

Stop Punishing the Victim: Decriminalization as an Alternative to Legalizing Prostitution

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This paper discusses why legalizing prostitution is not the best approach to protecting prostitutes, specifically the poorest ones who enter prostitution only when faced with no other options. Decriminalization of selling sex is a better solution to helping prostitutes escape poverty and preventing structural inequalities.

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I. Introduction

Shana Goodwin's mother first prostituted Shana at the age of thirteen.¹ For the next twenty-two years, Shana was under the control of a pimp who sold her to men for sex and took the vast majority of her profits.² Whenever she tried to leave, the pimp beat and drugged her.³ During the time she was under his control, Shana was arrested 167 times for engaging in the illegal act of prostitution.⁴ Her pimp was never arrested.⁵ Unfortunately, Shana's story is not abnormal among prostitutes in the United States.⁶ Police arrest many prostitutes for engaging in the illegal sex industry, but a drastically smaller number of pimps and buyers find themselves prosecuted for their own illegal acts.⁷

Women such as Shana do not often engage in prostitution by their own choice.⁸ Some prostitutes are trafficked into the industry,⁹ while others use it as a last resort in an attempt to

¹ See NICHOLAS D. KRISTOF & SHERYL WUDUNN, *A PATH APPEARS: TRANSFORMING LIVES, CREATING OPPORTUNITY* 162 (2014) ("Shana was taken by her mom to a stranger's house at age thirteen for her initiation into prostitution.").

² See *id.* at 163 (explaining Shana's situation while she was working as a prostitute).

³ See *id.* (noting the consequences of Shana trying to escape her situation).

⁴ See *id.* ("[S]he had been arrested 167 times.").

⁵ See *id.* (explaining that police never arrested Shana's pimp).

⁶ See generally Elizabeth M. Johnson, Note, *Buyers Without Remorse: Ending the Discriminatory Enforcement of Prostitution Laws*, 92 TEX. L. REV. 717 (2014) (discussing how prostitutes are often arrested for their work, but the buyers often go unpunished).

⁷ See Katie Beran, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 LAW & INEQ. 19, 25–26 (2012) (providing data on the percentages of prostitutes arrested and explaining that the buyers "are rarely arrested or punished").

⁸ See KRISTOF AND WUDUNN, *supra* note 1, at 162–63 (explaining the circumstances of how Shana Goodwin became involved in prostitution).

⁹ See Martti Lehti & Kauko Aromaa, *Trafficking for Sexual Exploitation*, 34 CRIME & JUST. 133, 133 (2006) (noting that many prostitutes end up in the sex industry after being trafficked against their will and explaining the difficulty of providing estimates of trafficking victims). It is difficult to separate human trafficking and prostitution because they are so interconnected. However, this paper does not focus on the connection between trafficking and prostitution. Rather, this paper focuses on women who enter prostitution in hopes of escaping poverty.

escape from poverty or merely to survive.¹⁰ After women find themselves in the sex trade, often due to external pressures and difficult circumstances, the criminal justice system punishes them for their acts.¹¹

One solution to this problem of persecution of prostitutes might be to legalize prostitution. Supporters of legalization argue that this solution would empower prostitutes, provide easier access to safety resources, and remove social stigmas associated with prostitution.¹² While these changes would indeed be positive, there are many reasons to doubt whether they would actually occur.¹³ Moreover, other ramifications of legalization ultimately outweigh any purported positive effects.¹⁴ This paper argues that legalizing prostitution will not provide a route to economic security for prostitutes, nor will it protect the health and safety of women in the sex industry.¹⁵ Rather, decriminalization for the prostitutes would provide many of

¹⁰ See Susan E. Thompson, Note, *Prostitution—A Choice Ignored*, 21 WOMEN'S R. L. REP. 217, 235 (2000) (“Unemployment, discrimination, and low-paying jobs force women to turn to prostitution as a solution to escape poverty.”).

¹¹ See *id.* at 241 (noting the high prominence of prostitute arrests).

¹² See Beran, *supra* note 7, at 30–36 (explaining some of the arguments in favor of the legalization of prostitution).

¹³ See *infra* Part II (questioning whether legalization would lead to positive effects).

