

Prostitution in the United States, Russia, and Great Britain:  
A New Strategy for the Oldest Profession

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## I. Introduction

“Why is it illegal to sell something that is perfectly legal to give away?”<sup>1</sup> In a word, that ‘something’ is sex, and the means by which the “product” is sold is prostitution. There are many definitions of prostitution, some that harbor negative connotations toward the practice. For example, according to the American Heritage Dictionary, prostitution has two definitions: 1) The act or practice of engaging in sex acts for hire; and 2) The act or an instance of offering or devoting one's talent to an unworthy use or cause.<sup>2</sup> Webster’s Unabridged Revised Dictionary first defines prostitution as “the act or practice of prostituting or offering the body to an indiscriminate intercourse with men; common lewdness of a woman.”<sup>3</sup> Perhaps it can simply be reduced to bias on the part of different lexicographers. However, small insertions of words like “promiscuous” or “lewdness” are also reflections of societal attitudes towards prostitution. It is within this framework that lawmakers develop strategies towards prostitution. This paper does not seek to impose judgment on prostitution and thus, for the purposes of this paper, prostitution is defined objectively as “offering or engaging in sexual intercourse for compensation (usually monetary).”

Perceptions of prostitution have changed over time, vacillating between acceptance and abhorrence. A Moscow journalist once remarked:

Prostitution has existed throughout human history. For thousands of years society has got along with sex workers, but every now and then considerations of outraged morality prevail, and then prostitution is outlawed. Yet some time passes (usually not much), and it thrives again. For a while society puts up with brothels, but then a new cleansing campaign begins and prostitutes fall

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<sup>1</sup> BBC News – TALKING POINT – Prostitution: Should The Law Be Changed. “Prostitution: should the law be changed?” 2001. [http://news.bbc.co.uk/2/hi/talking\\_point/1625746.stm](http://news.bbc.co.uk/2/hi/talking_point/1625746.stm).

<sup>2</sup> Prostitution. Dictionary.com. *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. <http://dictionary.reference.com/browse/prostitution>.

<sup>3</sup> Prostitution. Dictionary.com. *Webster's Revised Unabridged Dictionary*. MICRA, Inc. <http://dictionary.reference.com/browse/prostitution>.

on hard times; before long, however, the campaign lets up and everything slips back into the old pattern. And so it goes on from one century to the next.<sup>4</sup>

As attitudes waver, so too do prostitution laws. Because of the extremes in opinion, there has never been a universal prostitution law. Even within individual countries, policy towards prostitution can vary. For example, “The United States Government takes a firm stand against proposals to legalize prostitution because prostitution directly contributes to the modern-day slave trade and is inherently demeaning.”<sup>5</sup> At the same time, prostitution is legal in at least 11 counties in Nevada.<sup>6</sup> All around the world, prostitution is of varying degrees of legality; this legality is dependant upon the ways in which countries adopt or change laws in order to employ the most suitable policy towards prostitution.

The purpose of this paper is to analyze different legal approaches to prostitution in order to discern the best possible policy towards prostitution. Specifically, this paper will focus on the varying degrees of legality in the United States, Great Britain, and Russia. With respect to these countries, this paper will discuss: 1) the atmosphere surrounding prostitution. What are the statistics, the numbers-side of prostitution?; 2) how prostitution might operate in a society that condones the practice through its laws. In what way are the laws manifested in society?; and 3) the strategies that different groups have proposed/implemented. Why? And to what end? In the process of studying the laws of the United States, Great Britain, and Russia, this paper will likely expose weaknesses in existing prostitution law. Further analysis will implicate an enhanced policy for prostitution applicable across the board. This analysis will include 1) discerning between decriminalization and legalization; 2) a close

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<sup>4</sup> Igor Korolkov, “Brothels -in-Law?” *Moscow News (Russia)*, sec. HOME, no. 31. August 14, 2002.

<sup>5</sup> U.S. Department of State. “Trafficking in Persons Report.” 2004.

<http://www.state.gov/g/tip/rls/tiprpt/2004/34021.htm>.

<sup>6</sup> Prostitution ProCon.org. “U.S. Prostitution Laws and Related Punishments.” 2007.

<http://www.prostitutionprocon.org/law.htm>.

look at three different approaches to prostitution; and ultimately, 3) a proposal for the most workable prostitution policy.

## **II. Background: Current Laws in the United States, Russia, and Great Britain**

### *A. United States: Illegal – Enforced*

With the exceptions of Nevada and Rhode Island, prostitution is basically illegal in the United States. In Nevada, although sex workers do not have carte blanche, some legal prostitution is permitted. Brothels are permitted and are regulated through requirements of licensing and registration for both owner and sex worker.<sup>7</sup> Regulation power is also derived from Nevada state law that requires all sex workers to have weekly checks for sexually transmitted diseases (STDs) and monthly testing for the human immunodeficiency virus (HIV).<sup>8</sup> A brothel owner can be held liable for any damages suffered by a client if he continues to employ a sex worker who has tested positive for HIV (and has passed it on to the client).<sup>9</sup> According to a Nevada law passed in 1988, condom use is mandatory for all sexual forms of intercourse.<sup>10</sup> In Rhode Island, although operating a brothel and trafficking for purposes of prostitution are illegal, a loophole exists in Rhode Island’s General Laws that permits prostitution as long as it occurs indoors.<sup>11</sup> Soliciting and loitering for “indecent

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<sup>7</sup> Prostitution ProCon.org.

<sup>8</sup> Nevada Revised Statutes: Chapter 41 – Actions And Proceedings In Particular Cases Concerning Persons. Sec. 1397. <http://www.leg.state.nv.us/nrs/NRS-041.html#NRS041Sec1397>.

<sup>9</sup> Nevada Revised Statutes: Chapter 41.

<sup>10</sup> Albert AE, Hatcher RA, and Warner DL, “Facilitating condom use with clients during commercial sex in Nevada’s legal brothels.” *American Journal of Public Health*. 1998 Apr;88(4):643-6. <http://www.ponline.org/docs/1251/132597.html>.

<sup>11</sup> The State of Rhode Island General Laws. Title 11 Criminal Offenses – Prostitution and Lewdness. <http://www.rilin.state.ri.us/Statutes/TITLE11/11-34/11-34-8.HTM>.

purposes” are illegal.<sup>12</sup> The legislature is currently considering a bill to revise the statute in order to remove the loophole allowing indoor prostitution.<sup>13</sup>

In the other 48 states, prostitution is illegal. Penalties and crime classification vary significantly and are available for sex workers, customers, pimps, and brothel owners. For example, in Arkansas, the maximum penalty for pimping is custody for 1 year and/or a fine of \$1,000 (Class A Misdemeanor) whereas in Colorado, pimping is a Class 3 Felony with a penalty of 4 to 12 years in custody and/or a fine of \$3,000 to \$750,000.<sup>14</sup> These legal discrepancies exist and are possible because the federal government does not have jurisdiction over state prostitution laws. In *Hoke v. United States* (1913), the Supreme Court ruled that regulation of prostitution falls under the police powers of the several states.<sup>15</sup> Therefore, states can decide for themselves how they will address prostitution. However, Congress can regulate the trafficking of sex workers as a matter of interstate travel.<sup>16</sup>

Federal laws (codified in the United States Code) are primarily concerned with trafficking, but make illegal prostitution near military and naval establishments,<sup>17</sup> and deny admission to the United States or certificates of registration because of engagement in or conviction of prostitution.<sup>18</sup> As mentioned previously, the federal government strongly opposes the legalization of prostitution. This position is outlined in a 2002 National Security

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<sup>12</sup> Prostitution ProCon.org. “Prostitution Laws of Rhode Island.”

<http://www.prostitutionprocon.org/rhodeisland.htm>.

<sup>13</sup> Cynthia Needham, “Bill To Close Prostitution Loophole.” *The Providence Journal*. 2008.

[http://www.projo.com/news/content/PROSTITUTION\\_BILL\\_03-13-08\\_1F9C07G\\_v10.372d934.html](http://www.projo.com/news/content/PROSTITUTION_BILL_03-13-08_1F9C07G_v10.372d934.html).

<sup>14</sup> Prostitution ProCon.org.

<sup>15</sup> United States Supreme Court: *Hoke v. U S*, 227 U.S. 308 (1913).

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=227&invol=308>.

<sup>16</sup> *Hoke v. U S*, 227 U.S. 308 (1913).

<sup>17</sup> United States Code, Title 18, Chapter 67 – Military and Navy. 2006.

<http://uscode.house.gov/download/pls/18C67.txt>.

<sup>18</sup> Prostitution ProCon.org.

Presidential Directive that links prostitution with sex-trafficking and views prostitution as “inherently harmful and dehumanizing.”<sup>19</sup>

There is perhaps no better example of prostitution enforcement practices in the United States than the recent case of Eliot Spitzer, former Governor of New York. Mr. Spitzer resigned from his post as Governor, effective March 17, 2008, after public revelation of his involvement with an international prostitution ring.<sup>20</sup> Not only did Mr. Spitzer resign in the face of pressure from voters, politicians, and the media, but he may also face federal prosecution under the White Slave Traffic Act (Mann Act).<sup>21</sup> Because of his involvement with prostitution, Mr. Spitzer faced the multiple consequences of job loss, public shaming, and potential criminal charges.

#### *B. Russia: Ambiguous/Illegal – Little/No Enforcement*

In Russia, the relationship between prostitution and law has a long history of ambiguity. In the Soviet era, prostitution was not a crime because according to Communist doctrine, such a “capitalist vice” could not technically exist in a socialist society.<sup>22</sup> According to the Great Soviet Encyclopedia, prostitution was even declared as having been liquidated in the Soviet Union.<sup>23</sup> Prostitution was not a criminal offense in the Criminal

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<sup>19</sup> U.S. Department of State. “The Link Between Prostitution and Sex Trafficking.” 2004. <http://www.state.gov/r/pa/ei/rls/38790.htm>.

<sup>20</sup> Tom Leonard, “Eliot Spitzer resigns as Governor of New York after prostitute scandal.” *Telegraph*. 2008. <http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2008/03/12/wspitzer612.xml>.

<sup>21</sup> Eric Weiner, “The Long, Colorful History of the Mann Act.” *National Public Radio*. May 13, 2008. <http://www.npr.org/templates/story/story.php?storyId=88104308>.

<sup>22</sup> “Police: Without Laws We Cannot Curb Prostitution.” *Associated Press Worldstream*. Sec. International News. December 8, 1994.

