigmatization of the prostitute, which negatively affects women, prostitute and nonprostitute alike. Criminalization codifies the taint of sex and the

bifurcation of women, thus supporting patriarchal control and ideology. Finally, criminalization clearly violates prostitutes' right to bodily autonomy.

[p. 1221 ↓]

Legalization

Support and Justifications

There are, in general, four reasons given for favoring legalized prostitution: (1) to protect public sensibilities, (2) to protect public health, (3) to protect public safety, and (4) to protect prostitutes. Legal restrictions generally control the locations of prostitution and require prostitutes be registered, undergo medical testing, and so on.

Society often views legalization as a middle ground between the uncompromising position of criminalization and the “anything goes” perception of decriminalization.

Objections

Available evidence belies the presumption that prostitution transmits venereal diseases. In the Netherlands, where medical exams are not required and most forms of prostitution are decriminalized, only 10 percent of the national rate of sexually transmitted diseases (STDs) is attributable to prostitutes or their clients. Recent studies of Nevada brothel prostitutes, who are required to undergo such tests, indicate a lower rate of HIV compared with those prostituting illegally. However, this difference appears to be solely attributable to condom use. Nor is there any evidence of lower STD rates in these Nevada counties overall. Indeed, medical exams force infected prostitutes to work in criminalized venues, where they are more likely to infect clients due to the related difficulties of practicing safe sex.

Feminists argue that such policies are guilty of gender and class bias, since they are directed at protecting the (usually) male customer and not the (usually) female

prostitute. Finally, such approaches are demonstrably less successful than are less stigmatizing and limiting ones. Despite the open and international character of prostitution in the Netherlands, the Dutch have the lowest spread of HIV in the world. The Dutch combat venereal diseases with an aggressive and explicit public education campaign directed at all populations and tailored to specific populations (including, but not limited to, diverse populations of prostitutes). This approach is successful: about 80 percent of Dutch prostitutes regularly use condoms.

The expectation that controlling the location of prostitution activity will reduce the crime rate and increase the safety and welfare of the citizens is also erroneous. According to the Fraser Committee Report, under the then West German system, which zoned prostitution activity and required registration, health cards, and medical exams for prostitutes, the number of sex clubs and juvenile prostitution increased, more prostitutes were unregistered than registered, and street prostitution remained as high as before the institution of these measures. Boston attempted to develop a red light district that tolerated prostitution, but zoning there was a failure. The Bureau of Municipal Research reported that existing nonsexual businesses in the area moved out farther, stigmatizing prostitution activity, increasing crime, and decreasing police enforcement.

A pattern of noncompliance to prostitute registration is global. In Peru, Singapore, and Uruguay, despite legal requirements, fewer than 50 percent of working prostitutes are registered; in Indonesia, fewer than 30 percent; and in Nevada and Greece, only an estimated 10 percent. An unknown but clearly small percent of prostitutes in Geneva, Switzerland; Mombasa, Kenya; Chiapas, Mexico; and Guatemala are registered. Even in Austria, where registration entitles prostitutes to use the government health plan, only 50 percent are registered.

In addition, legalization and registration systems tend to perpetuate other written and unwritten restrictions on prostitutes. In Nevada, these restrictions are, in fact, unconstitutional, limiting, for example, prostitutes' rights to own cars, have their children in the county, remain in the county when not working, enter a bar, and so on. Indeed, various unwritten rules proscribe the behavior of nonprostitute women as well. For example, in Winnemucca, Nevada, no woman not working in the brothel can visit the brothels, or even drive through the area where they are located.

Feminists argue that legalization embodies and perpetuates the continued stigmatization of the prostitute, sexual activity, and the correlative subordinate status of nonprostitute women. It violates bodily autonomy and actively worsens the quality of life of prostitutes, makes most criminals for noncompliance, and promotes the spread of STDs through unrealistic expectations about the safety of government-controlled sex.

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Decriminalization

Support and Justifications

Proponents of decriminalization argue that both criminalization and legalization have proven to be empirical failures, demonstrably harming prostitutes and the community. Decriminalization combined with social services significantly improves the lot of prostitutes and the larger community. Prostitutes do not risk criminal sanctions, nor are they limited to working in abusive legalized brothels or streetwalking zones. Decriminalization facilitates state-funded social services that can improve the lives of prostitutes, an impossibility under criminalization. Because under legalization the vast majority of prostitutes work illegally, few would be able to access these services either. Removing the codified taint of illegal or legally stigmatized practices also increases the likelihood that social services will have a less censorious tenor. Furthermore, the harm caused by legalizing or criminalizing prostitution is not justified by potential health risks. Indeed, the opposite is true—decriminalization combined with appropriate public education campaigns lowers the rate of sexually transmitted diseases.

Because feminists believe that the paradigm of the Madonna-whore harms all women, they favor prostitution policies aimed at destroying this perpetual bifurcation of women (and the related beliefs in the worthlessness and depravity of all prostitutes). Criminalization clearly defines the prostitute as stigmatized outlaw. Legalization does the same by constructing prostitutes as requiring unique controls. Decriminalization is the only approach that does not codify the cultural stigma of the prostitute.

Objections

Opponents of decriminalization hold that it ignores fundamental moral values and the welfare of individuals and the community. Contrary to traditional moral values and some feminist concerns, decriminalization suggests that prostitution is morally permissible.

Decriminalization makes it appear that no special risks attach to prostitution, resulting in an increase of those who unwittingly participate in (and are harmed by) prostitution. Under decriminalization, the state cannot control the spread of venereal diseases. Finally, in decriminalized systems, prostitutes are free to ply their trade openly in residential neighborhoods, near schools, and so on, offending many and increasing the rate of crimes that often accompany streetwalking.

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<http://dx.doi.org/10.4135/9781412952637.n560>

See also

- [AIDS and HIV](#)
- [Belgium](#)
- [Decriminalization](#)
- [Discretion in Legal Decision Making](#)
- [Feminist Legal Studies](#)
- [Health](#)
- [Netherlands and Flanders](#)
- [Morality and Law](#)
- [Prostitution, Economics of](#)

Further Readings

Bureau of Municipal Research . (1983). "Prostitution in Our Cities." Civic Affairs (February) : 9–10.

Davis, Nanette J., Ed. (1993). Prostitution: An International Handbook on Trends, Problems, and Policies . Westport, CT: Greenwood Press.

Devlin, Patrick. (1965). *The Enforcement of Morals* . London: Oxford University Press.

Fraser Committee (Special Committee on Pornography and Prostitution) . (1985). *Pornography and Prostitution in Canada* , vols. 1 and 2. Ottawa: Ministry of Supply and Services.

Kuo, Lenore. (2002). *Prostitution Policy: Revolutionizing Practice through a Gendered Perspective* . New York: New York University Press.

Law, Sylvia A. "Commercial Sex: Beyond Decriminalization." *Southern California Law Review* 73 (2000). 526–610.

Pillard, Ellen. (1991). "Rethinking Prostitution: A Case for Uniform Regulation." *Nevada Public Affairs Review* . Reno: University of Nevada Press.

San Francisco Task Force . (1996). *San Francisco Task Force on Prostitution: Final Report* . San Francisco: Board of Supervisors.