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The Legalization of Prostitution

by [James Bovard](#), September 1998

Prostitution has long been illegal in the vast majority of the United States. Unfortunately, laws against prostitution often bring out the worst among the nation's law-enforcement agencies — and pose a growing threat to public health. As fear of the spread of AIDS rises, the legalization of prostitution offers one of the easiest means to limit the spread of the contagion — and of improving the quality of law enforcement in this country.

Since neither prostitutes nor their customers routinely run to the police to complain about the other's conduct, police rely on trickery and deceit in order to bust people. In San Francisco, the police wired rooms in the city's leading hotels to make videotapes of prostitutes satisfying their customers. But given the minimal control over the videotaping operation, there was little to stop local police from also watching and videotaping ordinary married couples engaging in coitus solely for the purpose of procreation.

A 1994 New York sting operation could indirectly have helped out the New York Mets: two San Diego Padres baseball players were arrested after speaking to an undercover policewoman. A Seattle journalist who also got busted described the police procedure to Newsday:

"He said that he was stuck in traffic when he discovered that a mini-skirted woman in a low-cut blouse was causing the jam, approaching the cars that were stopped. 'he came up to the windows, kind of swaggering,' he said. He said that she offered him sex, he made a suggestive reply, and the next thing he knew he was surrounded by police officers who dragged him out of his car and arrested him."

Many police appear to prefer chasing naked women to pursuing dangerous felons. Lt. Bill Young of the Las Vegas Metro Police declared, "You get up in a penthouse at Caesar's Palace with six naked women frolicking in the room and then say: 'Hey, baby, you're busted!' That's fun." (Las Vegas arrests between 300 and 400 prostitutes a month.)

In some cities, laws against prostitution are increasingly transforming local policemen into de facto car thieves. Policewomen masquerade as prostitutes; when some john stops to dicker prices, other police rush out and confiscate the person's car under local asset-forfeiture laws. Such programs are currently

operating in Detroit; Portland, Oregon; Washington, D.C.; and New York City. The policewomen who masquerade as prostitutes are, in some ways, worse than the prostitutes — since at least the hookers intend to render value for payment received, while the police simply intend to shake down would-be johns.

In recent years, the Washington, D.C., police force has tried one trick after another to suppress prostitution — including passing out tens of thousands of tickets to car drivers for making right turns from streets, in order to suppress drive-by traffic. (Didn't they see the tiny print on the street sign saying that right turns from this street were illegal between 5 p.m. and 2 a.m.?) Yet, at the same time, the murder rate in Washington has skyrocketed, and the city's arrest and conviction rate for murders has fallen by over 50 percent.

The futile fight against prostitution is a major drain on local law-enforcement resources. A study published in the *Hastings Law Journal* in 1987 is perhaps the most reliable estimate of the cost of prostitution enforcement on major cities. Author Julie Pearl observed:

"his study focuses on sixteen of the nation's largest cities, in which only 28% of reported violent crimes result in arrest. On average, police in these cities made as many arrests for prostitution as for all violent offenses. Last year, police in Boston, Cleveland, and Houston arrested twice as many people for prostitution as they did for all homicides, rapes, robberies, and assaults combined, while perpetrators evaded arrest for 90% of these violent crimes. Cleveland officers spent eighteen hours — the equivalent of two workdays — on prostitution duty for every violent offense failing to yield an arrest."

The average cost per hooker bust was almost \$2,000 — and "the average big-city police department spent 213 man-hours a day enforcing prostitution laws." Pearl estimated that 16 large American cities spent over \$120 million to suppress prostitution in 1985. In 1993, one Los Angeles government official estimated that prostitution enforcement was costing Los Angeles alone over \$100 million a year.

