



October 2014

Understanding Prostitution and the Need for Reform

Tesla Carrasquillo

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Criminal Law Commons](#)

Recommended Citation

Carrasquillo, Tesla (2014) "Understanding Prostitution and the Need for Reform," *Touro Law Review*. Vol. 30 : No. 3 , Article 11.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol30/iss3/11>

This Student Article is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Understanding Prostitution and the Need for Reform

Cover Page Footnote

30-3

UNDERSTANDING PROSTITUTION AND THE NEED FOR REFORM

*Tesla Carrasquillo**

I. INTRODUCTION

A “prostitute” is a person who has sex with someone in exchange for money.¹ Prostitutes, otherwise known as “whores,” “hookers,” “hoes,” “harlots,” “women of the street,” and “working girls,” have been around since the beginning of civilization.² Prostitution is notoriously known as the world’s “oldest profession,”³ and it continues to be a source of income for thousands of women in the United States today, despite its illegality in almost all fifty states.⁴ When people think of prostitutes, different images and stereotypes come to mind, including the common streetwalker working the corner, the high-end escort in an expensive hotel, the masseuse at a massage parlor, the “bunnies” at the Nevada Moonlite Bunny Ranch,⁵ or Julia Roberts in her blonde wig from *Pretty Woman*.⁶ People have preconceived notions of what prostitution is and who prostitutes are, as well as judgments about prostitution itself. Prostitutes are often

* J.D. Candidate 2014, Touro College Jacob D. Fuchsberg Law Center; B.A. 2011 in Philosophy, City University of New York, Queens College. I would like to thank my husband, for putting his dreams on hold to allow me to fulfill mine. I would also like to thank my parents, for being everything I wish I could be. In addition, I would like to thank Professor Kaufman for her guidance in researching and writing this paper. Finally, I would like to thank the *Touro Law Review* staff, especially Vincent Costa, Stefan Josephs, Tara Breslawski, and Alexander DePalo, for their time and dedication with editing this paper.

¹ *Prostitute Definition*, MERRIAM-WEBSTER.COM, <http://www.merriam-webster.com/dictionary/prostitute> (last visited on May 2, 2014).

² While prostitutes can be male or female, this paper discusses only female prostitutes.

³ Jacqueline Motyl, *Trading Sex for College Tuition: How Sugar Daddy “Dating” Sites May Be Sugar Coating Prostitution*, 117 PENN ST. L. REV. 927, 934 (2013).

⁴ Daria Snadowsky, *The Best Little Whorehouse Is Not in Texas: How Nevada’s Prostitution Laws Serve Public Policy, and How Those Laws May Be Improved*, 6 NEV. L.J. 217 (2005).

⁵ The Moonlite Bunny Ranch is a legal, licensed brothel in Mound House, Nevada.

⁶ *PRETTY WOMAN* (Touchstone Pictures 1990).

considered dirty, used, disease-ridden, pathetic, and worst of all, dispensable. The continued criminalization of prostitution only adds to these stereotypes.⁷

This Comment discusses the urgent need for prostitution reform. The harms that arise from the continued criminalization of prostitution far outweigh the purported benefits. However, each alternative to criminalization has its flaws and can yield unintended results.⁸ Section II of this Comment provides a brief overview of the history of prostitution. Section III examines the criminalization of prostitution, including the reasoning behind criminalization and the harms that result from criminalization. Section IV explains each alternative to criminalization, including decriminalization, partial decriminalization, and legalization, while examining the pros and cons of each system. Finally, Section V concludes that legalization is the approach most likely to yield favorable results.

II. HISTORY OF PROSTITUTION

“And the woman was arrayed in purple and scarlet color, and decked with gold and precious stones and pearls, having a golden cup in her hand full of abominations and filthiness of her fornication.” – Book of Revelations 17:4⁹

A. Where Did the “Oldest Profession” Begin?

What are the origins of prostitution? That question can only be answered if we decide that prostitution means the exchange of sex for something of value.¹⁰ Under that definition, it is possible that prostitution predates humans. Animal behaviorists have documented high-level primates engaging in prostituting behavior.¹¹ Primates have been observed offering sexual services in exchange for food or to avoid an attack.¹² There have also been studies of penguins in the

⁷ Belkys Garcia, *Reimagining the Right to Commercial Sex: The Impact of Lawrence v. Texas on Prostitution Statutes*, 9 N.Y. CITY L. REV. 161, 162 (2005).

⁸ Katie Beran, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 LAW & INEQ. 19 (2012).

⁹ *Revelations 17:4* (New International Version).

¹⁰ *Prostitution Definition*, *supra* note 1.

¹¹ VERN BULLOUGH, *WOMEN AND PROSTITUTION: A SOCIAL HISTORY* 1-1 (Prometheus Books 1987).

¹² *Id.*

Antarctic exchanging sex in return for stones.¹³ These findings show that only the female penguins prostitute themselves for stones, even female penguins with partners.¹⁴ Given this evidence, it can be argued that prostitution is, perhaps, older than humankind.

1. *Mesopotamia*

The first signs of prostitution in human civilization were observable starting in 2400 B.C. in Mesopotamia, among people called Sumerians.¹⁵ Sumerian theology taught that women were inferior to men and that most of the all-powerful gods were male.¹⁶ The most popular and highlighted female god was Ishtar, the goddess of fertility.¹⁷ Ishtar was also associated with promiscuity and prostitution.¹⁸ She came to earth accompanied by courtesans and prostitutes,¹⁹ but she never married and was considered an erotic figure capable of arousing any man.²⁰

Among the most reliable evidence of prostitution from this era were the special provisions for prostitutes set forth in the Code of Hammurabi.²¹ The Code of Hammurabi named different forms of prostitution in its list of different female occupations; this included the female slave who could be sold for prostitution, the independent unwed prostitute, or the revered temple prostitute.²² All but the temple prostitutes were considered to be outcasts and constituted the lowest class in society.²³ Secular prostitutes were forbidden from covering their heads and faces, distinguishing their status from that of the respectable women who covered their heads and wore veils to hide their faces.²⁴ Even female slaves were permitted to wear head coverings, but not veils; therefore, prostitutes held a status even lower

¹³ Stones are essential to penguins because they are used to build their nests.

¹⁴ *Pick up a penguin*, BBC NEWS (Feb. 26, 1998, 1:22PM), <http://news.bbc.co.uk/2/hi/asia-pacific/60302.stm>.