<sup>23</sup> Большая Советская Энциклопедия. Проституци. (Great Soviet Encyclopedia. Prostitution). <http://www.bse.freecopy.ru/words.php?id=69114&text=%EF%F0%EE%F1%F2%E8%F2%F3%F6%E8%FF>.

Code of the Russian Soviet Federated Socialist Republic (RSFSR), but was covered by “parasitism.”<sup>24</sup>

The Criminal Code of the Russian Federation replaced the Criminal Code of the RSFSR; the State Duma and Federation Council adopted it in 1996.<sup>25</sup> Currently, the Criminal Code of the Russian Federation does not cover the buying and selling of sex. However, the Criminal Code does outlaw “involvement in prostitution by means of applying violence or the threat of its use, blackmail, destroying or damaging property, or by means of fraud,” and “organization or maintenance of hangouts for prostitution.”<sup>26</sup> To summarize, the Criminal Code outlaws coercion into prostitution, pimping, and running brothels, but not the actual buying and selling of sex. Prostitution falls under the Code of Administrative Offenses of the Russian Federation, adopted in 2001. Thus, prostitution is not a criminal offense, but a minor administrative offense subject only to a fine.<sup>27</sup>

Several cases demonstrate the lack of enforcement of prostitution laws. According to The Guardian, in 1999, prostitution was illegal but few paid attention to the law: “a woman caught soliciting could be fined the equivalent of one month's minimum salary - 82 rubles (pounds 2) - a trivial sum for prostitutes in Moscow, St Petersburg and other cities.”<sup>28</sup> In 2000, police detained 68,000 women for prostitution in Moscow;<sup>29</sup> according to a city police spokeswoman, most were quickly released with only some women having to pay a fine.<sup>30</sup>

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<sup>24</sup> R. Beerman. *Soviet Studies*, Vol. 27, No. 3 (Jul., 1975), pp. 500-501. Taylor & Francis, Ltd. <http://www.jstor.org/stable/view/150459?seq=2>.

<sup>25</sup> The Criminal Code of the Russian Federation. <http://www.russian-criminal-code.com/>.

<sup>26</sup> The Criminal Code of the Russian Federation. Sec. IX, Chapter 25.

<sup>27</sup> The Criminal Code of the Russian Federation. Sec. 2, Chapter 6.

<sup>28</sup> “Prostitutes, their clients and the law across Europe.” *The Guardian (London)*. Sec. Guardian Foreign Pages; Pg. 20. October 30, 1999.

<sup>29</sup> “Police detain 68,000 women for prostitution in Moscow.” *Associated Press Worldstream*. Sec. International News. January 12, 2000.

<sup>30</sup> “Police detain 68,000 women for prostitution in Moscow.”

In 2003, a representative of the State Duma's legislative working committee expressed the opinion that “prostitution is a socially dangerous activity that humiliates women and treats them as commodities. Prostitution is not work; it is an activity of organized crime. We reject the legalization or decriminalization of prostitution that would recognize it as work.”<sup>31</sup> Yet, in 2004, the State Duma turned down a proposed bill seeking to further criminalize prostitution by implementing criminal punishment for engaging in prostitution.<sup>32</sup> Only 78 State Duma members gave their support, failing to get the 226 votes necessary for the bill’s passage.

### *C. Great Britain: Legal – Restricted*

In Great Britain, unlike in the United States and in Russia, prostitution is legal: authorities decriminalized the practice in 1959. Although Britain decriminalized the buying and selling of sex, it banned loitering and solicitation for purposes of prostitution (Street Offences Act of 1959).<sup>33</sup> The Sexual Offences Act of 1956 also prohibited the keeping of brothels, controlling prostitution for gain (pimping), and living off of “immoral earnings.”<sup>34</sup> The Sexual Offences Act of 1985 further prohibited kerb crawling, the persistent soliciting of a woman for the purpose of prostitution.<sup>35</sup> Under the most recent Sexual Offences Act (2003), prostitution remains legal, while brothel activity and pimping remain illegal. Kerb crawling and other offenses are treated as gender neutral: both men and women can be

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<sup>31</sup> Donna M. Hughes. “Nyet to Trafficking: Russians show political will to fight prostitution.” *National Review*. June 18, 2003. <http://www.nationalreview.com/comment/comment-hughes061803.asp>.

<sup>32</sup> Diana Rudakova, “State Duma turns down bill for punishment of prostitution.” *TASS*. November 19, 2004.

<sup>33</sup> Office of Public Sector Information. Street Offences Act 1957 (c.57). [http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1959/cukpga\\_19590057\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1959/cukpga_19590057_en_1).

<sup>34</sup> The Crown Prosecution Service: Offences Against Public Morals and Decency. [http://www.cps.gov.uk/legal/section12/chapter\\_d.html](http://www.cps.gov.uk/legal/section12/chapter_d.html).

<sup>35</sup> The UK Statute Law Database. Sexual Offences Act 1985 (c. 44). <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=42&NavFrom=2&parentActiveTextDocId=1299674&activetextdocid=1299678>.

victims as well as perpetrators. In general, “the only legal way to sell sex is to do it alone, and in private.”<sup>36</sup>

Currently, Britain is reviewing its prostitution laws in the face of many competing strategies for change. In 2006, the Home Office considered proposals for allowing sex workers to work in “mini-brothels.”<sup>37</sup> For enhanced safety purposes, two sex workers would be allowed to work together in one place. In 2007, Tony Blair’s 55<sup>th</sup> Criminal Justice and Immigration Bill announced a package of criminal justice reforms that would eliminate the term “common prostitute,” and ease restrictions on sex workers.<sup>38</sup> Although the bill does not fully decriminalize loitering or soliciting for purposes of prostitution, it makes only “persistent” loitering or soliciting a crime.<sup>39</sup> Additionally, the bill intends to encourage sex workers towards rehabilitation. This relaxation of the law is in contrast to Women’s Minister Harriet Harman’s view that the purchase of sex should be made illegal.<sup>40</sup> In line with the new reforms, a British delegation visited Sweden in 2008 in order to further study Sweden’s Sex Purchase Law that criminalizes the buy-side of sex.<sup>41</sup>

### **III. United States, Russia, and Great Britain: A Closer Look**

#### *A. United States: Numbers, The Practice of Prostitution, and Proposals For Change*

Because of the nature of prostitution, it is difficult to estimate how many sex workers are currently working in the United States; the estimate is something close to 100,000 sex workers. Between 2000 and 2005, FBI Arrest Statistics revealed arrests in the 70 and 80

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<sup>36</sup> “Indecent Proposals: Prostitution and advertising.” *The Economist (U.S. Edition)*. November 3, 2007.

<sup>37</sup> “Searching Questions.” *The Times (London)*. December 14, 2006.

<sup>38</sup> Alan Travis, “Justice reforms focus on prostitution and jail numbers: Proposal to rid law of ‘common prostitute’ term.” *The Guardian*. June 27, 2007.  
<http://www.guardian.co.uk/uk/2007/jun/27/ukcrime.prisonsandprobation>.

<sup>39</sup> The Criminal Justice and Immigration Bill. Bill 130 of 2006-07. Research Paper 07/65. August 9, 2007.  
<http://www.parliament.uk/commons/lib/research/rp2007/rp07-065.pdf>.

<sup>40</sup> “Buying sex should be illegal, says Harman.” *Daily Mail (London)*. December 21, 2007.

<sup>41</sup> Karl Ritter, “Once mocked, Sweden's pioneering prostitution law attracts world interest.” *Associated Press Worldstream*. March 16, 2008.

thousands, from as low as 75,200 in 2003 to as high as 87,900 in 2004.<sup>42</sup> In 2007, national arrest figures ranged over 100,000 for prostitution-related arrests.<sup>43</sup> Approximately 1% of American women have worked as sex workers in the United States.<sup>44</sup> Corresponding to the rising figures in prostitution, an estimated 1,039,000 to 1,185,000 persons in the United States were living with HIV/AIDS at the end of 2003, with 24-27% undiagnosed and unaware of their infection status.<sup>45</sup> In 2007, it was estimated that 1.3 million people were living with AIDS/HIV in all of North America with approximately 46,000 new cases among adults and children.<sup>46</sup> Although transmission of HIV/AIDS has a strong correlation with intravenous drug use, the spread of disease is also a primary concern of prostitution.

Prostitution is basically perceived in society in two opposing paradigms: “liberated whore” or “inherent victim.” Of the 50 women working for the Emperors Club VIP, an illegal prostitution ring with which former Governor Eliot Spitzer was allegedly involved, few would be considered “inherent victims.” Before the website was dismantled in March 2008<sup>47</sup>, Emperors Club VIP boasted a specialization in “introductions of: fashion models, pageant winners and exquisite students, graduates and women of successful careers (finance, art, media etc...) to gentlemen of exceptional standards.”<sup>48</sup> These are the high-end women of escort-like services who are able to charge often exorbitant prices. They see themselves as

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<sup>42</sup> Easy Access to FBI Arrest Statistics: 1994-2005. “Estimated arrests of all persons in the United States.” 2005. [http://ojjdp.ncjrs.org/ojstatbb/ezaucr/asp/ucr\\_display.asp](http://ojjdp.ncjrs.org/ojstatbb/ezaucr/asp/ucr_display.asp).

<sup>43</sup> Prostitution ProCon.org. “How many prostitutes are in the United States and the rest of the world?” 2007. <http://www.prostitutionprocon.org/questions/population.htm>.

<sup>44</sup> Prostitution ProCon.org.

<sup>45</sup> Department of Health and Human Services. Centers for Disease Control and Prevention. “HIV/AIDS Statistics and Surveillance.” 2007. <http://www.cdc.gov/hiv/topics/surveillance/basic.htm>.

<sup>46</sup> Global Health Reporting.org. “HIV/AIDS: Facts at a Glance.” 2007. <http://www.globalhealthreporting.org/diseaseinfo.asp?id=23>.

<sup>47</sup> Emperors Club VIP: website disabled in March, 2008. <http://emperorsclubvip.com/>.

<sup>48</sup> “Emperors Club: All About Eliot Spitzer’s Alleged Prostitution Ring.” *The Huffington Post*. March 10, 2008. [http://www.huffingtonpost.com/2008/03/10/emperors-club-all-about-\\_n\\_90768.html](http://www.huffingtonpost.com/2008/03/10/emperors-club-all-about-_n_90768.html).

