

LEGALIZATION OF PROSTITUTION

ANALYZING PRESENT-DAY PROSTITUTION POLICIES

ECONOMICS

The Problem

Participating in consensual sexual activities is legal, yet participating in consensual sexual activities that involve an exchange of currency is illegal. While the previous two statements are seemingly identical, besides the presence of money in the second situation, the implications for sex-workers change drastically under different policies. In the United States of America, every state besides Nevada, bear policies that criminalize prostitution (Hayes-Smith 2010). The criminalization of prostitution is a threat to the prostitute's health, the prostitute's safety, and deprives individuals of their economic right to earn a profit as a product of their service.

HEALTH

The health of sex-workers are currently at risk in the unregulated prostitution business. Sex-workers have a higher probability of contracting a sexually transmitted disease because of the malpractices within the business (Rekhart 2006). These practices include the negligence of condom use, frequent intercourse, and vaginal drying (Rekhart 2006). In order to link policy and the implications of a sex -worker's health, one study analyzed a prostitute's accessibility to health services in three Australian cities that possessed varying prostitution laws (Harcourt 2010). One city criminalized most sex-work, another legalized licensed brothels only, and the third city decriminalized all forms of sex-work. After interviewing women from each city and researching the resources available, the study found that those in the city where prostitution is illegal comprised of the lowest health scores while the highest health scores came from the city that only allowed licensed brothels (Harcourt 2010). Health and safety was evaluated on the basis of accessibility to health care, level of sex-related education, the extent to which workers were provided with preventative materials such as condoms, and security measures such as cameras. Considering that Australia is also a democracy, the implications of policies in Australia are excellent indicators for that of America.

SAFETY

Women are frequently exploited within the illegal sex industry. As demonstrated in Figure 1, a San Francisco study found that 70% of sex workers were raped on average 31 times (Carrasquillo 2014). Unfortunately, underground businesses lack guidelines that could aid in assault prevention. Moreover, under the occurrence that a prostitute was assaulted, the worker lacks the ability to contact police forces without facing repercussions (Shannon 2010). Without having the police to protect them, prostitutes are forced to rely on their pimps; thus, creating an endless loop of the pimp capitalizing and dominating the prostitute (Carrasquillo 2014).

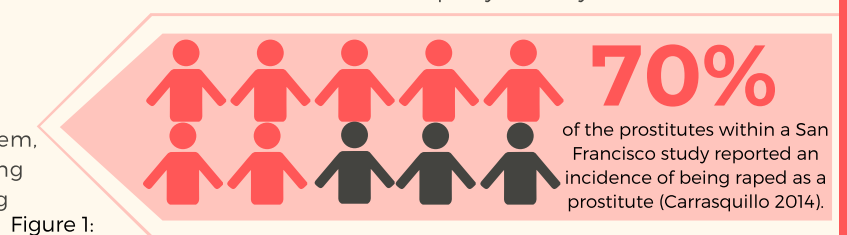
Systems that criminalize prostitutes often penalize impoverished people while they attempt to earn a living (Hayes-Smith 2010). Denying individuals the right to earn money through exchanging sexual pleasures, an action that is consensual between two adults, is inimical to the values listed in international doctrines and the constitution. The Universal Declaration of Human Rights clarifies that states must respect the "economic, social and cultural rights indispensable for his dignity and the free development of his personality" (United Nations 1948). Furthermore, the substantive due process clause in the fourteenth amendment of the United States Constitution includes protections for the right to work and the right to sexual privacy (Strasser 2017).

The Feminist Question

It is imperative that policy makers explicitly consider the repercussion that a policy may bear on historically marginalized groups. Implicit bias, the act of people unconsciously favoring decisions that further alienate or injure groups of people, can only be defeated if society actively considers the effect of their actions on such groups. Therefore, one must consider how the legalization of prostitution may affect women.

Under the same umbrella term of feminism lies opposing outlooks on the true definition of female empowerment. Traditional feminists, often referred to as "stop" feminists, oppose the legalization of prostitution. These feminists equate supporting prostitution to supporting women exploitation (O'Neil 2000). In contrast, one may support legalized prostitution because it offers an avenue to propose regulation that opposes female exploitation. Additionally, many pro-sex feminist support prostitution to increase the health care of women, promote sexual rights, and combat traditional gender roles (O'Neil 2000).

Under the current law, where selling and buying sex is considered illegal, female prostitutes are more frequently punished than "johns," the male consumers. One study conducted by the Seattle Women's Convention found that 62% of the 1210 women arrested were charged with prostitution and 12% were convicted, while only 8% of the 228 arrests of johns were convicted (Hayes-Smith 2010). Women should not be stigmatized and a man's behavior should not be condoned if the two actions equally disobey the law.