¹⁵ BULLOUGH, *supra* note 11, at 15.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ BULLOUGH, *supra* note 11, at 15.

²¹ *Id.* at 16.

²² *Id.* at 18.

²³ *Id.* at 21.

²⁴ *Id.*

than slaves.²⁵

2. *Ancient Greece*

“Pornography is derived from Greek words meaning ‘the writings of prostitutes.’”²⁶ In ancient Greece, prostitution was a part of everyday life.²⁷ Women who were married were not allowed in public and were rarely seen by men other than their husbands.²⁸ Therefore, the only women in the public eye were prostitutes.²⁹ Prostitutes had their own class system; those that worked in brothels occupied the lowest class.³⁰ Greece had an abundance of brothels, and owners would use female slaves as workers.³¹ Typically, a man would pay a fee to enter the brothel and then give the prostitute a small gift after they had sex.³² Just above the brothel prostitute in the class system was the streetwalker.³³ Streetwalkers were usually older women who would walk the street soliciting sex from passersby³⁴ or from customers in taverns and hotels.³⁵ Above the streetwalker in the class system was the female entertainer who would prostitute herself for extra money.³⁶ Typically, these women were dancers, flute players, and acrobats who could be sold at high prices in slave auctions.³⁷ These women would perform for the men holding positions of power within the city, including the King and ambassadors.³⁸ Finally, the highest class of prostitute was called hetaira, which literally means “companion.”³⁹ Hetairas were among the most educated women in Greece and would attract the attention of the most prestigious men.⁴⁰

²⁵ BULLOUGH, *supra* note 11, at 21.

²⁶ *Id.* at 35.

²⁷ *Id.* at 36.

²⁸ *Id.* at 35.

²⁹ *Id.*

³⁰ BULLOUGH, *supra* note 11, at 36.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 36-37.

³⁴ *Id.* at 37.

³⁵ BULLOUGH, *supra* note 11, at 37.

³⁶ *Id.* at 38.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 39.

⁴⁰ BULLOUGH, *supra* note 11, at 39.

3. *Ancient Rome*

The word “prostitute” is a Latin term meaning “to set forth in public” or “to be exposed for sale.”⁴¹ The attitude towards prostitution in ancient Rome was one of ambivalence.⁴² Prostitutes were considered to be in the lowest social class, yet prostitution was widespread and public.⁴³ Most men, even those in the highest positions, openly slept with prostitutes.⁴⁴ The Romans’ attitude towards prostitution was what eventually led to a shift in thought, and helped structure the way prostitution would be viewed in Christianity and in the modern world.⁴⁵ Prostitution was considered a “trade that was in great demand” and was needed to control the sexual activities of men.⁴⁶ It was in Rome that the first signs of prostitution regulation appeared.⁴⁷ Prostitutes were required to be licensed, and their names remained on the official list of prostitutes thereafter.⁴⁸

4. *Christianity*

The introduction of Christianity did not result in the eradication of prostitution. Christianity prohibited all sexual acts, except sex within marriage, and even then, it was only permitted for the purpose of child conception.⁴⁹ However, prostitution was still considered a necessary evil to combat rape, sodomy, and masturbation.⁵⁰ Prostitution was an outlet that men could use to satisfy their sexual urges.⁵¹ The Christian Church may have condemned prostitution, but a new compassion for the prostitute started to take shape.⁵² The Bible’s portrayal of Mary Magdalene as a prostitute created a new attitude that prostitutes were poor, exploited women who needed to be

⁴¹ *Id.* at 50.

⁴² *Id.* at 48.

⁴³ *Id.* at 54.

⁴⁴ *Id.* at 55.

⁴⁵ BULLOUGH, *supra* note 11, at 61.

⁴⁶ Nicole A. Hough, *Sodomy and Prostitution: Laws Protecting the “Fabric of Society,”* 3 PIERCE L. REV. 101, 107 (2004).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 103.

⁵⁰ *Id.*

⁵¹ Susan E. Thompson, *Prostitution—A Choice Ignored*, 21 WOMEN’S RTS. L. REP. 217, 220 (2000).

⁵² BULLOUGH, *supra* note 11, at 62.

“saved” rather than condemned.⁵³ However, the Bible provides contradictory views about sex.⁵⁴ Sex may have been seen as evil and sinful, but the truth remained that the prostitute was considered a victim and a woman who needed help.⁵⁵ Christianity helped shape how prostitution would be perceived for generations to come.

B. Prostitution in the United States

Early Americans’ attitudes towards prostitution were very similar to the Europeans’ attitudes; this was not unusual given that most Americans descended from Europe. In the 1800s, the United States was mostly rural, and although prostitution existed, it was not common in rural areas.⁵⁶ Prostitution generally thrives on commercial business and, as a result, is most common in urban areas; the 1800s were no different.⁵⁷ During this era, prostitutes were mainly unmarried, young women and immigrants.⁵⁸ The population in the United States was predominantly male, which created a great demand.⁵⁹ Prostitution was not condoned in American society, but, like the Romans, Americans treated prostitution as a “necessary evil” and used it to keep the virtue of proper women.⁶⁰ When men indulged their sexual appetite with a prostitute, proper women were kept chaste and pure.⁶¹

Industrialization was a leading cause of the spread of prostitution.⁶² Brothels were opened, newspapers were filled with solicitation advertisements, and streetwalkers were seen working corners or taverns.⁶³ In fact, prostitution was legal in America from colonial times through most of the nineteenth century.⁶⁴ However, there were

⁵³ *Id.* at 63.

⁵⁴ *Id.* at 62.

⁵⁵ *Id.* at 63.

⁵⁶ *Id.* at 211.

⁵⁷ BULLOUGH, *supra* note 11, at 211.

⁵⁸ Thompson, *supra* note 51, at 222-23.

⁵⁹ *Id.* at 222.

⁶⁰ Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN’S L.J. 47, 50-51 (1995).

⁶¹ *Id.*

⁶² Thompson, *supra* note 51, at 223.

⁶³ BULLOUGH, *supra* note 11, at 217.