“career sex workers” – not “survivalists who are just making part-time money.”<sup>49</sup> At the Emperors Club VIP, women were given diamond ratings between three and seven diamonds; a woman with a seven-diamond rating could cost up to \$31,000 per day or \$3,100 per hour.<sup>50</sup> Despite being an illegal business, in its four years of operation, the Emperors Club VIP was able to rake in profits of approximately \$1,000,000.<sup>51</sup>

Sex workers in the high-end business have also been able to benefit from technological advancement like web technology (e.g. advertisements, online message boards, electronic fund transfers) and communication technology (e.g. text messaging to note arrival and departure times of both client and worker).<sup>52</sup> There is an established link between sex and the internet and authorities claim that online prostitution is thriving.<sup>53</sup> A recent example of the online prostitution business is the controversial Erotic Services section of Craigslist, an international online network featuring classified advertisements. Craigslist Spokeswoman Susan Best has said, “If you’re a prostitute or a potential john, you’re taking a big risk putting a listing on Craigslist, because we cooperate actively with police departments.”<sup>54</sup> However, police cite Craigslist as a favorite place to advertise online, where in one day, some 9,000 listings are added to the Erotic Services section in the New York region alone.<sup>55</sup> Despite laws against prostitution, it appears that many workers and clients are willing to take the risk.

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<sup>49</sup> Sudhir Venkatesh, “Sex Trade Economy, Transcript.” Scott Simon, host. *National Public Radio*. March 15, 2008.

<sup>50</sup> “Emperors Club: All About Eliot Spitzer’s Alleged Prostitution Ring.”

<sup>51</sup> Alan Feuer, “Four Charged With Running Online Prostitution Ring.” *The New York Times*. Sec. N.Y. Region. March 7, 2008. [http://www.nytimes.com/2008/03/07/nyregion/07prostitution.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/03/07/nyregion/07prostitution.html?_r=1&oref=slogin).

<sup>52</sup> “Prostitution in a wired world: How technology has changed the world’s oldest profession.” *Associated Press Worldstream*. March 12, 2008.

<sup>53</sup> Bruce Lambert, “As Prostitutes Turn to Craigslist, Law Enforcement Takes Notice.” *The New York Times*. September 5, 2007.

<sup>54</sup> Craigsclist. “Entries tagged as susan mactavish best.” May 1, 2008. <http://craigsclist.org/plugin/tag/susan+mactavish+best>.

<sup>55</sup> Lambert, “As Prostitutes Turn to Craigslist, Law Enforcement Takes Notice.”

At the opposite end of the spectrum, there is a subcategory of prostitutes known as streetwalkers. These are sex workers who typically solicit business by walking the streets and are estimated to make up approximately 20% of the sex worker population in major cities.<sup>56</sup> Although people at the high-end of the spectrum are subject to physical abuse,<sup>57</sup> it is said that streetwalkers are subject to more violence because of their high visibility, accessibility, and the desperate conditions that originally put them on the street.<sup>58</sup>

One group dedicated to addressing violence against sex workers is the Sex Workers Outreach Project (SWOP), a “national social justice network dedicated to the fundamental human rights of sex workers and their communities, focusing on ending violence and stigma through education and advocacy.”<sup>59</sup> SWOP attributes violence against sex workers to their criminal status, and thus, in 2004, spearheaded a ballot initiative in Berkeley, California, that called for decriminalization of prostitution. Ballot Measure Q: Enforcement of State Prostitution Laws (a.k.a. Angel’s Initiative) proposed, “Shall an ordinance be adopted to: 1) make enforcement of prostitution laws the lowest priority; 2) oppose state laws making prostitution a crime; and 3) require semi-annual reporting of prostitution-related Berkeley Police Department law enforcement activities?”<sup>60</sup> Arguments in favor of the ballot initiative included decreased violence against women, improved public health and safety, and promotion of education over incarceration.<sup>61</sup> Arguments against the ballot initiative included

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<sup>56</sup> Wendy McElroy, “Tis pity she’s a whore; If you want to know what prostitutes go through, try asking them – and listening to the answers.” *The Globe and Mail (Canada)*. January 27, 2007.

<sup>57</sup> Venkatesh, “Sex Trade Economy, Transcript.”

<sup>58</sup> McElroy, “Tis pity she’s a whore.”

<sup>59</sup> Sex Workers Outreach Project. “About US.” 2007. <http://www.swopusa.org/node/25>.

<sup>60</sup> City of Berkeley. Election Info: November 2004 Ballot Measure: Enforcement of State Prostitution Laws (Angel’s Initiative). “Ballot Title, Text and City Attorney Analysis.” 2004. <http://www.ci.berkeley.ca.us/elections/measures/2004/nov/qAngelsTTA1.pdf>.

<sup>61</sup> City of Berkeley. Election Info: November 2004 Ballot Measure: Enforcement of State Prostitution Laws (Angel’s Initiative). “Argument For.” 2004. <http://www.ci.berkeley.ca.us/elections/measures/2004/nov/qAngelsFor.pdf>.

a concern for increased street prostitution as a result of reduced enforcement and its lack of movement towards the goal of safer sex work.<sup>62</sup> In November 2004, 50,741 votes were counted for Measure Q with only 18,516 (36.49%) voters voting in favor of the measure.<sup>63</sup> The majority of voters (63.51%) voted against Measure Q. The voting pattern for Measure Q, made clear that, at least in the city of Berkeley, residents were not ready to decriminalize. When commenting on the 2004 ballot initiative, Robin Few mentioned a huge backlash against the idea of decriminalizing, accompanied by fears that every prostitute would come to Berkeley.<sup>64</sup> She continues to advocate for more rights and labor laws – using labor as an ally.<sup>65</sup> She emphasized that sex workers have no choice, and that so long as prostitution is criminalized, not only do the workers have no rights, but also criminals (the mob, for example) can profit off of prostitution work.<sup>66</sup>

Another approach to prostitution, although dramatically different, is known colloquially as the shaming approach. This approach involves publicly shaming those caught soliciting prostitutes. It is an attempt to target the buy-side of prostitution where the idea is to curb demand through shame. The prospect of public shame or bringing shame on the family is thought to reduce demand for prostitution. Strategies include posting pictures of those arrested for solicitation on police websites or public access television, seizing their cars, or sending letters home to their families.<sup>67</sup> Many cities across the United States that

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<sup>62</sup> City of Berkeley. Election Info: November 2004 Ballot Measure: Enforcement of State Prostitution Laws (Angel's Initiative). "Rebuttal." 2004.

<http://www.ci.berkeley.ca.us/elections/measures/2004/nov/qAngelsRebuttal2For.pdf>

<sup>63</sup> City of Berkeley General Municipal Election – November 2, 2004. "Official Results." 2004.

<http://www.ci.berkeley.ca.us/uploadedFiles/Clerk/Elections/110204resultsfinal.pdf>

<sup>64</sup> Robin Few. "INSIDE DEEP THROAT: Reflections about the Sex Industry and Prostitution." (lecture, University of California, Berkeley, Berkeley CA, September 25, 2007).

<sup>65</sup> Few, "INSIDE DEEP THROAT: Reflections about the Sex Industry and Prostitution."

<sup>66</sup> Few, "INSIDE DEEP THROAT: Reflections about the Sex Industry and Prostitution."

<sup>67</sup> Larry Neumeister, "Shame is the game in prostitution fight as cops seek to curb demand with crackdown on johns." *Associated Press Worldstream*. March 16, 2008.

have tried the shame approach including major cities like Chicago, Raleigh, St. Paul, Denver, Detroit, Los Angeles, and Omaha.<sup>68</sup> The results of a two-year study revealed the existence of some form of shaming methodology in 200 communities across the nation.<sup>69</sup> Councilwoman Carol Duncan of Alabama supports the shaming approach in order to curb prostitution in Birmingham by “embarrassing prostitutes and their patrons.”<sup>70</sup> However, the question then arises as to the effects of shaming. At least two cities have not found shaming to be an effective way to curb prostitution. In Kansas City, Police Captain Richard Lockhart commented, “We didn't arrest any fewer people. We just arrested different people.”<sup>71</sup> More street people were arrested instead of affluent or educated people who avoided the prostitution-infested areas. In Chicago, a shame campaign was implemented in 2005 when prostitution arrest rates were already going down. Although prostitution arrests decreased by 16.2% the following year, crime rates also decreased for almost every other category of crime (many without shaming programs).<sup>72</sup> “Though modern psychological understanding would seem to support its potential effectiveness, statistics in communities where it has been implemented do not seem to indicate that it is working.”<sup>73</sup>

In the United States, there are many divided opinions as to the most effective way to approach prostitution. Attorneys like David Bigeleisen will lobby for legislation to permit licensed or zoned prostitution houses and even decriminalization in order to improve health

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<sup>68</sup> Neumeister, “Shame is the game in prostitution fight as cops seek to curb demand with crackdown on johns.”

<sup>69</sup> Larry Neumeister, “Spitzer Fall Renews Prostitution Debate.” *Associated Press Worldstream*. March 16, 2008.

<sup>70</sup> “City aims to put photos of prostitutes, clients on TV.” *Newshouse News Service*. October 2, 2007.

<sup>71</sup> Neumeister, “Shame is the game in prostitution fight as cops seek to curb demand with crackdown on johns.”

<sup>72</sup> “Bringing Back the Stocks.” *Celestiniosity*. 2008. <http://celestinosity.com/2008/02/25/bringing-back-the-stocks/>.

<sup>73</sup> “Bringing Back the Stocks.”

and safety for sex workers.<sup>74</sup> At the same time, psychologists like Melissa Farley purport that neither legalizing nor decriminalizing the practice improves prostitution.<sup>75</sup> Feminists also express divided opinions on the issue: Katharine Barry and Catharine MacKinnon hold an abolitionist perspective that seeks ultimately to eliminate prostitution as a practice.<sup>76</sup> Berta Hernandez-Truyol and others see prostitution as work, in which a prostitute contributes to the debate of labor rights as human rights.<sup>77</sup> Debates about prostitution continue in many different levels of society.

*B. Russia: Numbers, The Practice of Prostitution, and Proposals For Change*

As in the United States, the exact number of sex workers in Russia is impossible to find. Russian crime statistics are virtually inaccessible, a relic from Soviet times when no crime statistics were recorded at all.<sup>78</sup> However, according to Nezavisimaya Gazeta (Independent Newspaper), there were an estimated 100,000 sex workers working in Moscow alone in 2003. This is a 43% increase from the estimated 70,000 women reportedly working in Moscow as prostitutes in 2000.<sup>79</sup> The sex industry was estimated at being between \$400 and \$500 million dollars.<sup>80</sup> The first case of HIV in Russia was identified in 1987;<sup>81</sup> ten

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<sup>74</sup> Sex Workers Outreach Project. "Argument in Support of David Bigeleisen and Margaret Grover's Proposal to Decriminalize Prostitution in California."

