

National Task Force on Prostitution

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DECriminalization of Prostitution

A Position Paper

Prostitution exists because of the male dominance of every society of any size. This dominance results in a double standard of sexual behavior for men and women, and is reflected in the discrepancy between women's and men's earning power, with women in the United States earning 59 cents for every dollar men earn. Prostitution has existed in every society for which there are written records, and there is some evidence that non-human primates engage in activity that could be labeled prostitution. Even though countries such as China and Cuba have undertaken massive efforts to rehabilitate prostitutes and eradicate the economic dependence of women on men, there is some evidence that prostitution has reappeared in those countries, particularly with the recent increase in tourism.

Prostitution tends to increase in times of high unemployment and/or high inflation, and there has been a marked increase in the number of arrests before each major war in this century. Over 70,000 people were arrested in this country, last year, on prostitution charges, up from about 35,000 in 1973, the year the prostitutes' rights movement was founded in this country. Nationwide, about 70 to 75 percent of the people arrested on prostitution charges are women, about 15 percent are male prostitutes (mostly transvestites and transsexuals), and only about 10 percent are male customers. At least the same number of people are arrested on lesser charges connected with prostitution, such as loitering (with or without "intent to commit prostitution"), obstructing the sidewalk or doorway, or disturbing the peace. Again, the overwhelming majority of those arrested are women. At least a third of the women in jail at any given time are there on prostitution charges, and in one recent study in the San Francisco

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County Jail, 44 percent of the women were there for prostitution. The enforcement of the laws similarly discriminates against women and men of color, and against those from the lower economic classes of this society. 85 to 90 percent of the arrests are of street prostitutes, although only about 10 to 15 percent of prostitutes work the streets. Although prostitution is a non-violent misdemeanor, and although the complaining witness is almost always an undercover police officer, the penalties for violating the prostitution laws are often more severe than those for petty theft, or even wife beating.

In 1949, the United Nations called for the decriminalization of the specific transaction between prostitute and customer that is prostitution, while it recommended keeping all related activities a crime. In those countries that have adopted most of the provisions of the Convention (most of the Northern European countries), the problems that so plague the prohibited system in the United States are much less severe. However, the criminalizing of related activities such as pimping, renting a premises for the purposes of prostitution, keeping a disorderly house, advertising and soliciting, etc., makes it almost impossible to find a place to work legally or to engage in the kind of activity that is necessary to contact prospective clients. This leaves the prostitute subject to the exploitation of criminal third parties, landlords, bar owners, etc. The criminalizing of pimping, especially when no distinction is made between a person who is supported by one prostitute with whom he or she lives, and a person who receives a commission from several prostitutes, or a person who takes all of the money the prostitute earns, means that the prostitute's personal relationships become illegal. This reinforces the very dependency on pimps that the laws are designed to prevent, and the pimps then feel free to be abusive since the prostitute is unlikely to report the abuse since the relation-

ship itself is illegal.

In the United States, soliciting and engaging in an act of prostitution is a crime in every state except Nevada, where prostitution is illegal so long as it is confined to brothels in rural counties that opt for that system. In most U.S. cities, however, a sort of de facto legalization of prostitution has developed, with massage parlors and other euphemistic businesses being granted licenses to operate. In many areas, the women and men who work for these houses are required to obtain a massage license, but instead of these licenses being issued by the Health Department, which would be appropriate, they are issued by the Vice Squad. If the applicant has a prior conviction on prostitution charges, the license is denied. These quasi legal prostitution businesses are somewhat less than ideal places to work for the prostitute, with the same kinds of problems that occur in the legal brothel systems in Nevada and countries such as Morocco. In this country, prostitutes who work in brothels are often required to work 14-hour days, serving 10 to 15 customers a day or more, with little or no right of refusal. At the extreme end that exists in some countries, brothel prostitutes are sometimes required to see up to 80 to 120, or even 150 customers a day, so that they never even get out of bed. Prohibition makes it possible for the owners of such businesses to exploit the prostitute workers without any limitations. Even the legal, regulated systems that have so far been developed have been designed with only the benefit of the customer (the legislators) in mind, with little or no thought being given to the working conditions of the employees.

In the United States, there are periodic crackdowns on street prostitution, which usually result in most of the prostitutes moving from one city to another. For the most part the indoor businesses are ignored, but occasionally there is a crackdown on massage parlors as well, which results in an increase in street

prostitution, inspiring a frenzy of arrests of the women working the streets, causing them to move to another city, and the cycle goes on endlessly. These crackdowns are generally initiated with a fanfare about how the police are going to rid the streets of violent crime, but in fact crackdowns are generally followed by an increase in robberies and burglaries, and other real economic crimes, as the persons dependent on jailed prostitutes seek to replace lost income. The crackdowns, meanwhile, reinforce the dependence of prostitutes on pimps in a number of ways. Most obvious is the fact that the prostitute needs to have someone outside of the jail to post bail, arrange for lawyers, take care of their children, etc. But a second factor is that many prostitutes move to another city during a crackdown, a move that is made easier if she is in a pimp-controlled stable, so that any support outside of that stable in the local community is cut off. Were prostitutes allowed to work legally and independently in one city for a period of several years, they would be able to develop a more stable network and support system, which would make it easier for them to get out of abusive situations should they occur.

While this country spends an inordinate amount of money to arrest, prosecute and incarcerate women and men involved in prostitution, almost no money is spent on programs that would help them get out of prostitution if they wanted to. There is an urgent need for shelters and drop-in centers to provide emotional, educational, and vocational counseling and training. There are a few projects being developed around the country, such as Mari Maggu's Scapegoat Alternatives for Women in New York, but much more needs to be done. Any such programs will have to acknowledge and deal with the economic incentive that prostitution offers, where the typical prostitute earns \$85 to \$135 a day or more, in contrast with about \$35 or \$40 for most office jobs. Work for which prostitutes would be eminently qualified would include counseling, which most of them do even more

than they provide sexual services. A good place to start would be to train prostitutes as peer counselors for any programs that are set up in the next few years.

But before much can be done to help prostitutes, the laws must be changed. The transaction between a prostitute and a customer must be removed from the purview of the law completely. The laws against pimping, renting a premises, running a disorderly house, serving alcohol to a prostitute, soliciting and advertising, and conspiracy to commit prostitution must be repealed and/or replaced with business codes that would control the exploitation that currently exists in the prohibited market. Street prostitution could be limited by requiring prostitutes to obtain the same sellers' permits that street artists and musicians must have now, and limiting all such commercial street activity to areas zoned for commercial or mixed residential and commercial use.

At the same time, new laws must be developed to deal with forced prostitution (analogous to rape), which put the onus on the forcer, not the slave. The problems of juvenile prostitution, which is really the sexual abuse of children by adults, should be dealt with by the laws against child abuse that already exist. Pimping, or living off the earnings of a prostitute, should be ignored so long as the third party is receiving funds from only one prostitute. Someone who receives funds from more than one prostitute should be presumed to be in business, and should be regulated by the same sorts of business codes that now deal with temporary employment agencies, hair dressing establishments, and theatrical agents, for example.

In the meantime, until prostitution has been decriminalized, and the predators regulated, pressure must be put on police and sheriff's departments, district attorneys and public defenders, and judges, to improve the treatment of persons arrested under these archaic and oppressive laws. The onus for the

abuses that co-exist with illegal prostitution must be put on the system that perpetuates those abuses, and not any longer on the prostitutes, who are the victims of those abuses.

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