

LEARNING FROM MISTAKES: DECRIMINALIZING PROSTITUTION IN THE UNITED STATES

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Prostitution: Problem or Profession?

Prostitution is, according to cliché, the world's oldest profession. It is also an activity greatly disputed by many, all over the world. Nearly every country has developed some way to address the issue. In the United States of America, prostitution is against the law in forty-nine of fifty states and heavily regulated in the other. The fact of the matter is that prostitution must exist because there is demand for it, and as long as that demand persists, so will the activity. Prostitution occurs across the globe between people of all genders, sexualities, ages and religions, and many other countries have decided that to fight against prostitution is futile. These countries have chosen to better distribute their resources in ways that protect all citizens. The United States should consider the successes and failures of all possible approaches to prostitution in comparison to the disrespectful, limiting, expensive and crime-ridden systems of criminalization and legalization currently in place.

According to Merriam-Webster's Online Dictionary, prostitution can be defined as "the act or practice of engaging in promiscuous sexual relations especially for money;" (promiscuous meaning "not restricted to one sexual partner") (Merriam-Webster Online 2010). This definition is, technically, correct. Prostitution is the exchange of sexual activities for a favor, usually in the form of monetary compensation, and may also be referred to as commercial sex (Law 2000, 525). Based on this definition, it is important to recognize that any sexual activity for which an individual receives monetary compensation is considered prostitution, including activities typically associated with other parts of the sex industry. Film pornography, for example, may be considered prostitution. Additionally, this limited definition does not include individuals that exchange sex not only for cash but also for other favors or gifts—transactional or "soft-sell" sex, which is common in other cultures, particularly in Latin America (Wonders and Michalowski 2001, 599). It is important to acknowledge that prostitution is not easily defined or contained, and this is part of what makes the enforcement of criminalization policies so difficult.

Two forms of prostitution will be discussed in this paper, with the acknowledgment that these represent only a small facet of the commercial sex industry. Additionally, this paper presents arguments about prostitution using a female-seller/male-purchaser scenario, as this transactional arrangement was found to be disproportionately the most frequently discussed in scholarly material due to its

prevalence in Western culture. The two forms of prostitution presented here have been chosen because they are the forms of commercial sex to which much of the legal code currently pertains. According to Sylvia Law in "Commercial Sex: Beyond Criminalization" (2000), there are three primary forms of prostitution, each with a very different economic status and clientele (529). The first form, street-walking, describes the most visible commercial sex workers (Law 2000, 529). These women, who solicit openly on the street, represent the most marginalized and the lowest class of prostitutes and are most likely to be controlled by pimps (Law 2000, 529). While these women may be the most visible and familiar, they comprise only ten to twenty percent of all prostitutes in America. Brothel workers and other off-street prostitutes (who may work in various locations such as massage parlors, hotels, and bars) comprise the middle class of prostitutes (Law 2000, 529). These women work with greater profits and discretion than streetwalkers but do not receive the benefits of the highest form of prostitution (Law 2000, 529). The largest and most socially and economically privileged prostitutes are call girls or escorts, and these women represent the largest group of prostitutes in America (Law 2000, 529). However, escorting is quite different from brothel work or streetwalking because of its hidden nature and exclusive clientele and is often addressed under separate forms of legislation. As such, this form of prostitution is not directly addressed in this paper. Each of these types of prostitution is very different, and all should be considered and accounted for in the greater legal process.

In their article "State-Sanctioned Sex: Negotiating Formal And Informal Regulatory Practices In Nevada Brothels," Brents and Hausbeck (2001) describe four primary approaches that legislative systems may choose when discussing prostitution: policies of criminalization, abolition, decriminalization, or legalization (308). Criminalization has been the preferred method in much of the United States since laws addressing such activity were created, and such legislation makes it illegal to exchange sex for money (Brents and Hausbeck 2001, 308). Legalization, another legal option, involves the organization of a system wherein workers are governed and regulated by the government (Brents and Hausbeck 2001, 308). Like criminalization, legalization does not necessarily consider prostitution a legitimate occupational choice; very often, emphasis is placed on the volatile nature of sex work and the need for additional worker regulations and protections. Abolitionist legislation classifies sex for pay as illegal and is sometimes described as a form of criminalization; however, unlike traditional criminalization which tends to blame the prostitute, abolitionist policies punish the exploiters (i.e., those individuals purchasing sex or trafficking women) while viewing prostitutes as innocent and victims of societal imbalances (Brents and Hausbeck 2001, 308). Countries that develop abolitionist policies do so because they have identified a terrible gender binary in traditional, heterosexual prostitution. The final policy option for prostitution is decriminalization, a legislative option wherein prostitution is neither illegal nor legalized but is instead treated as all other professions (Brents and Hausbeck 2001, 308). In systems of decriminalization, workers have the right to organize and receive protection under the law in the same way as other citizens.

While prostitution is considered illegal in the United States and other societies that have chosen primary policies of criminalization, prostitution is what some scholars define as a "victimless crime" (Hardway 2003, 1). Prostitution, sodomy, the use of certain illegal drugs, and other crimes are considered victim-

less by some sociological scholars because it is generally assumed that both parties choose to participate in these activities and the consequences do not directly impact the lives of other people. Victimless crimes are believed to be personal choices with personal consequences, and as such, should not be criminalized by the government.