[http://www.aplehawaii.org/Resources\\_For\\_Prost\\_Law/Additional\\_Materials/SWOP\\_Support\\_Repeal.pdf](http://www.aplehawaii.org/Resources_For_Prost_Law/Additional_Materials/SWOP_Support_Repeal.pdf).

<sup>75</sup> Melissa Farley, "Bad for the Body, Bad for the Heart: Prostitution Harms Women Even if Legalized or Decriminalized." 2004. <http://www.prostitutionresearch.com/FarleyVAW.pdf>.

<sup>76</sup> Kathryn Abrams. "Feminist Perspectives on Prostitution" (lecture, University of California, Berkeley, Berkeley CA, November 29, 2007.).

<sup>77</sup> Hernandez-Truyol, Berte E. and Larson, Jane E., "Sexual Labor and Human Rights, Excerpts." in Kathryn Abrams (ed.), *Materials for Feminist Jurisprudence* (Berkeley: Copy Central, 2007), p. 445.

<sup>78</sup> Yuri N. Maltsev, "Economics of Russian Crime." *The Freeman: Ideas on Liberty*. Vol. 45, No. 12. 1995. <http://www.fee.org/publications/the-freeman/article.asp?aid=4767>.

<sup>79</sup> "Up to 70,000 prostitutes detained in Moscow last year." BBC Summary of World Broadcasts - *Interfax*. January 14, 2000.

<sup>80</sup> Korolkov, "Brothels -in-Law?"

<sup>81</sup> "WORLD AIDS DAY: RUSSIA: HIDDEN TOLL BLAMED ON DRUGS AND PROSTITUTION INFECT THOUSANDS." *The Independent (London)*. November 29, 2000.

years later, local rates of HIV infection were said to have skyrocketed<sup>82</sup> and a 2002 report noted that the HIV infection rate had increased by more than 500% since 1997.<sup>83</sup> The dramatic increase in rates of HIV infection is correlated with the rise in numbers of prostitutes in Russia. In 2006, The Russian Federation recorded 39,000 new cases of HIV infection, bringing the total number to approximately 370,000.<sup>84</sup> However, at the end of 2005, UNAIDS estimated the number to be significantly higher: 940,000 (560,000 – 1.6 million).<sup>85</sup> In 2007, it was estimated that 1.6 million people are living with AIDS/HIV in all of Eastern Europe/Central Asia, with approximately 150,000 new cases among adults and children.<sup>86</sup>

In Russia, there are several distinct types of prostitutes. At the top end of the spectrum, there are elite, high-end prostitutes who have regular wealthy clients. There are also call-girls who are known to be selective about their clientele and view their work as having a social function.<sup>87</sup> The valyutki (hard currency prostitutes) are prostitutes who only accept hard currency. Historically, a majority of the hard currency workers were under the age of 30 and had attained higher or secondary education.<sup>88</sup> There are also streetwalkers who make up approximately 80% of the total number of prostitutes.<sup>89</sup> At the lowest end of the

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<sup>82</sup> Bronwyn McLaren, “Brothel Plan Stirs Passions on Saratov Streets.” *The Moscow Times*. March 12, 1998.

<sup>83</sup> Michael Tierney. “Russian roulette; Since the collapse of communism, the former Soviet Union has been crippled by crime and drugs.” *The Herald (Glasgow)*. November 9, 2002.

<sup>84</sup> UNAIDS. “Eastern Europe and Central Asia: AIDS epidemic update, Regional Summary.” 2007. [http://data.unaids.org/pub/Report/2008/jc1529\\_epibriefs\\_europe\\_casia\\_en.pdf](http://data.unaids.org/pub/Report/2008/jc1529_epibriefs_europe_casia_en.pdf).

<sup>85</sup> UN AIDS. “Eastern Europe and Central Asia: AIDS epidemic update, Regional Summary.”

<sup>86</sup> Global Health Reporting.org. “HIV/AIDS: Facts at a Glance.”

<sup>87</sup> “Prostitution: Law And Reality.” *Russian Press Digest*. Source: Militsiya, No. 11, pp. 16-20. November 30, 1992.

<sup>88</sup> “Prostitution: Law And Reality.”

<sup>89</sup> Johnson’s Russia List “The Criminal Economy: The Structure of Prostitution.” Source: A. A. Mukhin. *Rossiskaia organizovannaia prestupnost’ i vlast’: Istoriia vzaimootnoshenii* [Russian Organized Crime and the State: History of Mutual Relations]. Moscow: Center for Political Information, 2002. pp. 55-57. <http://www.cdi.org/russia/johnson/7069-6.cfm>.

spectrum, where it is the least profitable and the most dangerous, are the prostitutes at railroad stations.<sup>90</sup>

Prostitution is very visible in Russia's capital city; sex workers have a strong capacity to proactively solicit clientele. One does not need to go to a designated area to find a prostitute; in the right situation, the prostitute will come to them. For example, on an average Monday night at Doug and Marty's Boarhouse, a Moscow bar frequented by expatriots and foreigners, the prostitutes have a seemingly good strategic plan. Given the belief that foreigners have a lot of money, it is an ideal place for hard currency prostitutes to solicit business. This is in addition to the fact that on Monday nights, Boarhouse has drink specials: while normally a cocktail will cost approximately 180 rubles (~\$7), from 7:00p.m. to 8:00p.m., drinks are four for the price of one, three for the price of one from 8:00p.m. to 9:00p.m., and two for the price of one from 9:00p.m. to 10:00pm. This is the countdown.<sup>91</sup> Prostitutes begin to show up around 10:00p.m., knowing that the clientele is largely foreign (and likely rich), inebriated (having started early in the night and able to get drinks for cheap), and out to have a good time (dancing begins at 10:00p.m.). Here, as in the rest of the country, prostitutes come in all shapes and sizes: according to one source, even "anorexic and hairy prostitutes are all the rage in Moscow."<sup>92</sup>

Particularly in Russia, prostitution is directly correlated with economic difficulties, wide gaps in standards of living, and declining social and moral principles. The country was particularly unstable around the time of the collapse of the Soviet Union when not only was

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<sup>90</sup> Johnson's Russia List "The Criminal Economy: The Structure of Prostitution."

<sup>91</sup> Personal account of travel experiences in Moscow, Russia. August-December 2006.

<sup>92</sup> "Anorexic and hairy prostitutes all the rage in Moscow." *Pravda*. November 19, 2007.  
[http://english.pravda.ru/society/sex/19-11-2007/101146-hairy\\_prostitute-0](http://english.pravda.ru/society/sex/19-11-2007/101146-hairy_prostitute-0).

there less shame attached to prostitution,<sup>93</sup> but prostitution also became a kind of coveted profession in the 1980s. A 1988 poll of schoolgirls even rated prostitution as one of the ten most prestigious/profitable professions.<sup>94</sup> Wealth has since come back to Russia where the nouveau riche can afford gold countertops and Prada bags. Yet, many still fall victim to economic circumstance and the practice of prostitution continues. Prostitutes also encounter two additional obstacles: being within the sphere of organized crime, or being in the throws of Russia's STD epidemic. In terms of safety, women forced into prostitution fear reporting abuse to the police because of potential immigration consequences (particularly women who are trafficked into the country and are living there illegally).<sup>95</sup> When abuse is reported, there is the potential for police to simply "consider beatings part of the hazards of the job."<sup>96</sup> With regard to health and disease, there is little sex education and a general lack of health and social services.<sup>97</sup> As of December 2007, there was only one rehabilitation center specifically for victims of sexual exploitation in all of Russia.<sup>98</sup> Although the use of condoms is widespread, use is inconsistent where clients are often willing to pay more for unprotected sex.<sup>99</sup>

In Russia, opinions toward legalization of prostitution are extremely divided. Highly motivated by the alarming rise in STD rates in the late 1990s, the Volga region began looking at proposals to license prostitutes and brothels. The laws would involve licensing,

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<sup>93</sup> Lawrence Martin, "In absence of law, Soviet prostitution a thriving business." *The Globe and Mail (Canada)*. November 26, 1986.

<sup>94</sup> "Prostitution: Law And Reality."

<sup>95</sup> Vladimir Isachenkov, "Trafficking in women flourishing in former Soviet bloc." *Associated Press*. November 7, 1997.

<sup>96</sup> Owen Matthews, "The Biznesmenki Of Tverskaya." *The Moscow Times*. July 6, 1996.

<sup>97</sup> "Russia holds first official conference on prostitution." *The Pakistan Newswire*. September 15, 2000.

<sup>98</sup> France24. "Prostitution: the dark side of Moscow – Report."

<http://www.youtube.com/watch?v=uoMQJZNfYG4>.

<sup>99</sup> Katarina Jiresova, "Sex workers, policies and HIV: Case from Central and Eastern Europe and Central Asia." [health.osf.lt/downloads/news/7\\_Katarina\\_Jiresova.ppt](http://health.osf.lt/downloads/news/7_Katarina_Jiresova.ppt).

mandatory health exams, paying taxes, and registering clients. Saratov Governor Dmitry Ayatskov supported the licensing of prostitutes to curb the spread of diseases like HIV, syphilis, and tuberculosis.<sup>100</sup> Legalization of prostitution would also create another tax collecting source; police estimate that the monthly income earned collectively by prostitutes is around \$417,000.<sup>101</sup> Although Saratov police were in favor of legalizing prostitution, local prostitutes were skeptical as to the law's ability to benefit them. They were concerned about the potential adverse affects to business as a result of registering clients.<sup>102</sup> Others were also skeptical about the effect of the laws on corruption. Case in point, Chairman of the regional Human Rights Commission, Aleksandr Lando, remarked, 'the most we can expect is to get some measure of control over the spread of AIDS and venereal disease, and, maybe, collect some tax money.'<sup>103</sup> Those adamantly opposed to legalization of prostitution included the Communist Party and the Russian Orthodox Church.<sup>104</sup>

Moscow has also seen numerous proposals to legalize prostitution. Anatoly Stankov, chair of the RF Commission for Combating Organized Crime and Corruption, drafted one proposal that would legalize prostitution in Moscow. As with the proposal in Saratov, the law would ideally better protect prostitutes and serve as a tax collecting source. The law would establish prostitution in entertainment facilities like nightclubs and casinos and prostitutes would have a price list, regular medical checkups, and health certifications. Prostitutes working on their own would be fined. It seemed that prostitutes supported this idea whereas nightclub owners and other businessmen were wary of associating the business

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<sup>100</sup> Alessandra Stanley, "With Prostitution Booming, Legalization Tempts Russia." *The New York Times*. Section A; Page 1; Column 5; Foreign Desk. March 3, 1998.