⁶⁴ Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235, 243 (2000).

criminal laws in place to help regulate prostitution.⁶⁵ Prostitutes were punished for being “sexual deviants” and were arrested under various vagrancy laws, such as “nightwalking.”⁶⁶ Brothels were regulated under public nuisance laws in order to combat fornication.⁶⁷ However, besides the fact that prostitution was considered sinful, a new concern arose.⁶⁸ Articles were written explaining venereal disease and claiming that prostitutes were spreading such diseases.⁶⁹ Men were never implicated as contributors to the spread, and married women who were contracting these diseases were seen as the innocent victims.⁷⁰ This development led to laws that would further regulate prostitution.⁷¹

In 1870, the city of St. Louis passed the “Social Evil Ordinance,” which required a team of physicians to provide health care to prostitutes and to open hospitals to treat women infected with sexually transmitted diseases (“STD”).⁷² Further regulation appeared in 1910, when the federal government passed the White Slave Traffic Act, better known as the “Mann Act.”⁷³ This federal statute 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.”⁷⁴ This law was passed to help stop the increase in human trafficking.⁷⁵ The regulation of prostitution by laws such as the Social Evil Ordinance and the Mann Act led to the criminalization of prostitution.⁷⁶ By 1971, prostitution was illegal in all states, excluding a few counties in Nevada.⁷⁷

⁶⁵ Lucas, *supra* note 60, at 50.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 54.

⁶⁹ BULLOUGH, *supra* note 11, at 217.

⁷⁰ Lucas, *supra* note 60, at 59-60.

⁷¹ *Id.* at 54.

⁷² Hough, *supra* note 46, at 112-13.

⁷³ *Id.* at 113; 18 U.S.C. § 2421 (1998).

⁷⁴ BULLOUGH, *supra* note 11, at 279.

⁷⁵ *Id.*

⁷⁶ Lucas, *supra* note 60, at 55.

⁷⁷ Alysia Castro, *Better in Theory: The Road to Prostitution Reform in Pennsylvania*, 9 RUTGERS J.L. & PUB. POL’Y 37, 45 (2012).

III. CRIMINALIZING PROSTITUTION DOES MORE HARM THAN GOOD

“I don’t understand why prostitution is illegal. Selling is legal. Fucking is legal. Why isn’t selling fucking legal? You know, why should it be illegal to sell something that’s perfectly legal to give away?” — George Carlin⁷⁸

A. Why is Prostitution Illegal?

Deciding whether or not to criminalize prostitution is a matter of state law. Almost all states have made it a crime to accept money in exchange for sex.⁷⁹ It is not only illegal to be a prostitute, but it is also illegal to purchase sex or facilitate the exchange of money for sex.⁸⁰ Some states have harsher penalties for prostitutes, while other states have harsher penalties for “Johns” and “Pimps.”⁸¹

States in favor of criminalization reason that eradication of prostitution is the ultimate goal. Eradication, states claim, would bring about several benefits, such as the prevention of the spread of STDs, the preclusion of the sexual exploitation of women, the reduction of other illegal crimes linked to prostitution, and the reinforcement of society’s moral views on sex, family, and the role of women.⁸² Criminalizing prostitution is a tool used by the states to achieve these goals. These goals are reasonable, as they promote public health and safety and enforce family values. Criminalizing prostitution also serves another important purpose for these states: keeping the stigma attached to prostitution in place. This stigma is necessary in order for society’s views of prostitution to remain negative and, therefore, work towards the goal of eradicating prostitution.⁸³

One of the largest concerns with prostitution is the spread of

⁷⁸ *Quotes*, THE HONEST COURTESAN, <http://maggiemcneill.wordpress.com/resources/quote/s/> (last visited May 2, 2014).

⁷⁹ ROBERT WEITZER, LEGALIZING PROSTITUTION: FROM ILLICIT VICE TO LAWFUL BUSINESS 48-49 (New York Univ. Press 2012).

⁸⁰ *Id.*

⁸¹ A “John” is a purchaser of sex, and a “Pimp” is someone who profits from the sale. Beran, *supra* note 8, at 20; Coty R. Miller, Nuria Haltiwanger, *Prostitution and the Legalization/decriminalization Debate*, 5 GEO. J. GENDER & L. 207, 215 (2004).

⁸² Tonya R. Noldon, *Challenging First Amendment Protection of Adult Films with the Use of Prostitution Statutes*, 3 VA. SPORTS & ENT. L.J. 310, 311 (2004).

⁸³ Lucas, *supra* note 60, at 58-59.

STDs. It was this fear that spearheaded regulation of prostitution.⁸⁴ In the early twentieth century, when prostitution was newly criminalized, women who were arrested for prostitution were subject to mental health and genetic defect testing, and many were forcibly sterilized.⁸⁵ This testing was used as a form of social control, which furthered the stigma attached to prostitution.⁸⁶ The threat of venereal disease was a valid concern, and it, like prostitution, became a “symbol of social contamination”⁸⁷ and “served to modify [the] public[’s] attitudes toward prostitution.”⁸⁸

Today, prostitution is practically synonymous with the spread of STDs.⁸⁹ This association is not entirely without merit. A prostitute makes a living from having sex with other people, and a successful prostitute has sex with multiple people, thus, increasing her chances of contracting an STD. A prostitute who contracts an STD can then infect a future customer.⁹⁰ The need to protect oneself from an STD is important to anyone who is sexually active, not just to prostitutes and their clients. Therefore, husbands who patronize a prostitute and become infected with an STD could then infect their “unknowing, undeserving” wives.⁹¹ Thus, disease prevention is imperative, but does criminalizing prostitution really help to promote that goal? In theory, if the initiative would end all prostitution, then yes, it would be an effective solution. However, because prostitution persists, and criminalizing prostitution has not effectively deterred women from becoming prostitutes, this goal has not been achieved.

Another valid reason for the criminalization of prostitution is to stop the “denigration and sexual exploitation of women.”⁹² Prostitution is the very essence of “gender victimization and oppression,” and because it is the most visible of such expression, criminalizing it would further suppress prostitution, thus “effectively reduc[ing] female degradation and abuse.”⁹³ The mere existence of prostitution

⁸⁴ Hough, *supra* note 46, at 112-13.

⁸⁵ Lucas, *supra* note 60, at 58.

⁸⁶ *Id.*

⁸⁷ *Id.* at 54.

⁸⁸ *Id.* at 55.

⁸⁹ Hough, *supra* note 46, at 108.

⁹⁰ *Id.*

⁹¹ Lucas, *supra* note 60, at 55.

⁹² Noldon, *supra* note 82, at 311.