¹⁴ See *id.* (criticizing arguments in favor of legalizing prostitution because they do not take into account the larger, long-term situation of prostitutes and the sex industry).

¹⁵ It should be noted that men are also prostitutes; however, women comprise the overwhelming majority of prostitutes. See Jacqueline Cooke & Melissa L. Sontag, *Prostitution*, 6 GEO. J. GENDER & L. 459, 470 (2005) (noting that while male prostitutes exist, women make up the majority of prostitutes); Lena Edlund & Evelyn Korn, *A Theory of Prostitution*, 110 J. POL. ECON. 181, 184 (2002) (assuming, for the purposes of their research, prostitutes are women). Therefore, for simplicity, the term “prostitutes” will be interchanged with “women” and “men” for buyers and pimps. This terminology is not meant to undermine the struggles of men in the prostitution industry or ignore the reality that women buy sex, but to keep the focus of the paper on female prostitutes in poverty. Future research could, and should, consider the implications of legalization for male prostitutes.

the purported benefits of legalization without the negative side effects and would provide a better solution for protecting prostitutes.¹⁶

II. Arguments and Counterarguments for Legalization of Prostitution

A. Legalizing Prostitution Provides Pathways Out of Poverty

While the demographics of prostitutes vary widely, the “vast majority of prostitutes are poor women.”¹⁷ Women usually enter prostitution due to a lack of other economic options, often needing the money to fund a drug addiction or repay a debt.¹⁸ And they often come into the sex industry after experiencing difficulties earlier in life: one study reports up to 70% of prostitutes experienced sexual abuse as children¹⁹ and another study found that 95% of the women studied felt abandoned as children.²⁰ Estimates vary, but some surmise that up to 50% of prostitutes enter the industry while using drugs regularly.²¹ For those who do not enter as drug users, they usually become addicted: in one study, 89% of women who entered prostitution solely for financial reasons reported developing a drug addiction while working as a prostitute.²²

¹⁶ See *infra* Part III (arguing for decriminalization of prostitution and discussing benefits of such).

¹⁷ Beran, *supra* note 7, at 25.

¹⁸ See ROCHELLE L. DALLA, EXPOSING THE “PRETTY WOMAN” MYTH: A QUALITATIVE INVESTIGATION OF STREET-LEVEL PROSTITUTED WOMEN 76 (2006) (discussing the relationship between drug use and prostitution); Beran, *supra* note 7, at 25. (“[T]he leading reason women pursue prostitution is their economic situation, with many women facings debts in need of repayment.”).

¹⁹ See DALLA, *supra* note 18 (citing percentages of prostitutes who “experience[d] sexual abuse early”).

²⁰ See *id.* at 52 (“Ninety-five percent of the women who participated in this investigation reported perceptions of relationship fissure.”).

²¹ See *id.* at 77 (citing statistics about prostitute drug use).

²² *Id.* at 83.

Once in prostitution, street-level prostitutes typically earn less than \$20,000 per year.²³ However, much of the income amount depends on factors such as hours worked, race of both the prostitute and the customer, whether protection is used, and services provided.²⁴ While some prostitutes bring in high earnings,²⁵ the majority of prostitutes make meager salaries for a job that exposes them to violence and a strongly negative social stigma.²⁶ “Having gotten in because of poverty, almost no one gets out of poverty through prostituting.”²⁷ Hence prostitution traps most prostitutes in a cycle of poverty.²⁸

Proponents of legalizing prostitution assert that it might provide pathways out of this poverty cycle.²⁹ While, in theory, prostitution might be seen as alleviating poverty by providing work opportunities, it generally makes escaping poverty extremely difficult, regardless of its legal status. Legalization might actually make escaping poverty more difficult for several reasons, including that the price of prostitute services might decrease because they cannot charge a premium for the risk of engaging in an illegal activity. For example, the price of marijuana has

²³ See Steven D. Levitt & Sudhir Alladi Venkatesh, *An Empirical Analysis of Street Level Prostitution* 5 (2007) (unpublished manuscript), *available at* <http://economics.uchicago.edu/pdf/Prostitution%205.pdf> (“Given the relatively limited hours that active prostitutes work, this [hourly rate for street prostitutes] generates less than \$20,000 annually for women working year round in prostitution.”). For a discussion of the types of prostitutes, *see infra* notes 41–51.

