The Decriminalization of Prostitution

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Marilyn Monroe, Jayne Mansfield, and Ann-Margret are all well known names, but not because of their accomplishments: they are well known for being sex symbols. Unfortunately, this is common: Hollywood and Western culture often “sell sex” in order to make money, and the main focus is placed on someone’s body rather than on the actual person. However, in a society that heavily sexualizes and objectifies women as a marketing tool, one would think prostitution and sex work would be legal. This is often not the case. In fact, countries around the world have struggled with whether or not to legalize prostitution. But why is something that is so heavily pushed onto consumers through social media, magazines, and movies, illegal, especially when it happens so frequently? The unfortunate answer is simple: the criminalization of prostitution is a patriarchal way to continue to exploit, control, and keep women in a lower position of power that prohibits them from rising up and ultimately, from reaching equality with men.

Sex work, as defined by Ronald Weitzer (2010), “…involves the exchange of sexual service, performances, or products for material compensation. It includes activities of direct physical contact between buyers and sellers (prostitution, lap dancing) as well as indirect sexual stimulation (pornography, stripping, telephone sex, live sex shows, erotic webcam performances). The sex industry refers to the workers, managers, owners, agencies, clubs, trade associations, and marketing involved in sexual commerce, both legal and illegal varieties” (1). While most of these types of sex work are legal, such as stripping, exotic dancing, webcam performances, and so on, prostitution, which is the act of selling sex for money (Carrasquillo 2014: 697), is still considered a crime in many places, that, sadly, women go to prison for. While often referred to as one of the “oldest professions”, prostitution can be found in most early civilizations and various historical eras. Scholars argue that since 2400 B.C.E. prostitutes have been treated disgracefully and as part of the lowest class (Carrasquillo 2014: 699). Prostitution was also a common profession in Ancient Greece and Ancient Rome, and is mentioned throughout the Christian bible. Continuing from ancient periods of time into the Victorian Era, prostitutes continued to be characterized and socially viewed as a “…ruined victim” or a “victimizer” who destroyed the public” (Ivie 2013: 53). This is when the dehumanization and stereotyping of female prostitutes began to take hold (Ivie 2013: 53). The Progressive Era expanded on this, but claimed that female prostitutes could be rehabilitated back into society, and that they could still be good mothers and wives. As Tesla Carrasquillo (2014) writes, “Prostitutes are [and were] often considered dirty, used, disease-ridden, pathetic, and worst of all, dispensable” (697-698). Despite all of this, in the 1800s prostitution in America was actually legal. However, once venereal diseases spread throughout the country, female prostitutes were the “scapegoats” that the public chose to blame, without prostitutes’ male customers receiving any of the blame, although they certainly held responsibility and partook in the acts as well (Carrasquillo 2014: 702-703). In the 1900s, prostitution continued to increase not only in the United States, but around the world, with the United States military and various wars that helped to globalize prostitution (Ivie 2013: 54). This is when laws that were meant to regulate prostitution and attempt to end human sex trafficking in the United States were created. Examples of such laws are the Mann Act, which “…imposed heavy penalties on transporting, or in any way aiding, abetting, or causing the transportation of women from one state to another for an ‘immoral purpose’” (Johnson 2014: 703). This law was meant to fight human trafficking (Johnson 2014: 703), while the Standard Vice Repression Law of 1919, worked towards criminalizing prostitution entirely (Deadly 2011: 525). By the year 1925, prostitution became illegal in every state (Johnson 2014: 723), with Nevada working to legalize it in the next few decades. Through these different events, eras, and policies, one thing remained constant: the constant degradation, stereotyping, and commodification of women as prostitutes.