⁹³ Carlin Meyer, *Decriminalizing Prostitution: Liberation or Dehumanization?*, 1 CARDOZO WOMEN’S L.J. 105, 112 (1993).

promotes violence towards women because a victimized woman's behavior is often compared to that of a stereotypical prostitute in order to decide whether or not she "asked for it."⁹⁴ Women who have been raped are constantly scrutinized about their appearance, their behavior, and any signs that they were behaving provocatively or perpetuating a prostitute-like persona.⁹⁵

Prostitution has also been criminalized in order to reduce other forms of vice typically connected to prostitution, such as gambling, drug activity, alcohol abuse, and street violence.⁹⁶ Of the several forms of prostitution, "street walking" is the most commonly known. Although, street walking may be the most well-known, it only accounts for 10-20% of all types of prostitution.⁹⁷ Despite its low numbers, this form of prostitution is still considered the most troublesome to society. This is likely due to its visibility and, therefore, is the type of prostitution that is most commonly combated by the police and legislatures.⁹⁸ The idea is that by placing the focus on "cleaning up the streets," other criminal activities linked to prostitution will also be reduced.⁹⁹

The criminalization of prostitution is often called into question because prostitution is considered to be a "victimless crime," as it entails two adults having consensual sex; this arrangement does not harm another person.¹⁰⁰ However, the conduct can be seen as causing "indirect harm to the 'fabric of our society.'"¹⁰¹ Courts have upheld laws that guard against acts that may harm the fabric of our society, opening the door to allow governments to decide what acts are immoral.¹⁰²

The immoral nature of prostitution is, perhaps, the most significant reason that prostitution remains illegal today. As the history of prostitution has shown, "extramarital sex is considered immoral."¹⁰³ During the Victorian era, women needed to be protected from becoming "fallen," therefore, women's chastity and purity needed to

⁹⁴ Hough, *supra* note 46, at 110.

⁹⁵ *Id.*

⁹⁶ Hough, *supra* note 46, at 110.

⁹⁷ Lucas, *supra* note 60, at 49.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ This is assuming that the prostitute is not being coerced or forced by a pimp.

¹⁰¹ Hough, *supra* note 46, at 103.

¹⁰² *Id.*

¹⁰³ *Id.* at 120.

remain intact.¹⁰⁴ Women today are still judged negatively if they have sexual relations outside of marriage.¹⁰⁵ Women who are considered “overtly sexual” are subjected to “slut shaming.”¹⁰⁶ They are not expected to be lustful, and because prostitution is the ultimate contradiction to this notion, it is considered immoral.

Prostitution is also seen as a threat to the family unit.¹⁰⁷ In the early years after prostitution became illegal, the fear was that women would use prostitution to support themselves and they would then lose the need for a man.¹⁰⁸ Criminalizing prostitution kept women from becoming independent, thus, encouraging marriage.¹⁰⁹ If more women were to become prostitutes, it was believed that less women would have the need for marriage.¹¹⁰ Another reason behind criminalizing prostitution was to deter husbands from cheating on their wives.¹¹¹ Therefore, the criminalization of prostitution was deemed necessary to maintain the moral norms of family and monogamy.¹¹² These reasons may arguably justify the criminalization of prostitution, but only if the criminalization actually promotes these morals.

All of these goals may be reasonable, and it is understandable that society would strive towards these goals. However, the criminalization of prostitution has not effectively deterred women from becoming prostitutes, thus, leaving these goals unfulfilled. Instead, as the next section demonstrates, the criminalization of prostitution has caused more harm to women while failing to accomplish the sought after goals.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Eric Michael Johnson, *Promiscuity is Pragmatic: Why Women and Other Female Primates Seek Out Multiple Partners*, SLATE (Dec. 4, 2013, 8:15 AM), http://www.slate.com/articles/health_and_science/science/2013/12/female_promiscuity_in_primates_when_do_women_have_multiple_partners.2.html. “Slut Shaming” is when a person, most often a woman, is being “shamed for actual or perceived sex that they’re involved in.” This often includes judgments on the way the person looks and dresses. See Jessica Wakeman, *Frisky Q&A: Melissa Gira Grant, Author Of Playing The Whore: The Work Of Sex Work*, THE FRISKY (March 11, 2014), <http://www.thefrisky.com/2014-03-11/frisky-qa-melissa-gira-grant-author-of-playing-the-whore-the-work-of-sex-work/>.

¹⁰⁷ Lucas, *supra* note 60, at 50.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 47.

¹¹² Lucas, *supra* note 60, at 47.

B. Criminalizing Prostitution Does Not Work

The benefits that were intended to stem from the criminalization of prostitution have not been achieved, and several harms have resulted from its remaining illegality. Criminalizing prostitution has “never significantly reduced the incidence of prostitution.”¹¹³ In fact, statistics overwhelmingly demonstrate that prostitutes are constant re-offenders.¹¹⁴ Arrests and fines do not effectively act as deterrents; prostitutes are soon selling sex in order to pay off their fines.¹¹⁵ Prostitution is costly, both to citizens and prostitutes.¹¹⁶ Due to the fear of reporting crime, prostitutes’ lives are at risk, and their ability to report crime is stifled.¹¹⁷ Criminalization is also an attack on a woman’s sexual autonomy and does nothing to prevent the spread of STDs.¹¹⁸

According to Legal Aid attorney Kate Mogulescu, “the NYPD makes an average of 2,700 arrests each year for prostitution and loitering for the purpose of engaging in prostitution citywide.”¹¹⁹ Many prostitutes face jail time if convicted in the state of New York, especially given the fact that many prostitutes are often repeat offenders.¹²⁰ It costs taxpayers \$167,731 to house an inmate each year in a city jail.¹²¹ That amounts to \$460 a day, per inmate, not including the cost of the New York Police Department’s manpower, the cost to the courts, or lawyer’s fees. Decriminalizing prostitution would free resources that could be allocated to more pressing criminal matters. Despite the fact that street prostitution accounts for a small minority of all prostitution, 90% of prostitutes arrested are streetwalkers.¹²² Forty-percent of streetwalkers are women of color, yet 55% of prostitutes arrested are minorities.¹²³ These results show

¹¹³ Meyer, *supra* note 93, at 113.

¹¹⁴ WEITZER, *supra* note 79, at 49.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Beran, *supra* note 8, at 29.

¹¹⁸ Meyer, *supra* note 93, at 109.

¹¹⁹ Jeff Storey, *Q&A: Kate Mogulescu*, N.Y. L.J. (July 26, 2013), <http://www.newyorklawjournal.com/id=1202612471658/Q>.