While there are many reasons that individuals protest prostitution's status as a victimless crime, many of those who contest this characterization do so because of its association with the spread of venereal disease, a problem that does actually leave true victims in its wake. The connection between the discovery of sexually transmitted infections and societal rejection of prostitution is long established and has provided a broad arena for political and legal discourse in America. Prostitutes and the diseases they carried were blamed for many problems in the early twentieth century, from the "race suicide" that was the shrinking number of white women having children to the weakened defense of the nation due to otherwise healthy men being rejected from military service (Leichter 1991, 56-57). Today, prostitutes and those individuals who purchase sexual services have much more information and a plethora of resources to prevent and treat sexually transmitted infections. While some sexually transmitted infections have no medical cure, such as HIV/AIDS, it is unfair to blame prostitutes entirely for the spread of all sexually transmitted infections, just as it is unfair to blame any single group for their creation. If anything, the individuals who choose a system of criminalization should be blamed for creating an environment where a prostitute may not have the option to use a condom or practice safe sex, an argument that is very often overlooked when debating a prostitute's victims (i.e., male purchasers of sexual services and the so-called innocent women to whom they may spread such diseases).

In the search to assign blame for this crime, the limitations that criminalization have created are easy to overlook. In some cases, the failure to practice safe sex may not be the prostitute's but rather the result of a legal system that has created an environment that overlooks these women's welfare. Controlling pimps and violent customers may leave the prostitute with no options regarding condom use, despite her personal preference. Condom use is, however, a choice that any prostitute would most assuredly have in a legalized or decriminalized system, where basic protections and rights would be insured; in many cases, condom use is required under these systems. The United States should, perhaps, be less willing to label the men who come away from encounters with prostitutes as "victims" and instead view them as free-willed products of the democratic society in which they have a voice. The voices of the prostitutes that they visit, however, are silenced in the criminalized system, and few will argue the truth: that infected male customers also bring sexually transmitted diseases to healthy women in prostitution.

If prostitution can be viewed as a victimless crime and many of its problems as secondary to the legal environment in which sex workers operate, questions raised concerning the continued criminalization of commercial sex work gain greater validity. With the exception of the state of Nevada, the United States has always held a staunch view of criminalization regarding prostitution. The best way to determine if a change is needed, then, is to look outside the box—to compare the actual success of the current criminalization policy the other legal option being used in American, Nevada's legalized system, and also with Sweden's

abolitionist system and the decriminalized system in the Netherlands. Doing so will illuminate both the strengths and weaknesses of each system and provide information necessary to consider the future of prostitution in the United States.

The Right to Remain Silent: Criminalization in the United States

Today in the United States it is estimated that as many as five hundred thousand women have worked as prostitutes (Hardway 2003, 24). This number may seem outrageous for a country that, with the exception of just a few organized brothels in Nevada, condemns prostitution and criminalizes both the prostitutes and their clients. American prostitution policy is a combination of criminalization and abolitionist theory, holding all individuals involved in the exchange responsible for legal violations. Yet something is obviously lacking in the American approach to prostitution when, despite active searches and real punishment for the men and women involved in the prostitution industry, more than 338 million acts of prostitution occur each year (Hardway 2003, 24). Something is wrong, and whether it is in the United States' approach to persecuting offenders or in its moralistic attempt to control the sexual lives of its citizens remains to be determined.

In the United States, prostitution is technically considered a matter of the state, and each state has the right to regulate prostitution according to public opinion and legislative decisions. Currently, only Nevada has chosen to legalize prostitution in any way, and individual counties there are given the choice to allow or prohibit such activity. The regulations for brothel owners, prostitutes, and clients are very strict, especially regarding health, a primary argument for the criminalization of such activity. In Nevada, each prostitute must submit to monthly blood tests for HIV and syphilis and weekly PAP smears for gonorrhea and Chlamydia (Brents and Hausbeck 2001, 314). Employees are not permitted to work if they test positive for any of these diseases, and a 1987 Nevada law makes it a felony for a brothel worker to continue to work in the legalized sex industry if she tests positive for HIV (Brents and Hausbeck 2001, 314). Additionally, the brothels are taxed, and significant amounts of revenue are generated. In 1978, the owner of the Mustang Ranch owed an estimated \$5.6 million in back taxes—after just four years (Bode 1978, 23). The nearly \$1.4 million in yearly federal taxes was in addition to a quarterly fee of \$9,000 (\$36,000 per year), paid to the county, making the Mustang Ranch in Sparks, Nevada the county's single largest revenue source (Bode 1978, 24).