Unfortunately, the history and globalization of prostitution has led to the current situation. The general consensus in the United States, save for the state of Nevada, is that prostitution is illegal. As Kathleen Barry (1995) writes, “Regardless of which legal approach to prostitution a given state adopts, a form of prostitution-visible street solicitation, which is usually the lowest category in the prostitution hierarchy-- singles out women for social and legal condemnation and punishment. Street prostitution is illegal or unacceptable in most countries. Because it is visible, it is the source of the most frequent arrests, fines, and imprisonment of prostitute women” (220). Currently, depending on if they are a first time offender and the state, women can face between months and years in jail, in addition to paying thousands of dollars in fees (Anon 2018:”US Federal and State…”). Historically, in the United States, laws regarding prostitution have targeted the seller of sex, but not the buyer. Since, statistically, there are more female prostitutes than there are male prostitutes, these laws most often target and affect women (Johnson 2014: 720). When prostitution in the United States was legal, though frowned upon, prostitutes were “…punished under lewdness or nightwalking statutes. Prosecutors and police enjoyed wide discretion, and they used this discretion to protect johns [(male clients)] while punishing prostitutes. As a consequence, johns were never charged in equal proportion to prostitutes, and even when men were charged as customers, they were convicted at lower rates and received lighter sentences, usually fines, while women were imprisoned” (Johnson 2014: 720-721). Sadly, not only were women being punished unfairly...
for their crimes more than men, but they were also being abused as well. In her article, “Asset Theory and Prostitution: The Implications of U.S. Prostitution Policy and Ideology on Asset Building Strategies”, Allison Ivie discusses how criminalizing sex work has not protected women from police abuse, nor has it done anything to help eliminate the market (56). What is appalling is that state governments ensure that this harmful cycle remains in place: by criminalizing prostitution, the stigma surrounding it and prostitutes remains intact, which moves states towards the goals of eradicating it (Carrasquillo 2014: 704). This, by extension, keeps women prostitutes in positions that do not allow them to exit their current employment position and, therefore, does not allow them to move into higher socioeconomic classes. Additionally, these laws have been harmful to female prostitutes’ physical health. “Over time, however, public health research has conclusively demonstrated that criminal laws on prostitution and HIV significantly impede the ability of sex workers to access services and to live without the stigma and blame association with being a transmitter of HIV” (Ahmed, Baskin, and Forbes 2016: 355). Not only are the current laws systematically sexist and inadvertently target women sex workers, but they are also harmful to the public’s health. This is because the stigma surrounding HIV and prostitution is so great that sex workers, and those associated with sex workers, may decline to get tested and seek treatment because of the shame associated with HIV and prostitution. Unfortunately, “…enforcement of prostitution laws against the sellers of sex disproportionately harms women….courts should act to end this practice by recognizing the defense of discriminatory enforcement of prostitution laws” (Johnson 2014: 718).

Even with its illegal status, many women rely on this profession as a source of income, either to supplement what they already earn or as their primary source. Due to the stigma and illegality, exact statistics on female prostitutes in the United States is nearly impossible to come by; with this in mind, it is estimated that in the United States the number of women who are involved in prostitution is between one to twelve percent (Ivie 2013: 55). Studies have shown that majority of female prostitutes, about seventy percent (based on available data), are mostly single mothers who are working to support their families, and who do not have much access to affordable childcare and housing (Ivie 2013: 55). Without many other choices due to lack of assistance and resources from the government, many women turn to prostitution as a temporary choice to a permanent problem. Unfortunately, as Barry (1995) states, “Women in street prostitution are among the poorest, the most vulnerable and victimized women” (220). In addition to this, “Dissociative disorders are common among those in escort, street, massage, strip club, and brothel prostitution, and are frequently accompanied by posttraumatic stress disorder, depression, and substance abuse. These in turn are linked to high rates of childhood physical and sexual abuse, and to violent victimization while in prostitution. The existing data suggest that almost all who are in prostitution suffer from at least one of the following types of disorders; dissociative, posttraumatic, mood, or substance abuse” (Ross, Farley, and Schwartz 2003: 199). Unfortunately, many of the women who are involved in prostitution are in lower socioeconomic classes, suffer from a disorder, and are more exposed to venereal diseases. These women need help, but are frequently unable to get it and are forced to resort to prostitution.