¹²⁰ *Id.*

¹²¹ *NYC’s yearly cost per inmate almost as expensive as Ivy League tuition*, FOX NEWS (Sept. 30, 2013), <http://www.foxnews.com/us/2013/09/30/nyc-cost-per-inmate-almost-equals-ivy-league-education-expenses-tied-to-rikers/>.

¹²² Lucas, *supra* note 60, at 49.

¹²³ *Id.*

that a disproportionate number of poor minority women are harassed and arrested for prostitution.¹²⁴ Furthermore, jail time as a result of a conviction is not the only punishment that affects these women. A conviction can negatively affect a woman's opportunity to obtain housing, education, and most importantly, the ability to get a job.¹²⁵ Saddled with the stigma of a criminal record, even prostitutes who truly want to leave that lifestyle are left with few available options, forcing them to continue prostituting.¹²⁶

One of the major flaws in criminalizing prostitution is that it jeopardizes women's lives. Prostitutes face a "risk of premature death that is forty times the national average."¹²⁷ Studies of San Francisco street prostitutes showed that 70% of the prostitutes in the study were raped an average of thirty-one times by their customers and 65% of the women stated they were beaten by customers an average of 4.3 times.¹²⁸ In a similar study in Oregon, "78% of the prostitutes were raped, 48% by pimps an average of sixteen times per year, 78% by johns an average of thirty-three times per year."¹²⁹ Perhaps the most frightening statistic is from the Justice Department, which estimates that one-third of the more than 4,000 women killed by serial murderers in 1982 were prostitutes.¹³⁰ This statistic shows that prostitution is dangerous work, but it is made more dangerous because "criminalizing prostitution leaves victims of violence with few avenues for recourse due to fear of police action and general lack of legal protection."¹³¹ Because prostitutes are "routine victims of police violence and arrests, sex workers fear reporting the violations of their rights."¹³² This reinforces the power that pimps have over their prostitutes, thus, making leaving this lifestyle extraordinarily difficult.¹³³ When a prostitute needs money for bail, she turns to her

¹²⁴ *Id.*

¹²⁵ Storey, *supra* note 119.

¹²⁶ WEITZER, *supra* note 79, at 49.

¹²⁷ Beran, *supra* note 8, at 29.

¹²⁸ Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 CARDOZO WOMEN'S L.J. 133, 138 (1993).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Beran, *supra* note 8, at 29.

¹³² Amalia Lucia Cabezas, *Legal Challenges to and by Sex Workers/prostitutes*, 48 CLEV. ST. L. REV. 79, 88 (2000).

¹³³ Catharine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13, 25 (1993).

pimp, leaving her forever in his debt.¹³⁴ Prostitutes are not only afraid to report crimes against themselves, but also to report crimes that are linked to prostitution in general.¹³⁵ For example, if a prostitute were a witness to a crime, she would be reluctant to report it because of the fear that her status as a prostitute would get her arrested.¹³⁶ Crimes associated with prostitution often exist because prostitution is illegal.¹³⁷ This is supported by the fact that areas where prostitution is legal have lower rates of crimes connected with prostitution.¹³⁸

“The frequency of violence against prostitutes is only exacerbated by oppressive cultural norms and biased media representations of prostitutes.”¹³⁹ Criminalization of prostitution makes violence against prostitutes “either socially invisible or conceptualized as ‘just life.’”¹⁴⁰ When prosecution occurs against those who attack prostitutes, prostitutes are rarely seen as being completely innocent.¹⁴¹ They are blamed for being assaulted, battered, raped, and are thought to have assumed the risks of their lifestyles.¹⁴² Prostitutes are “at best invisible and at worst considered deserving of abuse.”¹⁴³ The criminalization of prostitution, thus, further marginalizes prostitutes from society.¹⁴⁴ The consequence is a society that justifies the violence that prostitutes endure.¹⁴⁵

Another harm resulting from the criminalization of prostitution is its infringement on women’s sexual autonomy.¹⁴⁶ Women lose the choice to get paid for having consensual sex. A woman may have sex for free, but once she receives something of value for her services, the act becomes illegal. This attack on women’s sexual autonomy is similar to the past attacks on women’s sexual and repro-

¹³⁴ *Id.*

¹³⁵ Thompson, *supra* note 51, at 231.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ Hough, *supra* note 46, at 115.

¹³⁹ Beran, *supra* note 8, at 29.

¹⁴⁰ *Id.* at 30.

¹⁴¹ *Id.* at 29.

¹⁴² *Id.*

¹⁴³ Cabezas, *supra* note 132, at 88.

¹⁴⁴ Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws As Enforced by Cops, Politicians and Judges*, 10 HASTINGS WOMEN’S L.J. 119, 120 (1999).

¹⁴⁵ *Id.*

¹⁴⁶ Meyer, *supra* note 93 at 109.

ductive freedom.¹⁴⁷ Criminalizing prostitution is just another way to have control over a woman's body, in the same way that criminalizing contraceptives and abortion had done.¹⁴⁸ A woman should have the right to enter into a contract regarding the use of her body. Such contracts are already legal, even in similar situations. For example, surrogacy involves a contract between a woman and a potential couple who cannot, or choose not to, have a child traditionally.¹⁴⁹ In most cases, a couple is unable to conceive or carry a baby to term and seek a surrogate to complete the task for them.¹⁵⁰ Women who elect to become surrogates are very well compensated.¹⁵¹ The argument that no woman ever "wants" to be a prostitute has been made in respect to surrogacy.¹⁵² Radical feminists have argued that the:

surrogacy arrangement is not one in which a woman can enter into by her own free will because in both prostitution and surrogate motherhood, the state has created the social, economic and political situation in which the sale of some sexual or reproductive capacity is necessary to a woman's survival.¹⁵³

Therefore, surrogacy, like prostitution, "equate[s] women with sex and nothing more."¹⁵⁴ Yet, surrogacy is legal and prostitution is not. If a woman can enter into a contract and be compensated for carrying a baby for nine months, enduring the physical and emotional tolls of labor, and risking having to abort the baby if there are complications, then so should a woman who spends fifteen minutes having sex with stranger.

Many activities that were once deemed immoral, like the use of contraceptives or abortions, have gained social acceptance and are no longer banned in most places. For instance, gambling, alcohol consumption, and even sodomy were banned at one point, but are now tolerated by society.¹⁵⁵ Given the harms that criminalization can

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ Jean M. Sera, *Surrogacy and Prostitution: A Comparative Analysis*, 5 AM. U. J. GENDER & L. 315, 323-24 (1997).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 319.