<sup>101</sup> "Russian region considering legalized prostitution" *The Associated Press*. Section: International News. February 21, 1998.

<sup>102</sup> McLaren, "Brothel Plan Stirs Passions on Saratov Streets."

<sup>103</sup> Katherine Bliss, "Russian Prostitution." *The New York Times* – To The Editor. March 4, 1998.

<sup>104</sup> Richard Beeston, "Russians divided over plans to legalise the 'night butterflies.'" *The Times*. March 2, 1998.

of prostitution with their businesses.<sup>105</sup> Again, the Communist Party and the Russian Orthodox Church were opposed to legalization of prostitution. A few years later, officials gathered at a roundtable to discuss the possibility of legalizing prostitution. Two State Duma deputies, Alexander Barannikov and Andrei Vulf held the position that if legalized, taxes from prostitution could contribute greatly to the state treasury (approximately \$500,000<sup>106</sup>),<sup>107</sup> and offer protection of prostitutes and regulation of the health of prostitutes. Several State Duma deputies, sexologists and others supported legalization. At the same time, police officials and the Russia's Interior Ministry were opposed to legalization because of a belief that prostitution sets the stage for more criminal activity.<sup>108</sup> Prostitutes have not expressed any support for legislation either; they were basically absent from a rally held in the center of Moscow in support of legalization.<sup>109</sup>

*C. Great Britain: Numbers, The Practice of Prostitution, and Proposals For Change*

There are an estimated 80,000 sex workers in Great Britain, the majority of which are in London.<sup>110</sup> These sex workers contribute to an industry reported to bring in approximately \$1.5 billion per year.<sup>111</sup> One 2007 survey revealed that nearly one in five men admitted to paying for sex.<sup>112</sup> According to the Home Office's Crime Statistics, there were 62,081 sexual offenses recorded between 2005 and 2006.<sup>113</sup> The numbers recorded for sexual offenses rose significantly between 2004 and 2005 because of the passage of the Sexual Offenses Act 2003. In 2007, there were an estimated 93,231 people living with HIV in the

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<sup>105</sup> Svetlana Mikhailova and Konstantin Nikolayev, "Moscow To Employ Prostitutes In Municipal Service." *Russian Press Digest*. November 1, 1997.

<sup>106</sup> "Russia: Rally for legalization of prostitution held in centre of Moscow."

<sup>107</sup> Igor Korolkov, "Brothels -in-Law?"

<sup>108</sup> Igor Korolkov, "Brothels -in-Law?"

<sup>109</sup> "Russia: Rally for legalization of prostitution held in centre of Moscow." *Centre TV, Moscow*. July 25, 2002.

<sup>110</sup> Home Office. Prostitution. <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/prostitution/>.

<sup>111</sup> Igor Korolkov, "Brothels -in-Law?"

<sup>112</sup> Martyn Brown, "Confessions of 1-in-5 men who pay for sex." *The Express*. December 24, 2007.

<sup>113</sup> Home Office. Crime Statistics for England and Wales. <http://www.crimestatistics.org.uk/output/page24.asp>.

United Kingdom, up from an estimated 73,000 in 2006.<sup>114</sup> In 2007, it was estimated that 760,000 people are living with AIDS/HIV in all of Western/Central Europe with approximately 31,000 new cases among adults and children.<sup>115</sup>

At one end of the spectrum in Britain, prostitution can be seen as an attractive profession, especially for the women who are able to earn thousands of pounds from sex work. These are women who choose the path of prostitution for their independence, financial security, and possibly enjoyment of sex work.<sup>116</sup> There are even claims that prominent figures like Faria Alam, former Secretary of the Football Association, is working as a prostitute making pounds 8,000 a night.<sup>117</sup> The business is also driven by large numbers of eastern European immigrants and Internet technology. For less “high profile” women, a variety of escort agencies are available and act as management agencies that promote the prostitutes. One such escort service, AProv (Agency Provocateur), sets women up with housing, photographs them, and advertises them on their website.<sup>118</sup> Prices range from pounds 250-800 for a one-hour incall and pounds 300-800 for a one-hour outcall.<sup>119</sup> For the most part, law enforcement officials ignore these escort agencies unless there are violations of trafficking or violence.<sup>120</sup> One vice unit officer remarked, ‘If a girl makes the choice without duress and is not exploited, the police are happy. The taboos have gone. It’s become a career. They’re even advertising in the back of the *Spectator*,<sup>121</sup> for God’s sake!’<sup>122</sup>

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<sup>114</sup> Avert.org. “United Kingdom Statistics Summary: HIV & AIDS.” <http://www.avert.org/uksummary.htm>.

<sup>115</sup> Global Health Reporting.org. “HIV/AIDS: Facts at a Glance.”

<sup>116</sup> John Gibb, “Prostitution: the newest profession.” *The First Post*. February 6, 2007.

<http://www.thefirstpost.co.uk/2366/features/prostitution-the-newest-profession.2>.

<sup>117</sup> Conrad Brown. “50 most shocking pictures from 2007.” *News of the World*.

[http://www.newsoftheworld.co.uk/slidecenter/3012\\_50\\_most\\_shocking\\_pics/pages/005.htm](http://www.newsoftheworld.co.uk/slidecenter/3012_50_most_shocking_pics/pages/005.htm).

<sup>118</sup> AProv (Agency Provocateur). <http://www.aprov.co.uk/index.htm>.

<sup>119</sup> AProv (Agency Provocateur).

<sup>120</sup> Gibb, “Prostitution: the newest profession.”

<sup>121</sup> The Spectator: a weekly UK magazine publishing on political and current events.

<sup>122</sup> Gibb, “Prostitution: the newest profession.”

However not every prostitute has the luxury to choose and/or enjoy their profession. As in every society, there are desperate women in a desperate situation at the opposite end of the spectrum. For example, there are streetwalkers trying to feed their drug addictions or women forced to work to pay their traffickers. Some women need the money simply because they are not paid a decent enough wage. According to one source, many workers in the National Health Service work as prostitutes to supplement inadequate income.<sup>123</sup> These women are in a much more dangerous situation and are in no position of privilege. There are countless examples of police officers ignoring violence against sex workers:

In one horrifying case a half-naked street sex worker ran through the streets of south London after escaping from a customer who had raped and attempted to strangle her. Police officers witnessed her running through the streets in a distressed state and followed her to a local crack house, where she sought refuge. Officers then raided the crack house but ignored requests to gather forensic evidence from the woman. In another case, a street sex worker wanted to report an attempted rape. There was a warrant out for her arrest, so a support worker called the local police station, asking if it could be temporarily waived so that she could report the attack. The police refused.<sup>124</sup>

The practice of ignoring violence against prostitutes stems from attitudes that it is simply a hazard of the job or that a prostitute must endure a certain risk for her “sins.”<sup>125</sup>

Although Britain decriminalized prostitution in 1959, it was not a sufficient solution to the problem of prostitution, particularly in stride with the criminalization of various practices surrounding prostitution. But in 2004, the Home Office appeared to be on the verge of reworking Britain’s sex laws. It was in 2004 that the then Home Secretary David Blunkett proposed a plan to legalize brothels and permit tolerance zones for prostitution. The

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<sup>123</sup> Gibb, “Prostitution: the newest profession.”

<sup>124</sup> Diane Taylor, “Comment & Debate: A brutal indifference: Street sex workers who attempt to report violent attacks are too often shrugged off by police.” *The Guardian (London)*. December 12, 2006.

<sup>125</sup> Deborah Orr, “Why these women are paying the price of a zero tolerance approach to street prostitution.” *The Independent (London)*. Sec. Ipswich Murders: Pg. 2. December 13, 2006.

tolerance zones would be monitored by police or other surveillance and provide easier access to health facilities and other services. As can be expected, there were many mixed opinions about tolerance zones. One study based on 1,000 residents in Liverpool showed 83% in favor of managed zones.<sup>126</sup> Those in opposition to tolerance zones felt that sex worker safety would not improve and that the local communities would be degraded.<sup>127</sup> Even among prostitutes, opinions were divided: the English Collective of Prostitutes was against tolerance zones whereas the International Union of Sex Workers was in favor of tolerance zones.<sup>128</sup> The plan failed: despite appeals for tolerance zones, David Blunkett's successor Charles Clarke turned down the proposals for tolerance zones in January 2006.<sup>129</sup>

Another significant event in Britain, connected with David Blunkett's proposal for legalized brothels and tolerance zones, is the publishing in 2004 of a government paper called "Paying The Price." The document led to the creation of the Home Office's prostitution strategy of prevention, curbing demand, developing paths out of prostitution, ensuring justice, and reducing street prostitution.<sup>130</sup> Arguably, there have not been many changes in the laws since the publishing of the paper; as an example, David Blunkett's proposals ultimately failed. However, this paper is significant because it actively solicited responses from the public. The government did not simply want to engineer a law and impose it on the people; the laws were meant to be a product of collaborative thought and opinion. "Paying The Price" actually received 861 responses from a variety of organizations,

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<sup>126</sup> Helen Carter, "City prepares to vote on official red light zone: Plan for first legal tolerance scheme gets mixed response." *The Guardian*. January 26, 2005. <http://www.guardian.co.uk/uk/2005/jan/26/politics.ukcrime>.

<sup>127</sup> "Blunkett unveils plan for legalized brothels." *The Guardian*. July 16, 2004. <http://www.guardian.co.uk/uk/2004/jul/16/immigrationpolicy>.

<sup>128</sup> Helen Carter, "City prepares to vote on official red light zone: Plan for first legal tolerance scheme gets mixed response."

<sup>129</sup> "Tolerance zones plan in tatters." *The Guardian*. December 14, 2006. <http://www.guardian.co.uk/uk/2006/dec/14/suffolkmurders>.

<sup>130</sup> Home Office. Prostitution.

residents, sex workers, etc.<sup>131</sup> The broad collection of responses shows that the public has a voice and can provide reasonable input as to how to better address the situation.