So where does the solution to this widespread problem lie? There is certainly strong support for both legalizing and trying to abolish prostitution. In the United States the debate over whether or not prostitution should be legal has grown recently, and those against it readily point out negative factors of doing so (R. Barri Flowers 1998: 153). On one hand, there are those who believe that legalizing prostitution only perpetuates the systematic injustice that keeps women in subordinate classes. Additionally, many believe that the complete eradication of prostitution would help to prevent venereal diseases from being spread, lead to crimes connected to prostitution being reduced, and stop the sexual exploitation of women (Carrasquillo 2014: 704). As Barry (1995) argues, “There is no legal approach to prostitution that isn’t abusive and doesn’t exploit women. Each patriarchal state system in its own way locks women into prostitution. In prohibitionist systems, where prostitutes are criminals, they can hardly expect justice to turn in their favor or protection to be granted to them. Where prostitution is legally accepted and regulated, the exploitation of prostitutes by pimps and customers is forgotten. Where prostitution is tolerated, prostitutes are still hassled on the streets. All legal approaches to prostitution is a necessary and inevitable sexual service required by men. States’ laws promote men buying women for sex and support social hatred of women for doing it” (222). Barry (1995), and those against the decriminalization of prostitution, are not wrong; there are many valid reasons for being opposed to legalizing prostitution.

On the other hand, there are those that continue to believe that prostitution should be legalized. There are different reasons for this: for example, it is argued that prostitution will continue on regardless of what laws there are, so decriminalizing and legalizing prostitution would help to regulate the system, protect women, eliminate pimps, and combat human trafficking, which is an increasing problem. Additionally, decriminalizing prostitution could help to address and treat the HIV epidemic that is happening within our country, possibly more than any other intervention in the United States (Ahmed, Baskin, Forbes 2016: 355). We already know that the laws that have been in place for nearly over a century have done little to alleviate the situation and the problems that cause women who turn to prostitution in the first place. As Barry (1995) argues, “Consistently
across societies, women in street prostitution are hassled and fined, but never to the point of being totally removed from the streets, where they are always available for male customer demand” (221). Essentially, continuing to make all forms of prostitution illegal, especially with unfair laws, will allow for the unfair treatment and negative stigma to continue.

Unfortunately, there is no clear cut answer to this problem. What we do know is that in majority of the country, prostitution is illegal, and the illegalization has done little to negate the problem. Though, as Tesla Carrasquillo (2014) writes, “…each alternative to criminalization [of prostitution] has its flaws and can yield unintended results” (698). With that in mind, perhaps there needs to be something that has not been done yet. What if the United States created policies that changed the stigma and the negative connotations around prostitution? If there were positive connotations around prostitution, then female prostitutes would be treated differently. What if the policies changed to allow prostitution in more states than just Nevada, but limited the amount of positions that were open? This could change the mindset that female prostitutes are disposable. And to continue this, what if there were specific requirements for prostitutes to be eligible to apply? In the past few centuries, prostitutes have been regarded as the lowest of the low, dirty, and people that no one really wants to be around. What if, to combat this, prostitutes were required to hold or be currently pursuing at least an associates degree, undergo biweekly physical exams, and were only allowed to be employed for a certain number of years? This would change the “dirty” and “useless” mindset around female prostitutes, and could work to combat the negative connotations surrounding them. What if prostitutes had reputations of being educated, healthy women? Not only would this help the health of women, but it would help to give them some agency. Women would be able to use prostitution as a way to get themselves into higher socioeconomic classes and ultimately, be able to build healthier, better lives.

As Khan, Johansson, and Zaman et. al (2010) argue, “Emphasis on the strategy to stop selling sex and reenter mainstream society do[es] not fully address the factors that influence females to initiate and sell sex” (366). It is often said that prostitution is a victimless crime, but that is not true. Female prostitutes are the victims, because of the systemically sexist and oppressive laws that have been and are currently still in place. It is simply not enough to try to eradicate or legalize prostitution; we must look at and address the factors that lead women to prostitution in the first place, otherwise, this “victimless” crime will continue to claim more women’s futures.

References