¹⁵³ *Id.*

¹⁵⁴ Sera, *supra* note 149, at 319.

¹⁵⁵ Hough, *supra* note 46, at 104.

be considered the cause of, the need for prostitution reform is great. The next section will describe and analyze three alternatives to the criminalization of prostitution that may be more effective in reducing crime, preventing the spread of disease, and keeping women safe.

IV. ALTERNATIVES TO CRIMINALIZATION

“When prostitution is a crime, the message conveyed is that women who are sexual are ‘bad,’ and therefore legitimate victims of sexual assault. Sex becomes a weapon to be used by men.” – Margo St. James¹⁵⁶

There are three general alternatives to the criminalization of prostitution. The first alternative is to decriminalize prostitution, which entails removing all punishment from the act of selling and buying sex.¹⁵⁷ The second alternative is partial decriminalization, accomplished by removing all punishment from the sale of sex, but keeping the purchase of sex illegal.¹⁵⁸ The third alternative is legalization, which requires decriminalization of prostitution, but places regulations, such as worker registration and mandatory medical exams, in place.¹⁵⁹ None of the alternatives are perfect, but each one presents a better option than the continued criminalization of prostitution.

A. Decriminalization

Decriminalizing prostitution is not the same as legalizing prostitution. With decriminalization, there would be no regulations or standards put in place. Simply put, the act of buying or selling sex would not be a crime, leaving prostitutes free to control their business without the interference of the government.¹⁶⁰ The majority of developed countries today do not criminalize prostitution, although many do prohibit running brothels, pimping, and public solicitation.¹⁶¹ Countries that have decriminalized prostitution have found

¹⁵⁶ THE HONEST COURTESAN, *supra* note 78.

¹⁵⁷ WEITZER, *supra* note 79, at 49.

¹⁵⁸ Beran, *supra* note 8, at 49.

¹⁵⁹ WEITZER, *supra* note 79, at 50.

¹⁶⁰ Hough, *supra* note 46, at 113.

¹⁶¹ Meyer, *supra* note 93, at 106.

that many of the problems that have resulted from the criminalization of prostitution have been reduced or eliminated.¹⁶²

Prostitutes would no longer have a fear of criminal convictions if prostitution were not illegal, giving them the freedom to report abuse and crimes perpetrated against them. Eliminating the threat of prosecution and offering police protection would also reduce the need for pimps, in turn, reducing the number of women exploited by pimps. Women would have control over their bodies and “control of their own destinies.”¹⁶³

Decriminalization would protect prostitutes’ rights in regard to “wage and hour laws, social security, insurance and pension laws, safety and health protections and collective bargaining rights.”¹⁶⁴ Prostitution would be seen in the same light as any other occupation that uses contracts where one may hire an agent or manager to assist with one’s business.¹⁶⁵ Decriminalizing prostitution would allow for the possibility of prostitutes forming a union, providing even more protections for prostitutes.¹⁶⁶ Some argue that agents and managers would exploit prostitutes in the same way that pimps and madams have done historically.¹⁶⁷ However, if prostitution were decriminalized, the risk of exploitation would be no greater between a prostitute and her agent or manager than between an athlete or actor and his or her agent or manager.¹⁶⁸

Decriminalization may be a better alternative, but it also has its flaws. One major flaw is that decriminalization would “legitimize the degradation and abuse of women.”¹⁶⁹ It would also increase the demand for prostitution and, therefore, increase the supply of prostitutes.¹⁷⁰ Furthermore, decriminalization would do little to fight the spread of STDs since decriminalization would not involve government regulation such as STD testing. Although it appears decriminalization is a better alternative to criminalizing prostitution, it may

¹⁶² Thompson, *supra* note 51, at 231.

¹⁶³ Margo St. James, *Economic Justice for Sex Workers*, 10 HASTINGS WOMEN’S L.J. 5, 7 (1999).

¹⁶⁴ Meyer, *supra* note 93, at 106.

¹⁶⁵ Almodovar, *supra* note 144, at 124.

¹⁶⁶ *Id.* at 124-25.

¹⁶⁷ *Id.* at 124.

¹⁶⁸ *Id.* at 125.

¹⁶⁹ Arianne Plasencia, *Prostitution and Sex Workers*, 9 GEO. J. GENDER & L. 699, 715 (2008).

¹⁷⁰ Beran, *supra* note 8, at 47.

not be the best option available.

B. Partial Decriminalization

Partial decriminalization would criminalize the solicitation of sex, but not the selling of sex.¹⁷¹ In other words, the prostitute would not be actively engaging in criminal activity, but johns and pimps would be prosecuted. If a government has an interest in the cessation of prostitution, the prosecution of those who purchase sex is arguably the most effective option. This could result in a more favorable outcome because prostitutes would be left with viable economic alternatives and would not be relegated to prostitution. If a prostitute is not arrested, she does not have the stain of a criminal record and is not forced to bear the consequences of her pimp paying her court fines or bail. She is left with more options if she wants to leave the profession. This alternative would, in time, “create a society where it is socially unacceptable for men to buy sex, effectively decreasing the demand for prostitutes.”¹⁷² It would be a simple matter of supply and demand—once the demand was gone, there would be no need for the supply. Radical feminists argue that criminalizing prostitution “make[s] women into criminals for being victimized as women,” and partial decriminalization would avoid this problem.¹⁷³

This partial decriminalization, as with full decriminalization, would also serve to combat the violence that prostitutes face because the fear of prosecution would be gone. It would also make an exit strategy more feasible. Women would have options and resources to start a new life. For example, most public housing will not allow someone with a criminal record to apply for an apartment; the same is true for certain work programs. Because this type of policy treats prostitutes as the victims, they would be more likely to receive support and compassion.

Sweden adopted this approach in 1999, making the purchasing of sex services a crime punishable by a fine or imprisonment up to six months.¹⁷⁴ The law treats prostitutes as victims by only punishing the buyer.¹⁷⁵ This generates the sentiment that the country does

¹⁷¹ *Id.* at 49.

¹⁷² *Id.* at 53.

¹⁷³ MacKinnon, *supra* note 133, at 15.

¹⁷⁴ Beran, *supra* note 8, at 49.