Despite the fact that the rate of AIDS among prostitutes in these legalized Nevada brothels is the lowest in the United States and that the profits made from these successful companies are taxed and used to support public services rather than organized crime, the rest of the United States still balks at legalizing prostitution (Hardway 2003, 25). Certainly one aspect that should not be overlooked in this decision is the amount of state revenue spent on prosecuting prostitutes in a criminalized system in contrast to the revenue generated by brothels in the legalized systems in Nevada. In the United States, the arrest and incarceration of each prostitute costs between \$877 per arrest in Boston to \$2,000 per arrest in New York City (Hardway 2003, 25). Considering that there are likely to be more than 100,000 prostitution arrests per year in each of these cities, the total figure of annual tax revenues lost by states due to the criminalization of prostitution is staggering—\$87.7 million in Boston alone. Even removing this fiscal burden, without considering the revenue that could be made through taxation in a more

regulated system, would greatly improve the financial security of the nation and could be considered reason enough to evaluate the system of criminalization currently in place.

Despite these figures, prostitution has always been treated as a social problem in this country; in early America it was considered a sin from which women could be persuaded to reform. The first ban on brothels went into effect in 1672, and as early as 1699 larger cities such as Boston and Philadelphia passed laws making streetwalking an offense (Hardway 2003, 151). However, while prostitution has been illegal in much of the United States since the beginning of the eighteenth century, such regulations were not often enforced by police until the anti-prostitution movements in the early nineteenth century (Hardway 2003, 151). Led by seminary students and women's groups, these movements brought the often overlooked issue of prostitution to the forefront of public concern. Divinity student John McDowall and his associates wanted to help prostitutes repent and save their souls, while the New York Moral Reform wanted to illustrate that prostitution was a direct result of the inequality between the sexes (Hardway 2003, 152). Still others, especially in England, brought forth medical research that demonized the prostitute as a carrier of contagious disease, a title that the profession has yet to shed (Gilfoyle 1999, 122).

Although these movements were unsuccessful in eliminating prostitution, the public interest they sparked about prostitution and prostitutes has only increased over time. This interest has been accompanied by the critical and intellectual movements of the twentieth century which assist in framing and understanding sensitive issues such as prostitution (Shrange 1994, xi). The discourses of postmodernism, lesbian and gay studies, critical race theory, and post-colonialism have given feminists and other activists who strive to achieve social equality new contexts with which to critically understand and appreciate the advantages and disadvantages of prostitution to all affected (Shrange 1994, xi). The polarized views of prostitution that began with the movements of the nineteenth century have expanded through these new contexts, and a multitude of feminist theoretical perspectives have been established, each of which include new analyses of prostitution and its affect on women (Bromberg 2004, 2). Feminist theory now accommodates a wide arrange of opinions about prostitution, and each of these have been expanded in order to embrace new and changing views of the prostitute, society, and the nature of sex work.

Rather than continue the trend of examining and bemoaning the symbolic "fallen woman," the depth of her depravity, and the immoral conditions of men that lead to such abuse, many historians have begun to take a much more empathetic view of prostitutes and their work (Gilfoyle 1999, 121). Beginning in the 1980s, a new wave of historical criticism has been slowly created that expresses a direct interest not only in prostitution but also in the prostitute, and, more specifically, the social and structural conditions that "situate commercial sex within the world of work and working-class culture" (Gilfoyle 1999, 121). Modern research into prostitution includes an attitude that, while perhaps not entirely accepting, upholds the humanity of sex workers and empathizes with their struggles. Some scholars appear quite concerned with the image of prostitutes that exists in history, in current culture, and that which will exist for future generations. Recent examinations of this caliber "rescue prostitution from the literature of deviancy

and crime” and integrate prostitutes in “larger historical and national narratives” in a way that has never before been possible (Gilfoyle 1999, 120). Even for those that do not believe that prostitution is a choice made entirely of free will, there is a push to challenge moralistic terminology and incorporate these sex workers into our historical and current histories in a way that assists in creating a cultural understanding.

Prostitution in the United States today is an oxymoron of incredible proportions. It is clear from statistics, however, that criminalization has not stopped prostitution—338 million acts a year (Hardway 2003, 24). means that a lot of people are buying and selling sexual favors underneath government radar, despite the risks. And criminalization has not helped local economies to prosper: at a cost of several thousand dollars per arrest, the only thing being accomplished is an inconvenience to a pimp, the destruction of a woman’s personal record, and millions of dollars in revenue being wasted for what some people consider to be a crime without any victims. Marilyn Haft, a past director of the American Civil Liberties Union’s project on sexual privacy, asserted that “Prostitution is a victimless crime [because] it is a private agreement between consenting adults” (Bode 1978, 21). If the crime has no victims, arresting those who participate only serves to create victims and to create a black-market culture that is connected to actual and dangerous crime.

While individuals such as former Boston Vice Squad Chief John Doyle may be correct in saying that “The hooker on the street these days is no longer just a prostitute. She’s a mugger, a pickpocket, a robber and worse,” it is important for Americans to recognize that prostitution may not be inherently connected with these vices (Bode 1978, 21). It could be that the system of rejection and criminalization—of persecution and arrest and degradation—has led sex workers to turn to crime. At any given moment as many as one-third of the occupants of a women’s prison has been arrested for prostitution, and seven out of every ten women arrested for a felony have been previously arrested for prostitution (Flowers 1998, 8). The criminalization of prostitution has turned the act into a gateway crime: many women arrested for commercial sex work seem to become real criminals when they are released, driven further into the subculture that surrounds their profession in an effort to survive. These statistics show that the next time these women are arrested, it won’t be for a victimless crime. Modern societies that have decriminalized prostitution, however, illustrate that such activity is not inherently associated with commercial sex work. Perhaps, then, it is the criminalization of the action that leads to the criminalization of the workers—and that this leads desperate women to do even more desperate things.