The examples of the United States, Russia, and Great Britain illuminate upon the different types of prostitution that can occur in a country, and perhaps what is actually happening in practice—with or without respect—to the law on the books. The strategies employed by these countries to address prostitution mirror other countries’ strategies to address prostitution. The 2004 Berkeley ballot initiative, Measure Q, was an attempt at decriminalization in the United States. The shaming approach is one strategy to curb consumer demand. The proposals in Russia as well as the proposal for tolerance zones in Great Britain are legalization strategies. In general, the main strategies have been decriminalization, legalization, and “curbing demand.”

#### **IV. Decriminalization, Legalization, and Curbing Demand: Legal Strategies Expanded**

##### *A. Definitions*

Although the definitions are often muddled, decriminalization is distinguished from legalization. Decriminalization refers to the removal of laws against prostitution, or rather, deregulation of sexual activity among consenting adults. It is legality without additional restrictions or regulations. Some groups hold the opinion that prostitution is work and therefore, prostitutes should have the right to sell their labor as anyone else sells their labor. This is the message of groups like Call Off Your Old Tired Ethics (COYOTE), who recognize prostitution as work.

Legalization takes it further than decriminalization: prostitution is no longer just against the law, but it becomes part of the system of criminal regulation. With legalization,

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<sup>131</sup> Home Office. A Coordinated Prostitution Strategy and a summary of the responses to the ‘Paying the Price’ consultation. <http://www.homeoffice.gov.uk/documents/cons-paying-the-price/>.

the business of prostitution and prostitutes' lives come under government control. This control can be in the form of licensing, tolerance zones, taxing, medical exams, brothel restrictions, etc. Depending on the type of regulation, it is relatively easy to see where government interests lie. For example, taxing prostitutes means additional funds for the budget, and tolerance zones allow the government to hide prostitution by isolating it from the rest of the populace.

The idea of curbing demand stems from the opinion that prostitutes are victims and that the real criminal activity occurs in the buying and not the selling of sex. It is an economic idea: reducing demand creates a surplus in supply. In theory, dramatic reduction of demand should eventually cause a decrease in supply, at which point the market can again settle into equilibrium. Curbing demand exists in such forms as shaming (United States example) and punishing those who pay for sex with fines or incarceration.

With every sex work strategy, there needs to be some kind of cost-benefit analysis to discern what strategies are actually viable.

### *B. Decriminalization*

The same arguments that arose in 2004 in Berkeley, California over Measure Q, exist in the larger debate surrounding decriminalization. One central argument for the decriminalization of prostitution is an improved environment for sex workers with respect to safety. If prostitution is decriminalized, a prostitute can work without fear of prosecution. On the other hand, if prostitution is criminalized, a prostitute is likely to fear arrest and is therefore unlikely to report abuse or violence.<sup>132</sup> The police cannot protect prostitutes if they are busy arresting them. This exact scenario has occurred before, as in the example in Britain

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<sup>132</sup> Cary Mitchell, "Should the laws against prostitution be abolished?." *The Irish Times*. February 11, 2008.

when a prostitute wanted to report an attack but was unable to because she feared reprisals of a warrant out for her arrest.

With the decriminalization of prostitution, prostitutes would have access to legal protection because they would not have to fear prosecution for selling sex; they would be able to enjoy equal protection of the laws. It is a question of having more recourse to the law and police protection that improves safety of sex workers. Decriminalization emphasizes prostitution as work; if prostitution is work, a prostitute could be afforded labor rights. It becomes a personal choice and any worker should be able to enjoy equal protection of the laws and not be discriminated against based on employment choice. Moreover, in terms of finding employment at a later time, decriminalization better enables prostitutes to quit the industry and seek other work without the stigma of a prior prostitution conviction on their criminal history records.<sup>133</sup> Lastly, the numbers of women in prison would fall,<sup>134</sup> which may improve family dynamics and childcare (as women are primarily responsible for care work in society<sup>135</sup>).

There are just as many arguments against decriminalization as there are in favor. Rather than improve the safety of sex workers, opponents claim that decriminalization will set the stage for more sexual abuse. If there is reduced enforcement of the laws, and thus less of a presence of police officers, sexual violence is more likely to occur. One argument in favor of criminalization is that if a prostitute is arrested, the courts are said to be a tool to get prostitutes off the streets through diversion programs (regardless of the fact that the law is being used against prostitutes). One major concern of decriminalization is an increase in

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<sup>133</sup> Mitchell, "Should the laws against prostitution be abolished?"

<sup>134</sup> Mitchell, "Should the laws against prostitution be abolished?"

<sup>135</sup> Leslie Bender, "From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law." in Kathryn Abrams (ed.), *Materials for Feminist Jurisprudence* (Berkeley: Copy Central, 2007), p. 257-269.

demand for prostitution,<sup>136</sup> which could potentially lead to an increase in both sex tourism and sex trafficking, and also makes it easier for pimps and traffickers. Based on an association of prostitutes and drug use, residents also fear that an increase in prostitution will mean that more condoms and needles are littering the streets. One extreme argument claims that schools will direct their less apt students towards prostitution as a profession.<sup>137</sup>

In lieu of the arguments against decriminalization, it appears that proponents for decriminalization have a stronger argument. The argument that decriminalization will lead to an increase in demand falls apart when one considers that laws do not affect one's sex drive; it is there, to whatever extent, whether or not there exist laws that criminalize prostitution. Then there is the concern that one is more likely to solicit a prostitute if prostitution is legal rather than if it is illegal. That is an issue of supply rather than one of demand: if the service is somehow undesirable (because of illegalities) perhaps the consumer will not solicit the product, but the demand will still be there. Once the undesirable attribute is removed, the desire has not changed, but the supply has instead. One's sex drive (demand) is independent of law and thus, it is nonsensical to argue that decriminalization will encourage higher demand. Demand is likely to remain constant, but the net effect could still be an increase in prostitution. That decriminalization may increase sex tourism and sex trafficking is a legitimate concern. Depending on the rights of the sex workers, this does not necessarily have to be a negative. If it means more exploitation, it is clearly a bad thing, but if the workers are protected and society can function in the same way, it is not (barring anti-sex work attitudes in general).

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<sup>136</sup> John D. McHugh, "Britain cracks on prostitution." *The Christian Science Monitor*. January 31, 2006. <http://www.csmonitor.com/2006/0131/p07s02-woeu.html>.

<sup>137</sup> Catherine Healy, "Reply Letters and emails: Your letters: How to help sex workers." *The Observer (England)*. January 27, 2008.

New Zealand serves as a recent example of decriminalization (albeit with elements of legalization also). New Zealand decriminalized prostitution in the Prostitution Reform Act 2003 with the goal of safeguarding the human rights of sex workers, protecting them from exploitation, and promoting occupational health and safety.<sup>138</sup> Five years later, the laws have been reviewed with encouraging results:

More street-based sex workers are working together indoors, and brothel operators have had to improve conditions in order to be competitive. Trafficking has not increased - with the expectation that wrongs should be put right, women find it easier to come forward and report exploitation.<sup>139</sup> New Zealand shows that decriminalisation produces a safer environment, where the most vulnerable can expect the respectful consideration that everyone deserves.<sup>140</sup>

In general, prostitutes in New Zealand have more access to health services, no longer fear arrest and are able to report violence, can better insist upon their rights, and have the opportunity to work more safely (and together) indoors. Recall that prostitution was decriminalized in Britain and a 2004 ballot initiative for decriminalization in the United States failed.

### *C. Legalization*

Many of the same arguments made for decriminalization are made for legalization, with additional benefits as a result of regulation of practices. Legalization here refers specifically to consensual adult sexual activity (excluding all forms of child prostitution). If prostitutes were taxed, this could bring in money for the budget and provide for increased social spending on drug rehabilitation or exit strategies from prostitution. Also, a legal

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<sup>138</sup> Public Health Association of New Zealand Policy on Decriminalisation of Prostitution (2001). <http://www.pha.org.nz/policies/phapolicydecrimprostitution.pdf>.

<sup>139</sup> Mitchell, "Should the laws against prostitution be abolished?"

<sup>140</sup> Healy, "Reply Letters and emails: Your letters: How to help sex workers."

business is said to be more profitable than an illegal business for the state.<sup>141</sup> Mandatory, routine medical checks allow for some measure of control over the spread of disease. This indicates a trend towards more regularity of medical examinations for prostitutes and more access to treatment. Managed areas (tolerance zones/decriminalized red-light districts) are better monitored by police and therefore, prostitutes are less vulnerable to attack. With protection from authorities, prostitutes have more access to stopping abuse; it is a shift from prosecution to protection. By allowing and regulating brothels, the state would facilitate further choices for inside, safer work and opens up the possibility for registration of individual prostitutes.

Opponents of legalizing prostitution see flaws in the logic of proponents of legalizing prostitution. If prostitution were viewed as exploitative, then taxing would mean making money off exploitative labor; some would go so far as to accuse the state of acting like a pimp.<sup>142</sup> Legalization assumes that it is acceptable to have the commodification of both sex and body. It has been argued that legalization is “an attempt to dignify the sex industry not the women involved.” It is complacency about the sex industry and a normalizing of the exploitation of women.<sup>143</sup> Opponents argue that rather than make sex work safer, legalization does not protect prostitutes from violence, rape, or murder and is thought to lead to more back alley violence. Also, opponents purport that prostitutes do not have more control over their bodies and terms of employment because they may need to resort to more degrading sex work in order to compete for business. In terms of health, medical checks protect the client but leave prostitutes vulnerable to contracting disease and infection.

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<sup>141</sup> Igor Korolkov, “Brothels -in-Law?”

<sup>142</sup> Elizabeth and James Vorenberg, “The Biggest Pimp of All.” *The Atlantic*.  
<http://www.theatlantic.com/doc/197701/prostitution-tax>.

<sup>143</sup> Mitchell, “Should the laws against prostitution be abolished?.”