¹⁷⁵ *Id.* at 49-50.

not have a problem with prostitutes; it only has a problem with men who purchase sex. Since the enactment of the law, street prostitution has decreased 50%.¹⁷⁶ One survey of Swedish men who had previously purchased sexual services found that men stopped purchasing such services due, in part, to the new law and to the fear of being exposed.¹⁷⁷

The Swedish approach has gained popularity in other countries, most recently in France.¹⁷⁸ The French Parliament recently passed a bill criminalizing the purchase of sex.¹⁷⁹ The penalty is a \$2,000 fine. France has also created a fund for those seeking to exit the profession that helps to finance short-term residences.¹⁸⁰ There are also programs available that will train prostitutes in other occupations.¹⁸¹ France parallels Sweden by “treat[ing] prostitutes as exploited and abused victims rather than as criminals.”¹⁸²

There are, however, downsides to this option. A major problem with this alternative, which is cause for alarm, is reports from healthcare professionals in Sweden claiming to “have mixed feelings about the ban, as cases of abuse and rape have increased considerably.”¹⁸³ Prostitutes in Sweden have also found the ban to be hard on their lifestyles.¹⁸⁴ They now encounter much more dangerous clientele, who are not afraid of law enforcement, given that their regular, and often nicer clients, are now too afraid to buy sex.¹⁸⁵ STD rates have also increased due to the pressure prostitutes now have to participate in unprotected sex.¹⁸⁶ This is due to the reduction in clientele; as one streetwalker from Sweden explains, “[w]hen things are slow, the way they are tonight, I’m also willing to go with guys who want to get a little rough with me and don’t want to use a condom, . . . I

¹⁷⁶ *Id.* at 50.

¹⁷⁷ *Id.*

¹⁷⁸ The Editorial Board, *France’s New Approach to Curbing Prostitution*, N.Y. TIMES (Dec. 8, 2013), <http://www.nytimes.com/2013/12/09/opinion/frances-new-approach-to-curbing-prostitution.html>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ Beran, *supra* note 8, at 52.

¹⁸⁴ Andre Anwar, *Criminalizing the Customers: Prostitution Ban Huge Success in Sweden*, SPIEGEL ONLINE (Nov. 8, 2007), <http://www.spiegel.de/international/europe/0,1518,516030,00.html>.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

need the money.”¹⁸⁷ There has also been an increase in human trafficking and prostitution in neighboring countries.¹⁸⁸ People are still buying sex—they are just leaving the country to do so.¹⁸⁹ This alternative, in theory, appears ideal, but in practice it raises serious concerns.

Another problem with partial decriminalization is the complete disregard of women’s autonomy. This option is most popular with radical feminists who believe that no woman chooses to sell her body and that all prostitutes are victims.¹⁹⁰ As an activist and feminist, Catharine MacKinnon has stated, “[p]rostitution was not formerly called ‘white slavery’ for nothing.”¹⁹¹ Most radical feminists equate prostitution with sex slavery even when the prostitute insists that she enjoys her work.¹⁹² However, others believe the view that all prostitutes are victims is “condescending, patronizing, and out of touch with the experience of prostitutes.”¹⁹³

C. Legalization

Legalization of prostitution would remove criminal penalties from the selling and buying of sex, but would also add regulations and standards to control it. This alternative to criminalization can result in favorable outcomes. The most important benefit from legalizing prostitution is that it would create cognizable regulations and standards. One regulation could be that women who want to practice prostitution would need to be licensed in order to sell sex. Requiring a license would make both the sale and the purchase of sex much safer. For example, women would be tested for STDs on a regular basis and brothels would have to comply with regular business standards. Just as with decriminalization, prostitutes could receive health care and other employee benefits, such as social security and unemployment insurance.¹⁹⁴ Women could make safer, more informed decisions about whether or not they want to enter into the business. Ne-

¹⁸⁷ *Id.*

¹⁸⁸ Beran, *supra* note 8, at 51.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 39.

¹⁹¹ MacKinnon, *supra* note 133, at 24.

¹⁹² Beran, *supra* note 8, at 37.

¹⁹³ *Id.* at 44.

¹⁹⁴ This would depend on the regulations passed by the government, but because prostitution is legal, it becomes a viable option.

vada serves as a good example of how well legalization works to combat the ills of prostitution.¹⁹⁵

In Nevada, prostitution is legal in counties where the population does not exceed 400,000 people.¹⁹⁶ At any given time, Nevada has between twenty-five to thirty brothels open for business.¹⁹⁷ The many harms of prostitution are either nonexistent or minimal due, in part, to the regulations put in place in the various counties.¹⁹⁸ For instance, to eliminate the exploitation of women, counties have made it illegal to “procure a person for the purpose of prostitution.”¹⁹⁹ In other words, pimping would be illegal. Brothel owners are also typically mandated to be female, and many counties prohibit men from working within the brothel.²⁰⁰ Women who are neither a prostitute nor an employee are often banned from brothels in order to avoid disputes from wives or girlfriends in search of their significant others.²⁰¹ To reduce violence against prostitutes, men can be denied entrance to the brothel if they are intoxicated, “rowdy, or underage.”²⁰² Prostitutes working in these brothels have rarely encountered violence due to these safeguards.²⁰³

One of the most impressive and hopeful statistics from Nevada is that not a single brothel prostitute has tested positive for HIV since 1986.²⁰⁴ In fact, statistics have shown that Nevada brothel workers have a lower STD rate than the entire female population.²⁰⁵ Nevada has very strict rules on HIV and STD screening.²⁰⁶ Brothel workers are required to get monthly HIV tests and are subject to weekly STD screening.²⁰⁷ They are also required to use condoms.²⁰⁸ If a brothel worker contracts an STD, she is not permitted to work until she is medically cleared.²⁰⁹ Brothel owners are also liable to their

¹⁹⁵ Hough, *supra* note 46, at 113.

¹⁹⁶ Snadowsky, *supra* note 4, at 222.

¹⁹⁷ *Id.* at 224.

¹⁹⁸ NEV. REV. STAT. ANN. § 41.1397; NEV. ADMIN. CODE §§ 441A.800, 441A.805.

¹⁹⁹ Hough, *supra* note 46, at 114.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Hough, *supra* note 46, at 115.