²⁴ See Levitt & Venkatesh, *supra* note 23, at 5–6 (explaining price differences for sexual services based on various factors).

²⁵ See *infra* note 42 (noting the high salaries of call girls).

²⁶ See *infra* Parts II.B–C (discussing the violence and negative social stigmas commonly associated with prostitution).

²⁷ Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 276–277 (2011).

²⁸ See *id.* at 277 (explaining the ways in which prostitution perpetuates the cycle of poverty).

²⁹ See Sharon S. Oselin, *Prostitution*, in CRIME AND CRIMINAL BEHAVIOR 185, 189 (William J. Chambliss, ed., 2011) (explaining and rebutting the argument that prostitution is easy to leave for other careers).

dropped since states began legalizing the drug.³⁰ The market price of prostitution services would also likely drop with legalization and prostitutes would bring in even less income than they currently do. In addition to not improving the financial situations of prostitutes, legalization would not improve other negative effects of prostitution, such as the social stigma and lack of opportunities for career development. Legalization would further trap prostitutes in poverty.

1. Negative Stigma of Prostitution

First, although a criminal record for prostitution currently acts as a large barrier for women trying to leave the sex industry, legalization would not make finding other work significantly easier for prostitutes.³¹ Even though legalization would remove the criminal record, prostitution carries a significant social stigma, so former prostitutes would likely have a difficult time attaining a job, particularly one with room for career advancement.³² If they ever want to escape the cycle of poverty, women need jobs that will provide economic freedom and room for upward advancement.³³ While legalization would diminish prostitutes' criminal record to

³⁰ See Jacob Sullum, *How is Marijuana Legalization Going? The Price of Pot Peace Looks Like a Bargain.*, Forbes (July 7, 2015, 5:47 PM), <http://www.forbes.com/sites/jacobsullum/2014/07/10/how-is-marijuana-legalization-going-so-far-the-price-of-pot-peace-looks-like-a-bargain/> (last visited Apr. 14, 2015) (discussing the effects of marijuana legalization on prices).

³¹ See Carrie Johnson & Evie Stone, *Little-Known Laws Helps Sex Trafficking Victims Clear Criminal Records*, NPR (Feb. 24, 2015, 4:38 PM), http://www.npr.org/2015/02/24/388716830/little-known-law-helps-sex-trafficking-victims-clear-criminal-records?sc=17?f=1001&utm_source=iosnewsapp&utm_medium=Email&utm_campaign=app (last visited Apr. 15, 2015) (discussing the ways in which criminal records hold back former prostitutes when trying to secure employment).

³² See RONALD WEITZER, *LEGALIZING PROSTITUTION: FROM ILLICIT VICE TO LAWFUL BUSINESS*, 49 (2012) (explaining why arrest and punishment can be especially harmful to prostitutes as they try to access other jobs).

³³ See Amela Karabegović & Fred McMahon, *Economic Freedom Reduces Poverty*, 32 FRASER FORUM 4, 4 (2008) (arguing that “economic freedom plays a key role” in reducing poverty).

potentially open career opportunities with advancement possibilities,³⁴ legalization would not remove the stigma associated with prostitution and, thus, prostitutes would still struggle to gain employment in another field.³⁵ Similarly, prostitution does not provide preparation and training for other career paths and is not the sort of position that works well on a resume.³⁶

In addition to the stigma of prostitution limiting other job prospects for prostitutes, the stigma itself is a facet of poverty.³⁷ Regardless of the amount of money a prostitute makes, she is never free of poverty because she carries the social shame associated with her work. Thus, because of the pervasive negative connotations of the commercial sex industry,³⁸ legalization of prostitution would not provide pathways out of poverty for prostitutes.

2. Lack of Career Development Opportunities

Second, legalized prostitution would not provide pathways out of poverty because prostitution does not offer opportunities to develop a career. Pimps comprise the management level of prostitution and prostitutes themselves typically do not become the managers.³⁹ This

³⁴ In addition to criminal charges for prostitution, prostitutes often face drug charges because of the strong link between prostitution and drug addiction. *See* DALLA, *supra* note 18, at 77–79 (examining data on drug use among prostitutes). It is unlikely that after legalization, prostitutes would be less likely to use illegal drugs. Therefore, even if prostitutes did not have prostitution on their criminal record, they would likely have other crimes.