Instead, legalization would help pimps in a realm where criminals exist as untouchables.<sup>144</sup>

Legalization is thought to expand the sex industry and lead to a greater demand for victims of human trafficking. Additionally, child prostitution, organized crime, and even illegal forms of prostitution may increase. Some residents fear that legalizing will dramatically increase the number of prostitutes in the area because of a lack of prohibitive laws. Another main criticism of legalization is the idea that no matter what laws and structure are in place, there will always be people in so desperate a situation that they fall out of it.<sup>145</sup>

The debate over legalization appears to be more convoluted than that of decriminalization. Even among the countries that have tried to legalize prostitution, the results are mixed. As mentioned previously, New Zealand is thus far a successful case. However, two main European examples, Germany and the Netherlands have had mixed results. In both countries, brothels are regulated which has led to a decrease in violence against sex workers.<sup>146</sup> The brothels are located in tolerance zones that are regularly monitored by police and are generally located in remote or industrial areas away from residential communities.<sup>147</sup> In Germany and the Netherlands, the women are given regular medical examinations and there are also “night shelters” available where they can “talk, have a drink, buy condoms or even get clean syringes.”<sup>148</sup> However, legalization has had its pitfalls, particularly with respect to trafficking. The places where prostitution has been legalized have not become magnets that draw all prostitutes to the area. After all, not every prostitute in the United States resides in Nevada or Rhode Island for example. However, such locations, Germany and the Netherlands in particular, become centers for recruitment

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<sup>144</sup> Mitchell, “Should the laws against prostitution be abolished?”

<sup>145</sup> Esther Addley, “Ipswich murders: FAQ: Prostitution.” *The Guardian (London)*. February 22, 2008.

<sup>146</sup> “What's in a name?” *The Independent (London)*. December 14, 2006.

<sup>147</sup> “COUNTRIES WHERE IT IS SAFER FOR THE GIRLS.” *The Express*. December 31, 2003.

<sup>148</sup> “COUNTRIES WHERE IT IS SAFER FOR THE GIRLS.”

and trafficking. For the women trafficked from Russia, statistics show that Germany and the Netherlands are their most common destinations.<sup>149</sup> Police in Sweden have learned from wiretaps that trafficking gangs consider countries with tough prostitution laws “bad for business.”<sup>150</sup> Germany has an estimated 400,000 sex workers, 80% of whom are foreign.<sup>151</sup> This is approximately four times the estimated number of sex workers in countries like the United States, Great Britain, and Russia, where prostitution is not legalized. In the Netherlands, it was believed that legalizing prostitution would decrease the amount of child prostitution; the opposite has occurred and the Netherlands has seen larger numbers of child prostitutes.<sup>152</sup> An increase in organized crime has prompted officials in the Netherlands to begin rethinking and even dismantling tolerance zones for streetwalkers.

Victoria, Australia has also experienced many of the same pitfalls as Germany and the Netherlands, after legalizing prostitution in 1994.<sup>153</sup> The numbers of brothels increased by over 60% in the ten years following the passage of the laws (first introduced in the Prostitution Regulation Act 1986).<sup>154</sup> The number rose from 40 brothels to over 100 brothels in Victoria.<sup>155</sup> In Australia, legalization is also said to have expanded the illegal prostitution business where men might pay more for unprotected or other riskier forms of sexual activity.<sup>156</sup>

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<sup>149</sup> “HEARING OF THE AFRICA, GLOBAL HUMAN RIGHTS AND INTERNATIONAL OPERATIONS SUBCOMMITTEE OF THE HOUSE INTERNATIONAL RELATIONS COMMITTEE SUBJECT: GERMANY’S WORLD CUP BROTHELS: WOMEN AND CHILDREN AT RISK OF EXPLOITATION THROUGH TRAFFICKING.” Chaired by: Representative Christopher H. Smith. *Federal News Service*. May 4, 2006.

<sup>150</sup> Ritter, “Once mocked, Sweden’s pioneering prostitution law attracts world interest.”

<sup>151</sup> Joan Smith, “Yes, it should be a crime to pay for sex.” *The Independent (London)*. December 27, 2007.

<sup>152</sup> Mitchell, “Should the laws against prostitution be abolished?”

<sup>153</sup> Australian Government: Australian Institute of Criminology. “Australian studies in law, crime and justice: The Legalisation experiment: Victoria.” <http://www.aic.gov.au/publications/lcj/working/ch2-3.html>.

<sup>154</sup> Birgitta Ohlsson and Jenny Sonesson, “Zero tolerance for johns; Prostitution.” *The International Herald Tribune*. March 20, 2008.

<sup>155</sup> Birgitta Ohlsson and Jenny Sonesson, “Zero tolerance for johns; Prostitution.”

<sup>156</sup> Paul Gray, “Law reform has failed women.” *Herald Sun (Australia)*. June 12, 2007.

#### *D. Curbing Demand*

The primary goal of curbing demand is targeting the person buying sex, rather than the person selling sex; a strategy that shifts culpability from the sex worker to the client. Proponents argue that strategies to curb demand ought to decrease the number of people who purchase sex and eventually decrease the number of people who sell sex. Specifically, the strategy of punishing those caught purchasing sex is thought to decrease the numbers of people involved in prostitution, reshape attitudes towards the sex trade, and hinder prostitution trafficking rings. Feminists like Catharine MacKinnon argue that this is the only “sex equality” approach that views prostitutes as the victims of sexual exploitation.<sup>157</sup>

Opponents of strategies to curb demand claim that such laws make prostitutes’ lives more dangerous, where prostitutes are more vulnerable to attack. It makes the practice more hidden, dangerous, and unsafe. If a client is worried about getting caught, he may put pressure on a prostitute to make a hasty decision without a proper assessment of danger. A client may also be less forthcoming about his information, which decreases the chance of catching a client who abuses a prostitute.

As mentioned earlier, the curbing demand approach of shaming was thought to be largely ineffective by authorities in the United States. Sweden’s Sex Purchase Law, however, has had mixed results. Passed in 1999, Sweden’s Sex Purchase Law makes it a crime to pay for sex, but not a crime to sell sex. Paying for sex is punishable by fines, up to six months in prison, and public humiliation. So far, the numbers look very encouraging:

In Stockholm, the number of street workers has fallen from around 300 in 1999 to around 200 today (January 2008).<sup>158</sup> The number of women in street prostitution has been reduced by two thirds, and the number of johns has been

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<sup>157</sup> Emily Bazelon, “Why Is Prostitution Illegal?” *Slate Magazine*. March 10, 2008.

<sup>158</sup> “Britain eyes Swedish law on sex workers.” *Christian Science Monitor*. January 10, 2008.

reduced by 80%.<sup>159</sup> The law has produced results including a 50 per cent fall-off in the number of women involved in prostitution and a huge decrease in human trafficking from poor countries for sex slavery.<sup>160</sup> Trafficking is reportedly down to 200 to 400 girls and women a year, compared with 15,000 to 17,000 in nearby Finland.<sup>161</sup>

Sweden has seen a dramatic reduction in the number of people selling sex, the number of people buying sex, and the number of people being trafficked into the country. However, sex workers have said that the Sex Purchase Law makes life more dangerous for them.<sup>162</sup> Many argue that prostitution has not decreased, but has gone underground where sex workers (the original victims) are even more vulnerable as a result of less access to police protection and social services. Sweden's law is to be officially reviewed in 2010.<sup>163</sup>

## **V. Proposal**

These global strategies for prostitution demonstrate that neither blanket legalization nor criminalization is the best policy. A combination of strategies is necessary to address the many intricacies of prostitution. In particular, this proposal prioritizes the health and safety of sex workers. In this sense, as illustrated by prostitution policies in New Zealand, decriminalization appears to have a lot of success. This must be strongly considered in working the best strategy for prostitution. This paper does not posit that every prostitute is a victim as there are (however few) women and men who choose to engage in prostitution (where choices are not constrained). It happens to be the case that many sex workers have very few choices and find themselves engaged in prostitution because of desperate

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<sup>159</sup> Bazon, "Why Is Prostitution Illegal?"

<sup>160</sup> Gray, "Law reform has failed women."

<sup>161</sup> Bazon, "Why Is Prostitution Illegal?"

<sup>162</sup> "Britain eyes Swedish law on sex workers."

<sup>163</sup> "Sweden to evaluate prostitution law by 2010 amid international interest." *The International Herald Tribune*. April 24, 2008. <http://www.iht.com/articles/ap/2008/04/24/europe/EU-GEN-Sweden-Prostitution-Law.php>.

circumstances. Acknowledging that there are victims prompts the question of what kinds of situations would make a victim's plight better or worse.

In terms of decriminalization, one obvious result of decriminalizing is the fact that there are no longer laws working against a prostitute. Rather than fear being arrested by authorities for engagement in criminal activity, a prostitute can seek recourse through the courts and through law enforcement. If the activity is criminal, one is much less likely to seek help from authorities for fear of being penalized for engaging in criminal activity. Additionally, if the activity is criminal, there is a lot of room for criminals to take advantage of the situation and the people involved. In general, criminalizing activity does not eliminate said activity. Rather, it motivates those involved to operate outside of law enforcement radar, pushing the activity underground, and making it more dangerous for those involved. It is a question of access to protection rather than fear of prosecution: more choices instead of fewer choices for those who may have very few options to begin with. At one end, it makes it easier for high-end prostitutes to do their jobs and run their businesses. In reality, these are not the ones that society is as concerned with. What matters most is that decriminalization makes it easier for prostitutes at the opposite end of the spectrum (streetwalkers) to work by providing means for redress of abuses and grievances. Furthermore, in any situation, it is better to live with recourse to the law as opposed to having to fear ramifications of the law. Decriminalization is a step in the right direction, but removing laws against prostitution is not automatically going to improve the lives of sex workers or assuage the concerns of residents.

To borrow a phrase from proponents of decriminalization, “don’t look the other way, look *another way*.”<sup>164</sup>

Decriminalization then is a starting point. Once prostitution is decriminalized, there is a need for regulatory measures. Just as a prostitute’s life is not automatically improved, societal concerns do not automatically dissipate. Two concerns in particular, safety of sex workers and angst from residents, require more than just the removal of laws against prostitution. They require a balance between the needs of sex workers and the needs of residents. Depending on where priorities are, tolerance zones appear to be a viable approach to go hand in hand with decriminalization. This paper envisions specific places (zones) in which prostitution is allowed to take place in such forms as streetwalking and running of brothels. Regarding general safety, if prostitution is decriminalized, police would be less likely to be keeping tabs on prostitution-related activity, which may enable more abuse of prostitutes. However, if there are specific decriminalized zones, the perimeter of which can be monitored by police, prostitutes would be ensured at least some measure of protection. Ideally, prostitutes become like any other citizen with access to police protection when needed. Perhaps more careful monitoring of these kinds of tolerance zones might be necessary given the inherent “hazards of the job.”