The most high-profile prostitution prosecution in recent years was the Heidi Fleiss case out of Los Angeles. Fleiss organized call girls for wealthy customers. Fleiss's hookers made up to \$10,000 a day and none complained about how she treated them. Lawyer Thomas Tanana detailed the Los Angeles police campaign against Fleiss in 1995 in the *Orange County Register*:

"While people were getting murdered, mugged, and raped in other parts of Los Angeles, 20 to 30 members of the LA metro vice squad safely perched themselves high atop the spacious penthouse of a Beverly Hills hotel for weeks conducting endless preparatory 'strategic meetings,' installing and testing hidden video cameras behind special see-through mirrors in adjoining suites, bugging rooms with recording devices, chatting with young call girls

about sex, and watching racy movies — all at taxpayers' expense."

At the key moment — after several call girls had arrived and had stripped naked — the signal for the raid occurred and 20 to 30 cops stormed into the penthouse suite. Luckily, none of the women had concealed weapons, so no law enforcement officers were injured.

Locking up prostitutes and their customers is especially irrational at a time when more than 20 states are under court orders to reduce prison overcrowding. Gerald Arenberg, executive director of the National Association of the Chiefs of Police, has come out in favor of legalizing prostitution. Dennis Martin, president of the same association, declared that prostitution-law enforcement is "much too time-consuming, and police forces are short-staffed." Maryland Judge Darryl Russell observed, "We have to explore other alternatives to solving this problem because this eats up a lot of manpower of the police. We're just putting out brush fires while the forest is blazing."

National surveys have shown that 94 percent of citizens believe that police do not respond quickly enough to calls for help — and the endless pursuit of prostitution is one factor that slows down many police departments from responding to other victims. In 1994, Edward Delatorre, police commander of New York City's 43rd Precinct, said of Operation Losing Proposition, a big crackdown on prostitutes and their customers in the Bronx, that his policy was to "make this an issue as important as any issue can be." Yet, while prostitutes cluttering up a street can be a damn nuisance, the average New Yorker is probably far more irritated and injured by the city's sky-high rate of car theft — not to mention its high murder rate.

HIV infection rates tend to be stratospheric among the nation's streetwalkers. In Newark, New Jersey, 57 percent of prostitutes were found to be HIV-positive; in New York City, 35 percent of prostitutes were HIV-positive; and in Washington, D.C., almost half of all streetwalkers were found to be HIV-positive.

In contrast, brothels are legal in ten rural Nevadan counties — and the legal brothels tend to be comparative paragons of public safety. The University of California at Berkeley School of Public Health studied the health of legal Nevada brothel workers compared with that of the jailed Nevada streetwalkers. None of the brothel workers had AIDS, while 6 percent of the streetwalkers had AIDS. Brothel owners had a strong incentive to police the health of their employees, since they could conceivably face liability if an infection were passed on to a customer.

Bans on prostitution actually generate public disorder — streetwalkers, police chases, pervasive disrespect for the laws, and condoms littering people's lawns. As long as people have both money and sexual frustration, some people will continue paying other people to gratify their desires. The issue is

not whether prostitution is immoral, but whether police suppression of prostitution will make society a safer place. The ultimate question to ask about a crackdown on prostitution is: how many murders are occurring while police are chasing after people who only want to spend a few bucks for a few jollies?

Lysander Spooner wrote in 1875, "Vices are those acts by which a man harms himself or his property. Crimes are those acts by which one man harms the person or property of another. Vices are simply the errors which a man makes in his search after his own happiness." Many of the worst abuses of law enforcement stem from political wars on vices. Government power must be limited to protecting citizens from other people's aggression, not from their own stupidity or weakness.

Vices are not crimes. Despite centuries of attempts to suppress prostitution, the problem continues to flourish — little has changed. Simply because prostitution may, in many people's opinion, be immoral is no reason for police to waste their time in a futile effort to suppress the oldest profession.

[Mr. Bovard](#) is the author of *Lost Rights: The Destruction of American Liberty* (St. Martin's Press, 1994) and *Shakedown* (Viking-Penguin Press, 1995).

BOOKS BY JAMES BOVARD

[Freedom in Chains: The Rise of the State & The Demise of the Citizen](#) (1999)

[Shakedown: How the State Screws You from A to Z](#) (1996)

[Lost Rights: The Destruction of American Liberty](#) (1995)

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