Legalization, Nevada, and the Benefits of Mind Control

Policies of legalization were developed in order to increase state intervention in the sex industry, to “control disease, violence, theft, robberies, assaults, white slavery, and other forms of social disorder” commonly associated with criminalized sex industries (Bretners and Hausbeck 2001, 308). In theory, those who support legalization believe prostitution is “an unstoppable social exchange” and believe that legalization is the best way to eliminate violence in the exchange and

protect all parties involved (Brents and Hausbeck 2005, 273). Historically, prostitution in Nevada has existed very openly, especially in rural areas, and current laws continue this trend. The legal code, known as the Nevada Revised Statutes (NRS), has several sections relating to prostitution. The first, NRS 244.245, legalizes prostitution by prohibiting “the licensing of prostitution from counties with populations over 400,000” (Brents and Hausbeck 2005, 275). In counties below this population limit, prostitution is considered a matter for local opinion, and many counties and municipalities have chosen to allow legalized prostitution. NRS Section 201.300-360 also prohibits any person from forcing or enticing a woman to become a prostitute or work in a brothel; the law also protects spouses from being forced to work as prostitutes, prevents women from being forced into marriage, and prohibits anyone from living off the earnings of a prostitute (Brents and Hausbeck 2005, 276). The legal code also provides for zoning restrictions, allowing legislators and local authorities to determine “safe distances” for prostitutes to be allowed near schools, churches, and main streets (Brents and Hausbeck 2005, 276).

While prostitution is legal in Nevada, it is important to acknowledge that the tightly structured and rural nature of such activity has its downfalls, as indicated in the high levels of prostitution that occur outside these legal brothels. Many of the state’s prostitutes work independently and illegally in the much larger cities of Reno and Las Vegas. In her book *Prostitution and Trafficking in Nevada: Making the Connections* (2007), Melissa Farley describes the results of two-year research study regarding legalized prostitution in Nevada in grim detail. In addition to discovering that only about ten percent of prostitution occurs in legal brothels, Farley discovered that many of the frequently cited positives of legalized Nevada prostitution are, in fact false (13). Throughout the study, Farley discovered that legal and heavily controlled prostitution does not necessarily protect women from violence, verbal abuse, physical injury, or sexually transmitted disease, and that women in legal brothels are placed in situations of extreme emotional stress and frequently “exhibit symptoms of chronic institutionalization and trauma” (13). It is clear that, even though this form of prostitution appears safer and more controlled than that which exists in the criminalized sector, it is still imperfect and perhaps even more harmful to sex workers.

Proponents of the legalized system in Nevada may point to it as the ideal standard for the rest of the United States and cite the need to protect these women as the primary goal. Scholars argue that these brothels were created to temper the violence associated with prostitution, of which there are three primary types: interpersonal violence against prostitutes, violence against community order, and the violence of disease (Brents and Hausbeck 2005, 277). Many assert that there is no better way to insure the safety of both sex workers and their clients than to monitor and control the conditions in which these transactions take place. The implication behind this rhetoric is that the nature of commercial sex leaves the sex worker in a very vulnerable position, in which she must be protected from community members who do not support her actions, violent customers and men who may violate her will, and disease. Individuals involved with the Nevada system defend it as “the most reasonable way to regulate sex as commerce,” asserting that its legality prevents an inherent association with criminal activity and creates an environment in which the prostitute and clients are safe (Farley 2007, 13).

The truth, however, lies in the fact that Nevada's legal brothels are not the pleasant and safe communities brothel owners would like outsiders to believe. They are not safe havens wherein workers gain fair wages, work in clean buildings without fear of violence from customers, and are protected from disease and mistreatment. A close examination of current Nevada brothels leaves little doubt regarding the decision of prostitutes who choose to work outside the system. The fact that many sex workers would rather work in the criminalized system where they face a real risk of arrest and, perhaps, sexually transmitted infections, should indicate a disconnect between the illusion presented to the public and the reality of legalized Nevada brothels.

A Nevada brothel may be easily mistaken for a prison, and the chain-linked fences covered with barbed wire surely serve to keep people in rather than keeping them out (Farley 2007, 16). The women that work within these systems have been described as "brainwashed and imprisoned," and their every word and action is monitored by other employees through electronic surveillance (Farley 2007, 16). They are confined to the compound unless given express permission to leave—and then they must be accompanied by an escort whose time they are required to pay for (Farley 2007, 18). Here, women are frequently treated "like machine[s]," viewed as prisoners and treated as potential revenue; their entire lives are scripted by the pimps and madams, down the amount of food they receive each day (Farley 2007, 17). This information appears to negate claims that legalization "eliminates the universally abusive pimp-prostitute relationship," and indicates the opposite: that these relationships are at times even worse than in the criminalized system because of the sheer control that pimps and madams are given over these workers, sanctioned by state and local officials (Bode 1978, 24).