If decriminalized, some residents fear that prostitution will be too visible and extremely pervasive in society. Tolerance zones will also effectively mitigate this risk: if prostitutes are designated into certain areas that are provided police protection and are away from residential and cultural areas, the needs of both sex workers and residents are met. Some additional punitive measure may be necessary to encourage prostitutes to abide by

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<sup>164</sup> City of Berkeley. Election Info: November 2004 Ballot Measure: Enforcement of State Prostitution Laws (Angel’s Initiative). “Rebuttal Against.” 2004.  
<http://www.ci.berkeley.ca.us/elections/measures/2004/nov/qAngelsRebuttal2Against.pdf>.

zoning laws (e.g. a heavy fine, jail time, etc) although it must be emphasized that the purpose of tolerance zones is not to isolate or stigmatize prostitutes from the rest of the population. The logic follows from traditional zoning laws that separate incompatible interests and work: eliminating the harm of new business and development in the existing environment. In this case, the buying and selling of sex is still decriminalized, but the prostitute would be required to abide by the same laws as other citizens – where people cannot simply run their businesses wherever they see fit. The examples of Germany and the Netherlands demonstrate that tolerance zones have increased sex worker safety while simultaneously meeting the needs of local residents.

Realistically, there will always be people categorically against prostitution. There are strong views from certain groups in society that see prostitution as exploitative or harmful to the people involved. Others are against prostitution because they have moral qualms with prostitution or are against the commodification of the body and of sexual acts. Abolitionists, for example, view prostitution as “inherently exploitative,” where prostitution is an act of violence. Nonetheless, criminalizing prostitution is not the answer because it would be putting the “victim” in an even weaker position. This paper does not propose full legalization, in which prostitution is recognized in the same light as any other job with benefits of retirement and social security. To put it frankly, society is not ready to accept such a dramatic change. Measure Q of the 2004 Berkeley, California ballot initiative demonstrates this: a majority of residents were not willing to accept decriminalization, let alone recognition of prostitution just as any other profession. Yes, lawmakers are to consider the needs and desires of a significant portion of the population who feels strongly against prostitution. However, if the government must choose the more compelling state interest,

society would be better served with a focus on protecting its citizens rather than appeasement.

One key issue of state concern is control over the spread of STDs. This issue is complicated because it involves another balancing act between the rights of sex workers and those of people in society, particularly the privacy rights of clients. To require routine medical checks for prostitutes would be reasonable if the goal is to quell the spread of disease. The idea is simple enough: prostitutes are allowed to work if they are free of HIV, syphilis, and other diseases. However, this protects the client and is a kind of assurance that the “product” he is buying is clean. In terms of safety for prostitutes however, this situation leaves these sex workers vulnerable to contracting diseases from their clients. To subject prostitutes to medical checks is balanced by subjecting clients to the same medical checks, or at least screening for HIV. If for example there were tolerance zones, a client could be asked (before soliciting a prostitute) to submit to an HIV test. There is technology now that will give results for an HIV test in 60 seconds and is 99.96% effective.<sup>165</sup> This may come into conflict with the client’s right to privacy, but this test in particular is not invasive and only takes a minute of someone’s time. The person is not to be registered or reported (in adherence to privacy rights), but instead, he shall be denied access to those prostitutes and maybe even referred to treatment. The attitude towards medical examinations can be similar to implied consent laws in the United States. Just as one consents to a Blood Alcohol Content (BAC) test when operating a motor vehicle, so could one consent to an HIV test when engaging in prostitution (the buy-side or sell-side). In both cases, there is a

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<sup>165</sup> “bioLytical Laboratories: INSTI™ HIV-1 Rapid Antibody Test to Be Used in Research Study Conducted by McGill University AIDS Centre and Funded by CIHR.” *Marketwire*. November 29, 2007.

government interest in protecting somebody from causing unknown harm to oneself or to others.

Tolerance zones, virtually instantaneous HIV test results, and provision of other social and health services require adequate funding. In reality, people may not be willing to contribute their tax dollars to anything related to prostitution. In that case, one additional source of income could be from taxing prostitutes themselves. It may, however, be impossible to tax prostitutes based on their earnings, as many transactions are “under the table.” But if working in a particular tolerance zone were like being a member of a club, prostitutes (members) could pay dues for their membership (work) in a specific place. These dues would be spent solely on prostitution related activities, just as membership dues are spent on members and the organization. Then, the state is not taxing prostitutes or in anyway acting as a pimp. Instead, the community of prostitutes becomes semi self-sustainable as it independently acquires and allocates funding specifically to prostitution related activities.

“*Another way*” has also come in the form of criminalizing the buy-side of sex. However, this paper does not propose curbing demand as a viable strategy towards prostitution for the same reasons it sees utility in decriminalization. Whether the prostitute or the client is being criminalized, the result is the same: the criminal activity will still go on, just at a more risky and below-the-radar level. Criminalizing any part of prostitution puts people at risk. Prostitutes are less likely to have time to make a proper assessment if, for example, they are being rushed by a client who is worried about being caught. A client who has perhaps contracted an STD may be less willing to seek treatment for fear of being punished for the means by which he contracted the disease.

The Swedish model of punishing people who pay for sex is flawed because of its criminalizing component. However, one striking aspect of the Swedish model is that Sweden has seen significantly reduced rates of prostitution and trafficking. That there are 200 to 400 women and girls trafficked to Sweden compared to 15,000 to 17,000 to neighboring Finland is significant.<sup>166</sup> Even so, authorities cannot attribute these kinds of numbers simply to the fact that since 1999, paying for sex has been deemed a criminal activity in Sweden. Sheer proximity to Russia, known as a hub for trafficking women to other countries, likely has a dramatic effect on numbers of women and girls trafficked to Finland. Agenta Borg, head of Stockholm city government's prostitution unit, has remarked, "Police tell us that they've learned from wire-taps and other detective work that many of these trafficking gangs now try to avoid Sweden because we've focused so much on this issue - not just by passing the law, but because we've kept it high on our political agenda."<sup>167</sup> She recognized the fact that reduced trafficking to Sweden was not simply the result of criminalizing the buy-side of sex. Thus, if other countries were to keep trafficking and other issues surrounding prostitution high on their political agendas, it could make trafficking gangs more wary of engaging in the business.

This paper does not argue that all prostitution is trafficking, and can therefore distinguish between the two. Currently, human trafficking is a major topic of international concern and arguments for decriminalization or legalization get muddled in arguments about human trafficking. It is true that more human trafficking occurs where there are fewer obstacles to prostitution. However, if the priority is on the safety and health of sex workers, it is decriminalization that provides the best possible environment for the prostitutes. Also,

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<sup>166</sup> Gray, "Law reform has failed women."

<sup>167</sup> "Britain eyes Swedish law on sex workers."

the New Zealand example has not seen an increase in trafficking because prostitutes have recourse to authorities; instead, the authorities have become allies to whom prostitutes can report abuse or trafficking.

Finally, there has to be some consideration of the fact that some sex workers will find themselves outside of the framework; every society has its outliers. This may happen for a variety of reasons: a prostitute's heavy drug dependence may hinder his ability to function in a community of other prostitutes; a prostitute who tests positive for HIV may no longer be permitted to work in the one space tolerant of prostitution; or a prostitute may be in so desperate a situation that they need the money that would otherwise be handed over when working in a tolerance zone. It is not just a problem for prostitution, but it is also a societal problem that requires increasing poor or desperate people's access to decent and safe work in general. Similarly, adequate access to health and social services is not just a problem for prostitutes. Meaning, the legalization of prostitution will not solve society's problems of lack of access to safe work, education, health services, social services, and other opportunities. Although decriminalizing or legalizing prostitution is not the key to solve all of society's problems, people like Martha Nussbaum, Ernst Freund Distinguished Service Professor of Law and Ethics, have remarked, '(legalizing prostitution) is likely to make things a little better for women who have too few options to begin with.'<sup>168</sup>

## **VI. Conclusion**

This paper has explored prostitution in the United States, Russia, and Great Britain in detail with the purpose of 1) taking a comparative look at how prostitution manifests itself amidst different laws, regulations, and societal attitudes, and from there 2) ultimately discerning the best strategy towards prostitution. The strategies employed by the United

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<sup>168</sup> Bazelon, "Why Is Prostitution Illegal?"

States, Russia, and Great Britain to deal with prostitution are only a subset of the strategies employed across the globe: decriminalization, legalization, and curbing demand. Despite laws against prostitution or laws that decriminalized prostitution in each country, prostitution continues. There is a wide spectrum of sex workers, and at every level, sex workers are subject to violence and abuse. Recognizing this pattern of abuse of sex workers, this paper particularly emphasizes the need for decriminalization to better protect sex workers.

Prostitution flourished in biblical times. When Jesus reprimanded the priestly caste for wanting to stone a prostitute, it should have signalled the end of the punitive approach to this social dilemma. Jesus said only those without sin should cast the first stone; somehow, over the ages, this has been transformed into a licence for a multitude of petty sinners to cast many stones in the direction of hookers.<sup>169</sup>

This paper argues for the end of one such punitive approach to the social dilemma of prostitution. After an analysis of prostitution across the globe, this paper proposes the best policy for prostitution as follows: Start with decriminalization (ending the “punitive approach to this social dilemma [prostitution]”) in order to improve worker safety, undercut violence against prostitutes, and provide prostitutes with recourse to the law. Next, institute the following regulatory measures: tolerance zones that provide a balance between sex worker and resident interests; fines for streetwalkers engaging in prostitution outside of tolerance zones (prostitution is not a criminal offense; this is a minor infraction without the stigma of a sex work conviction); institution of medical checks that operate like implied consent laws (for both client and sex worker); taxes for community use – taxes from prostitutes, for prostitutes; provision for more social and health services for prostitutes (and in society as a whole); and keeping the issue of human trafficking high on the political agenda.

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<sup>169</sup> Alan Young, “Legalize prostitution, for all our sakes; How do we stop the disappearance and killing of sex-trade workers?.” *The Globe and Mail (Canada)*. January 19, 2007.

In the face of stigma, moral repugnance, and violence, this is a viable strategy for prostitution applicable across the board. In particular, it addresses concerns in the United States over stigma and trafficking; it addresses Russia's budgetary concern and the interest in controlling the spread of disease. Lastly, it addresses Britain's desire to protect sex workers and improve their access to rehabilitative services. Recognizing that the practice of prostitution will continue necessitates extending to sex workers protections afforded to other citizens. This paper recognizes that this may not be the best strategy to undercut human trafficking or other criminal activity, but it is a strategy that seeks to protect sex workers and mitigate some of the potential hazards of sex work.

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