Policy Options

1. Criminalization

States are motivated to criminalize prostitution because they ultimately desire the elimination of the institution (Carrasquillo 2014). Prostitution is often linked with the spread of sexual diseases, exploitation of women, drugs, and other forms of crime (Carrasquillo 2014). Additionally prostitution is viewed as a threat to the morality of society. Although the rationale for criminalizing prostitution stems from a just perspective, the policy implementation fails to deter prostitution (Carrasquillo 2014). The deterrence theory assumes that human rationality will prevent individuals from behaving in criminal activities (Hayes-Smith 2010). Statistics regarding prostitution have not supported this theory; rather, many prostitutes are arrested multiple times which suggests that punishments do not thwart their actions.

2. Decriminalization

The complete decriminalization of prostitution allows all forms of sex-work to occur (Carrasquillo 2014). If every transaction between sex and money is legal, then the government has little to no control over casual encounters. For official business, prostitutes would possess the same rights as other workers such as a minimum wage, social security, and health regulations (Carrasquillo 2014). Additionally, police protection is improved in cases of decriminalization because prostitutes do not fear arrest (Carrasquillo 2014). Partial decriminalization, often referred to as the Swedish Model, pardons the actions of prostitutes but condemns those of pimps and Johns (Carrasquillo). The Swedish model is linked to a decrease occurrence of human trafficking because it refrains from punishing involuntary those forced into trafficking (Lee 2015).

3. Legalization

The legalization model, often referred to as the Dutch model, permits prostitution that obeys explicit guidelines (Lee 2015). The most common legalization requirement includes licensure for all prostitutes (Carrasquillo 2014). Legalization of prostitution also provides economic benefits; for instance, thirty-five million dollars a year in taxes is collected from the sex-work industry in Nevada (Carrasquillo 2014). Although an increased government regulation improves the health and safety of prostitutes, government can sometimes overstep their powers. For example, in Nevada women are not allowed to work if they tested positive for a disease, but in certain counties, if a woman tests positive these records are publicly published (Carrasquillo 2014).

This photo was taken by Mark McAndrew who went to various brothels in Nevada. One of the laws in Nevada specify that a brothel can only exist in counties that have less than 400,000 people (Carrasquillo 2014). Therefore, many brothels can be found in desolate places such as this one.



The Optimal Solution

The best prostitution policy is referred to as the Dutch-Swedish Model. Criminalization policies are inferior because they fail to protect the health, safety, and economic freedom of individuals. Complete decriminalization policies are also substandard; while these policies may improve the quality of life for some prostitutes, the limited regulation under decriminalization does not adequately resolve all the major issues of a criminalized prostitution market. The Dutch-Swedish model is a combination of partial decriminalization and legalization (Lee 2015). While the Dutch model legalizes licensed prostitution, the Swedish model criminalizes the consumers of illegal sexual favors (Lee 2015). The combination of the Dutch and Swedish Model is favorable because it protects the health of prostitutes, expands the freedoms of individuals, while also implementing safe guards for human trafficking. Criminalizing the buyer of illegal prostitution helps to counter human trafficking because those who voluntarily wish to work in prostitution have the means to do it legally while those being enslaved to human trafficking will work in the illegal sector (Lee 2015).

Nevada is an impeccable illustration of the success that emanates from a legalization policy. Nevada's prostitution policies implement regulations that call for frequent testing of sexually transmitted disease, implement zoning restrictions, and prohibit pandering (Brents 2005). In addition to Nevada laws, legal brothels had numerous in-house rules that prevented violence from occurring between the prostitute and their client. These beneficial operational standards included a systematic negotiation process that ensures proper payments and behaviors from the client, emergency call buttons placed in rooms, a requirement that all sexual transactions must occur within the brothel, a reliance on healthy relationships with the police, and health policy codes (Brents 2005). One of the highest, tangible, achievements of the Nevada prostitution policy is that every brothel has tested negative for HIV since 1986 (Carrasquillo 2014).

In America, the states currently have jurisdiction over their prostitution policy (Carrasquillo 2014). To better protect the safety, health, and rights of American citizens, the federal government should implement the Dutch-Swedish prostitution model. The federal government should exert their power over the states if a policy will grant more rights to citizens or provide superior protection to citizens. Additionally, combatting issues of women exploitation will become a difficult task if the policies are not congruent across the states.