Conversations with Nevada's prostitutes show that these women are also aware of the way they are viewed by their managers, and many indicate that the safety so often touted as a primary reason for legalization is nothing but a myth. During research for their 2005 article "Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy," Barbara Brents and Kathryn Hausbeck spoke with prostitutes from thirteen of Nevada's twenty-six brothels, and their comments about their perceived safety as presented in the article are quite shocking (271). While these women appreciate the way that Nevada's brothels handle the negotiation process by allowing them to negotiate early and quickly separate money from the transaction, some women believed that their personal safety was not always the first priority of the brothel owners, especially after the money had been received. One woman said that the baby monitors placed in the rooms for protection were "a real false sense of security" because "they're not always listening" (271). Similar complaints were raised about panic buttons in the rooms, a safety feature in all the brothels visited by Brents and Hausbeck. A prostitute interviewed said that "panic buttons are a joke" because they are usually located across or even outside the room, making them difficult or even impossible to reach in a dangerous situation (280). Brothel owners interviewed during the same research process, however, insist that their primary concern is their ladies' well being, and that, due to legalization, the women are safe in their brothels and have access to police and other forms of protection (281).

Despite this assertion, there is evidence that big-city pimps in the criminalized sector work with legal brothel owners to exert greater control over the

lives of “their” women. One pimp described a brothel as a sort of personal prison camp, where other pimps could drop off women and they would be forced into cooperation (Farley 2007, 16). If legalized prostitution is connected with illegal prostitution, it can be inferred that it is also connected with the organized crime with which prostitution has become so firmly associated, resulting in a failure in the Nevada system to protect these women from at least one element of the violence from which they claim to shelter them. Additionally, these women aren’t making the impressive earnings that Americans would be led to believe: they are financially exploited just as sex workers in the criminalized system are, and they are required to forfeit as much as fifty percent of their earnings to pimps or madams (Farley 2007, 19). After being required to tip brothel employees, pay gouged prices for rent, and receive no employment benefits or health insurance, women in this industry are lucky to keep one fifth of the money that they earn (Farley 2007, 19).

In her book, Melissa Farley asserts that many of the problems with legalized prostitution occur because of society’s rejection of prostitutes as complete human beings and argues that these women understand that they are devalued (Farley 2007, 15). She believes that this social rejection leads them to hide their status as prostitutes and that no prostitution theory will remove this social stigma and willingness to hide unless the entire social system is reworked. Reworking the entire system would be an impossible task and one that leads Farley to therefore assume that prostitution will never be a desirable, respected, nor healthy profession, and certainly not in a legalized system. While Farley does have a point in the argument that American society does reject prostitutes, and is also correct in her assertion that these women know the marginalized place they hold in society, this is not necessarily a characteristic inherent in the commercial sex industry but likely a product of deeply established cultural attitudes. The majority of the United States has criminalized prostitution and therefore treats prostitutes as criminals; Nevada’s legalized system is no different with its state-sanctioned brothel-prisons. Even in Nevada’s legalized system, prostitutes are not given the opportunity to become valued citizens. Instead, they are cloistered in brothels, kept away from the rest of the public and abused beneath the watchful eye of the state.

Sweden’s Kvinnofriod: All Prostitution is Violence

There are very serious flaws in the United States’ current prostitution policies of criminalization and Nevada’s policy of legalization. Based on this evidence, legislators and citizens must seriously consider reworking policy to better benefit communities, sex workers, and the general goal of public health. In order to determine the best legal options for the United States, citizens and legislators should consider policies that approach prostitution from a different tactical direction. Legislative options that rely more heavily on abolitionist and decriminalization rhetoric should be examined in an effort to determine the best new approach for the United States.

Sweden is a country that has taken a very different approach to prostitution, and the Swedish version of a pure abolitionist policy may be the first in world history. Sweden, a country committed to gender equality, identified many prob-

lems in societies that have legalized, criminalized, or decriminalized prostitution. These failures are, from the Swedish perspective, caused from the gross gender inequality that exists in the female-seller/male-purchaser prostitution binary and the violence inherent in such activity. In response, the Swedish government drafted and passed a bill designed to completely remove such inequality. The Swedish government established the Commission on Prostitution in 1977 to analyze prostitution practices and policies in Sweden, and in 1995 the group developed a new approach to prostitution which has become the new legal standard in Sweden (Hubbard, Matthews and Scoular 2008, 143).

In July of 1998, the *Kvinnofriod Act* was passed. This legal motion, also known as the “Violence Against Women Act,” is an entirely abolitionist approach to commercial sex work (Hubbard, Matthews and Scoular 2008, 143). Rather than punishing those women who sell sex, the *Kvinnofriod Act* criminalizes the purchase of sex. The document states that “a person who obtains a casual sexual relation in return for payment will be sentenced...for the purchase of sexual services to a fine or a term of imprisonment not exceeding six months” (Hubbard, Matthews and Scoular 2008, 143). While the United States and other countries incorporate elements of abolitionist theory into their criminalization policies by punishing those who purchase sex as well as those who sell it, Sweden is unique in that the *Kvinnofriod Act* does not criminalize the sale of sex in any way. In Sweden, it is completely legal to sell sex; it is also, however, completely illegal to purchase it (Sullivan 2009, 10). Upon the development of this legislation, Swedish officials from the Ministry of Industry, Employment and Communications explained the choice of abolitionist policy by stating that “Gender equality will remain unattainable so long as men buy, sell, and exploit women and children by prostituting them” and that “by adopting the legislation Sweden has given notice to the world that it regards prostitution as a serious form of oppression” (Hubbard, Matthews and Scoular 2008, 143).