²⁰⁵ Snadowsky, *supra* note 4, at 228.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

clients if they allow prostitutes to work while infected with an STD.²¹⁰

Legalizing prostitution also allows the taxation of sex services. In Nevada, the brothel industry brings in an average of \$35 million a year.²¹¹ In major cities in Nevada, where prostitution is illegal, it is estimated that taxpayers spend about \$7.5 million on prostitution control per major city.²¹²

However, the Nevada model is not perfect, and many of the regulations imposed on brothel workers have been seen as yet another “pervasive system of control of women’s bodies.”²¹³ Many counties prohibit both brothel workers and their families from residing within the county.²¹⁴ Other counties restrict brothel workers from leaving the brothel while under contract, except for the limited purpose of doctor exams and other related appointments.²¹⁵ Perhaps most troubling is the state law that mandates that the name and photograph of any brothel worker who is HIV positive be published publicly.²¹⁶

Liberal feminists who believe in a woman’s autonomy support legalization and argue that prostitution should be treated as any other business transaction.²¹⁷ “Liberal feminists see sexual free choice as the bottom line, noting that the separation of sex and love has the capacity to contribute to gender equality by liberating women.”²¹⁸ It can be argued, however, that when looking at the regulations imposed on prostitutes in Nevada, many women lose most of their autonomy and control over their bodies. Nevada’s system works, but at the cost of women having to give up significant control of their bodies in order to reap the benefits of legalization.

The Netherlands is recognized as the country with the least oppressive prostitution laws.²¹⁹ Prostitution has never been illegal in the Netherlands, although brothels were made illegal in 1911.²²⁰

²¹⁰ Hough, *supra* note 46, at 115.

²¹¹ Snadowsky, *supra* note 4, at 239.

²¹² *Id.* at 240.

²¹³ Meyer, *supra* note 93, at 108.

²¹⁴ *Id.* at 107.

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Berman, *supra* note 8, at 31.

²¹⁸ *Id.*

²¹⁹ Thompson, *supra* note 51, at 244.

²²⁰ Jason Chan, *Decriminalization of Prostitution in China*, 13 NEW ENG. J. INT’L & COMP. L. 329, 343 (2007).

However, the laws against brothels were never enforced, and in 2000, those laws were lifted and prostitution became completely legal.²²¹ The purpose for legalization was to create a better work environment for prostitutes.²²² The Dutch government distinguishes “voluntary” prostitution from “involuntary” or “forced” prostitution, making the latter illegal.²²³ The legalization of prostitution imposes a heavy regulatory burden on municipalities to ensure a healthy and safe work environment for prostitutes.²²⁴ This includes regular health inspections of brothels to ensure sanitary work environments.²²⁵ Nurses are sent to brothels to ensure that hygiene regulations are not being violated and to lend their services to prostitutes.²²⁶ The nurses encourage prostitutes to obtain medical check-ups, and they provide assistance if a prostitute has contracted an STD.²²⁷ Medical check-ups are not required in the Netherlands, but are highly encouraged, and most prostitutes do get tested regularly.²²⁸ There are even four hospitals in the Netherlands dedicated to STD prevention and care.²²⁹ Prostitutes who cease working because of medical reasons are eligible for unemployment insurance and those who are not eligible may still receive social assistance, which includes employment services.²³⁰ There are many advantages to the Netherlands’ model, but there have been some serious unforeseen consequences to the legalization of prostitution. For example, the sex industry has risen 25% since the legalization of prostitution.²³¹ Furthermore, despite the goal of decreasing human trafficking, it has been reported that in countries where prostitution has become legalized, human trafficking rates have risen.²³²

The Supreme Court of Canada has recently held that Canada’s prostitution laws to be unconstitutional.²³³ Prostitution in Canada is

²²¹ *Id.* at 344.

²²² Dianne Post, *Legalization of Prostitution Is A Violation of Human Rights*, 68 NAT’L L. GUILD REV. 65, 76 (2011).

²²³ Chan, *supra* note 220, at 344.

²²⁴ *Id.* at 347.

²²⁵ *Id.* at 355.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Chan, *supra* note 220, at 355.

²²⁹ *Id.*

²³⁰ *Id.* at 356.

²³¹ Post, *supra* note 222, at 75.

²³² Ione Curva, *Thinking Globally, Acting Locally: How New Jersey Prostitution Law Reform Can Reduce Sex Trafficking*, 64 RUTGERS L. REV. 557, 587 (2012).

²³³ Ian Austen, *Canadian Court Strikes Down Laws on Sex Trade*, N.Y. TIMES (Dec. 20,

not illegal; however, there were laws in place that made prostituting virtually impossible.²³⁴ Such laws criminalized brothels, any communication for the purpose of engaging in prostitution, and any livelihood created off of money gained from prostitution.²³⁵ Statistics have shown that indoor prostitution, such as a brothel, has “fewer issues with violence than the unregulated sex trade.”²³⁶ The Supreme Court of Canada has held these laws to be unconstitutional because of the security risks that have resulted due to their enforcement.²³⁷ It noted that the government has the right to regulate prostitution but “not at the cost of the health, safety and lives of prostitutes.”²³⁸ This new development is further evidence of the importance of legalization. The Canadian Supreme Court’s acknowledgment of the need to protect prostitutes should serve as support to legalization in the United States.

IV. CONCLUSION

All three alternatives to the criminalization of prostitution are flawed, but all three alternatives are better than criminalization. Criminalization exacerbates the harms experienced by women. Of the three, the legalization of prostitution remains the best option. Prostitution is not going away any time soon, and the best way to prevent the spread of venereal disease and stop violence against women is to regulate it. Nevada’s system represents a solid foundation, but it requires some improvements, such as less regulation in terms of where a prostitute may live, the ability to form a union, and, most importantly, more programs to help women who want to leave the profession.

All of these alternatives have one common flaw that is troubling. Not a single approach takes into account why women become prostitutes. If most women do so because of a lack of viable employment options, then society should be addressing that problem directly. If women choose prostitution because they have been abused

2013), http://www.nytimes.com/2013/12/21/world/americas/canadian-court-strikes-down-laws-on-sex-trade.html?_r=0.

²³⁴ Danna Altemimei, *Prostitution and the Right to Privacy: A Comparative Analysis of Current Law in the United States and Canada*, 2013 U. ILL. L. REV. 625, 631 (2013).

²³⁵ *Id.*

²³⁶ *Id.* at 626.

²³⁷ Austen, *supra* note 233.

²³⁸ *Canada (Attorney General) v. Bedford*, [2013] SCC 72 (Can.).

2014]

UNDERSTANDING PROSTITUTION

721

as children, then they should be given the counseling they need to combat their childhood abuse. If it is because the women enjoy the profession and desire this career for the sexual freedom it offers, then we should be supporting these women and should pursue steps to ensure not only their safety, but the safety of their clients as well. While there may not be a perfect solution, criminalizing prostitution is not the answer.