There have been major improvements with the addition of the law. According to research, the number of women in prostitution dropped nearly 40% within the first five years after the law’s enactment, a major goal of the legislation (“Sweden” 2008, 7). There is also research to indicate that the presence of the law has changed the attitudes of the public, particularly young men, toward prostitution by illustrating its prostitution’s inherent negative treatment of women (Sullivan 2009, 10). Additionally, the presence of the law has deterred traffickers, an especially important action. The number of trafficked women in Europe has grown steeply in recent years, and now many countries are being forced to evaluate their prostitution policies. Police overhear traffickers commenting that they avoid Sweden because it’s “a bad market,” and the Swedish people should consider this a victory in the fight against human trafficking (“Prostitution” 2007, 12).

While the attitude behind the *Kvinnofriod Act* is commendable and the successes to be praised, there are many flaws in the Act’s rhetoric and execution. It is the intention of the *Kvinnofriod Act* to criminalize the purchase of all sexual activity, including specifically those services sold on the street, in brothels, in massage parlors, and from escort services (Hubbard, Matthews and Scoular 2008, 143). As previously discussed, however, these services are just a fragment of what can actually be considered commercial sex, and authorities have difficulties separating what is legal from what is not (Hubbard, Matthews and Scoular 2008, 143). Additionally, much

of Sweden's prostitution is mobile, with sellers and purchasers connected electronically through the internet and cellular phones, making them difficult to track down (Sullivan 2009, 10). Perhaps the biggest problem that critics find with the Kvinnofriod Act is the lack of punishment for those who violate the law. Some studies indicated that as of 2009, a decade after the law was put in place, over 2,000 arrests had been documented but not one individual had been jailed and even convictions had resulted only in minor fines, a phenomenon blamed on the low maximum penalties listed in the law (Sullivan 2009, 10). Critics have also charged Sweden and the Kvinnofriod as a law that has not helped prostitutes themselves. Susan Dodillet, the author of the controversial study "Is Sex Work?," investigated Sweden's law and commented on the discrepancies, saying that "Since it came into force, nothing has been done to improve the situation for women in prostitution" (Sullivan 2009, 10).

The Swedish government has not ignored critical remarks, however, and has instead seriously considered them in an attempt to make their system of abolition a new world standard. In 2008, the government adopted a new "36-point plan" to improve the Kvinnofriod Act. Legislators have pledged \$35 million to institute these measures which include an expansion of the social services available to prostitutes, an increase in police activity and legal persecution of pimps, johns and traffickers, and the training of medical and social service employees to better identify and assist in suspected cases of prostitution and trafficking ("Sweden" 2008, 7). The Swedish government is truly trying to establish a society that will be free from gender inequality and violence toward women, and they believe that a policy of abolition is the best way to combat these attitudes. Other countries, such as Norway and Iceland, agree with the Swedish model, and have recently developed their own versions of the Kvinnofriod (Sullivan 2009, 10).

Although imperfect, the Swedish model does offer a very different approach to classical criminalization policies which demonize the woman in prostitution. This information indicates, however, that pure abolitionist theory is far from perfect, and many of the changes that are being implemented in the "36-point plan" are social programs that have been established in countries with policies of legalization and decriminalization. Additionally, the abolitionist perspective, in an attempt to establish a society with complete gender equality, may be viewed by some as "paternalistic" and "disempowering to women" because of its tendency to view them as victims who require special protections (Bretns and Hausbeck 2005, 273). Abolitionist theory assumes that prostitutes are victims in instances of transactional sex and, while this may be preferred to a criminalized status or oppressive legalized system, this perspective does not account for women's freedom of choice. Rather than legitimizing the woman and her work, abolitionist theory establishes one as weak and the other as repugnant in civilized societies, a view which ultimately limits women's rights to sexual freedom and autonomous ownership of their physical bodies.

Sweden's attempt to abolish prostitution through the criminalization of the purchase of sex, while commendable, cannot be the solution to the problem of sex work in the United States. In order for prostitutes and sex workers to be accepted in society and for women to move toward complete ownership of their bodies, commercial sex must be accepted as a profession: it must be viewed as equal work with equal pay. Other countries, such as the Netherlands, have had success with models of decriminalization and have proved that while it is impos-

sible for all citizens to agree on the moral issues surrounding sex work, it is possible for sex workers to fit into society in a way that they have not been able to in American systems. The social stigma that Melissa Farley believes to be permanent is, in fact, a matter of acceptance that must come from the governmental level. Although Farley believes that acceptance cannot come from any established policy, previous attempts have proven that legitimizing the work can go a long way in legitimizing the worker in the eyes of a resistant public

Decriminalization or the Right to Pay Taxes

The 1970s was a decade of rebellion and reform in America, and many groups moved forward in the fight for tolerance and equality. The Women's Movement and Gay Rights Movement were primary movements in the search for equality in American culture. Another, lesser-known group was working just as diligently on the sidelines, however. Along with these two major movements came the Sex Workers' Rights Movement, led by an organization called Call Off Your Old Tired Morals (COYOTE) and a former prostitute, Margo St. James (Weitzer 1991, 24). The movement and COYOTE began in San Francisco when a group of sex workers decided that it was time to fight the system. They believed that prostitution was legitimate employment and a part of the rights of sexual determination given to all citizens. These women believed that they should have the right to control their own bodies, and that this included exchanging sex for money or other favors (Weitzer 1991, 24). Unfortunately, a lack of proper organization and a failure to secure direct support from other, more powerful groups led to the ultimate failure of the movement's primary goals—to educate the public about the social inequalities perpetuated through the current system of criminalization and to increase awareness and support of a system of decriminalization (Weitzer 1991, 25).

While the Sex Workers' Rights Movement in the United States may have failed to meet its goals, other countries have embraced the idea of decriminalization and vindicated the rights and independence that American sex workers have sought. The system of decriminalization in effect in the Netherlands is one of the most well-established in the world. While the Netherlands is often described as "a place where anything goes," Christje Brants suggests in her article "The Fine Art of Tolerance: Prostitution in Amsterdam" (1998) that the decision to decriminalize prostitution in the country was an important one not easily made. According to Brants, what the rest of the world sees as a Dutch willingness to overlook crime is actually a carefully developed method of dealing with controversial issues in the complicated Dutch legal system (624). The Netherlands's liberal policies are not evidence of a country that has no rules but rather the result of extreme compromises in a complicated political climate wherein many different parties vie for dominance, particularly conservative religious groups (624).

The Netherlands has always been known as a place where prostitution was common; the "Red Light Districts," so popular in the 1960s and '70s, are world famous. But prostitution was, until very recently, illegal in the Netherlands and existed in a system known as *geoden* or "pragmatic tolerance," the non-persecution of criminal offenses (Brants 1998, 624). *Geoden* is a method of social control that has been popular in the Netherlands and Dutch culture for several hundred years.

Basically, prostitution has been considered a crime in the Netherlands for much of the nineteenth century, but offenses were differentiated and diverted through the criminal justice system because of conflicting social views on the subject. Unlike the United States, the Netherlands has never held a standard criminalized view of prostitution but instead adopted a more abolitionist approach throughout history, criminalizing anyone living off of or organizing prostitution (Kilvington, Day and Ward 2001, 81). Through this system, prostitution could be both visible and illegal through the careful management of legal code, and prostitutes themselves were not targeted by authorities.

Although the Dutch legal system may be complicated and evasive, the Dutch view of prostitution is straightforward and based on long-held beliefs. Although prostitution may not coincide with all aspects of moral belief in the Netherlands, it has always been seen as necessary, and Dutch law throughout the centuries has followed this belief. A 1413 Amsterdam law expressed a belief in the necessity of prostitution, especially in larger cities, based on the theory that “the holy church tolerates whores on good grounds” and that “for these reasons the court and sheriff of Amsterdam shall not entirely forbid the keeping of brothels” (Brants 1998, 626).

Even though the Dutch have had a historically accepting view of prostitution, the current policy of decriminalization struggled to gain voter acceptance. The decriminalization of prostitution in the Netherlands was only approved after an ongoing political campaign lasting more than fifteen years (Brants 1998, 626). Current legislation, passed in 2000, legalizes brothels as long as the businesses are discreet and do not interfere with public life, and legitimizes prostitution as a profession in an attempt to remove the social stigma from which the women in this industry suffer (Kilvington, Day and Ward 2001, 82). Although there are specific regulations applicable to the now-legitimized sex industry, they have been put in place in an effort to secure quality of life for sex workers and to prevent human trafficking. For example, the new legislation requires that all brothels meet certain size requirements and provide certain standard amenities for workers, such as hot and cold running water (Kilvington, Day and Ward 2001, 82).

Although all of the aims of the new law in the Netherlands have yet to be realized, conditions for sex workers have shown extreme improvements. The introduction of health and safety regulations, the ability of workers to operate as part of public life, the right to access health services, pensions, and register as self-employed persons are all improvements and rights that have changed the nature of prostitution and sex work in the Netherlands for the better (Kilvington, Day and Ward 2001, 84). And, although the decriminalization of prostitution has not completely removed the stigma placed on sex workers, conditions have been greatly improved, especially after sex workers were required (or granted the opportunity, depending on perspective) to pay taxes, thus legitimizing them as contributing and productive members of the community (Wonders and Michalowski 2001, 554). Such a seemingly small, perhaps inconvenient thing, has greatly improved the public perception of sex workers, who can now be seen as contributing community members with the same rights, entitlements, and governmental treatments. These women are now true “sex workers,” and this is slowly changing their image—even in a country as tolerant as the Netherlands.

While the decriminalization policy is not without flaws, the problems are less related to prostitution and more connected with social and economic prob-

lems that are affecting all world communities. Because the new legislation has given prostitution legal employment status, only those individuals eligible to be legally employed in the Netherlands are able to register and gain benefits. This means that underage sex workers, those who are addicted to drugs, and illegal immigrants are not covered under the new system, and have been forced to operate beneath the radar of the law (Kilvington, Day and Ward 2001, 86). While these exclusions are problematic and have resulted in an increase in illegal prostitution, they are secondary issues not caused by the new decriminalization policy. Indeed, problems such as illegal immigration and delinquent youth plague all societies and are issues that the Netherlands is attempting to solve independently in an effort to prevent the same criminal associations with illegal prostitution often seen in countries with criminalized policies. The benefits of the decriminalized system to legal prostitutes have been vitally important to individual self esteem and personal safety, and successful systems of decriminalization work to change not only the negative opinion of sex work in the country in which they are instituted, but it the world. These systems allow prostitutes to be meaningful members communities, and to regain in part the sense of worth so often lost because of societal prejudices.

Sex is the Word

While there are some feminists who believe that no policy of prostitution will ever be perfect, current policies of criminalization in the United States clearly benefit some groups while detrimentally impacting others—namely, benefiting “those in society who find the exchange of sex for money morally reprehensible and a threat to the family order” (Hayes-Smith and Shekarkhar 2010, 46). Those women who find themselves working in the sex industry are looked down upon by a society that has, perhaps, been conditioned to assimilate certain religiously-based moral beliefs. It is also obvious from statistics that the primary assumptions behind the current policies of criminalization and legalization contain obvious fallacies: criminalization of prostitution does not prevent the solicitation of such services; prostitutes are neither the sole cause of nor the reason behind the spread of all sexual diseases; prostitution is not inherently related to violence against women, but such violence is instead a product of the subculture caused by illegality (Hayes-Smith and Shekarkhar 2010, 44-45). Sweden’s approach, too, leaves much to be desired in the way it victimizes women and prevents the entire population from taking complete control of their bodies. Countries like the Netherlands prove that, in policies of decriminalization, prostitution does not disrupt the community order, harm children, or lead to public harassment or violence against women (Hayes-Smith and Shakarkhar 2010, 45).

Decriminalization is not perfect, and there are real problems associated with its introduction into a culture. Questions about prostitution legislation should not be framed “What are the problems?” but instead “What problems can this solve?” The answer to this question is simple: decriminalization is a step toward the acceptance and tolerance so badly needed in the lives of these women. The answer is a solution to the discrimination and hatred that they feel walking down the street, the judgment that this culture passes upon them as criminals, ob-

jects and impediments to societal perfection. One bondage and discipline worker described what she hoped might happen in a decriminalized system quite concisely, stating: "It might change the way people perceive or think about sex workers ... because that would kind of start to heighten people's awareness about how this moral stigma has affected us" (Reproductive Health Matters 2009, para. 32).

The truth about prostitution in America—both legalized and criminalized—is disturbing, and continuing to ignore the problems in the current legislation will not help anyone. There are real issues here which affect the public and especially the workers, and the current policies of legalization and criminalization are placing women involved in street work and brothel work in dangerously marginalized positions. The evidence presented here proves that criminalization has not decreased instances of prostitution, and indicates that such legislation may in fact have led to an increased delinquency rate among these women. Criminalization has also fostered an attitude of distrust regarding commercial sex workers, whose profession has been determined immoral and a risk to the public and American family. Legalization, despite what proponents may suggest, does not provide workers with more rights or protect them from the drugs and crime associated with pimps in the criminalized system. These women are treated much worse; not only are their entire lives controlled by pimps posing as business owners, the local governments are aware of these injustices and allow them to continue. The communities in which brothels are located shun sex workers and enforce demeaning segregation rules which go against the basic ideals of a country that promotes freedom and equality.

Countries such as the Netherlands have shown the world, however, that the legitimization of commercial sex workers does not mean an end to the family unit or chaos to the society. In fact, the decriminalization of sex work provides a solution to many of the problems associated with criminalization and legalization. Workers retain their rights and independence but are offered benefits individuals outside the industry take for granted, such as the right to unionize, to seek legal protection and to obtain health care. Approving commercial sex as an acceptable career choice also goes a long way in improving the self-esteem and public image of the women that choose to seek employment in such a field. Instead of being treated as criminals, objects, or victims, these women have the opportunity to become valued members of society. As illustrated in the Netherlands, the opportunity to pay taxes the way other citizens do can go a long way in improving sex work in the eyes of the public and participants.

Citizens, legislators, and sex workers in the United States should consider the benefits of the decriminalization of sex work, and evaluate the potential benefits that it offers to society. Not only could such legislation improve the crime rate and fiscal spending of the entire country, but decriminalization could be the chance to prove to all American citizens that this truly is a country that values personal choice and equality. It is time to look at the facts, learn from mistakes, and move forward. As Sweden has discovered, commercial sex work will not disappear any time in the future, and an unwillingness to face facts not only harms women that work in this industry but society as a whole. It's time to move past old prejudices and look toward a new future where safety is guaranteed, respect is encouraged, and equality is an inalienable right.

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