³⁵ *See* Ole Martin Moen, *Is Prostitution Harmful?*, 40 J. MED. ETHICS 73, 74 (2014) (explaining that if a prostitute were honest about her work in a job application it “would seriously have damaged her career”).

³⁶ *See id.* (discussing some of the barriers to employment former prostitutes face).

³⁷ *See generally* Margaret Shih, *Positive Stigma: Examining Resilience and Empowerment in Overcoming Stigma*, 591 AM. ACAD. POLITICAL & SOC. SCI. 175 (2004) (considering stigmas as trapping people in poverty).

³⁸ *See infra* Part II.B.2 (comparing the stigma of prostitution to strip clubs and pornography).

³⁹ *See* Meredith Dank, et al., *Estimating the Size and Structure of the Underground Commercial Sex Economy in Eight Major US Cities*, THE URBAN INSTITUTE (Mar. 2014), <http://www.urban.org/UploadedPDF/413047-Underground-Commercial-Sex-Economy.pdf> (last visited Apr. 14, 2015) (providing information on pimp entry into the sex industry).

scheme differs from other entry-level jobs, which typically provide room for advancement to management.⁴⁰

Additionally, within the ranks of prostitutes it is difficult—if not impossible—to move to a more desired position, which range from streetwalkers to call girls.⁴¹ The call girl position carries the most prestige in the sex industry, with these jobs typically going to educated, attractive, cultured women often earning high salaries equal to middle-upper-class salaries.⁴² Young women starting out in the commercial sex industry typically take these highly sought positions.⁴³ They often take these positions for the high salary rather than for lack of alternatives.⁴⁴

In contrast to women choosing call girl jobs for their lucrative pay, women who enter the lowest level of prostitution, streetwalking,⁴⁵ generally do so because they have no other options.⁴⁶ Streetwalkers are primarily poor minority women⁴⁷ and their position carries the most

⁴⁰ See, e.g., Lydia DePillis, *The Walmart Worker Went From Temp to Store Manager*, WASH. POST (Jan. 31, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/01/31/this-walmart-worker-went-from-temp-to-store-manager-heres-why-thats-so-tough> (last visited Apr. 14, 2015) (telling the story of a poor woman who started as a temporary Walmart employee and eventually become a store manager).

⁴¹ See Ronald Weitzer, *Sociology of Sex Work*, 35 ANN. REV. SOC. 213, 217 (2009) (providing a table listing the various levels of prostitution).

⁴² See Oselin, *supra* note 29, at 186 (explaining the prestige associated with call girls and the type of women who have these jobs).

⁴³ See Edlund & Korn, *supra* note 15, at 187 (noting that “higher-end prostitutes” are usually much younger).

⁴⁴ Debra Satz, *Markets in Women’s Sexual Labor*, 106 ETHICS 63, 65 (1995) (describing the typical demographics of call girls).

⁴⁵ See Oselin, *supra* note 29, at 188 (“By all accounts, street prostitutes fall on the bottom of the hierarchy due to their working conditions and personal experiences.”).

⁴⁶ See DALLA, *supra* note 18, at 76 (“Economic vulnerability . . . forces women into the streets.”).

⁴⁷ See Satz, *supra* note 44, at 65 (“The majority of streetwalkers in the United States are poor black women.”).

negative social stigma.⁴⁸ In between streetwalkers and call girls fall brothel workers.⁴⁹ While these women are somewhat safer than their streetwalking counterparts because their work does not expose them to the public, they are often subject to low wages and violence.⁵⁰ Brothel workers also make significantly less money than call girls because up to 50% of their income goes to their pimp or building manager.⁵¹

There is no reason to think this business structure will change with legalization. The prostitutes will still not have access to management positions and thus, no room for career development.⁵² Many women will reach the height of their careers at a young age⁵³ and may become trapped in poverty if they have to take low-paying, potentially violent, jobs to make ends meet.⁵⁴ Additionally, the high-paying call girl jobs will continue to go to white, educated women, while the brothel and streetwalking jobs will be left for poor minorities.⁵⁵ Legalization will not change this industry structure and will continue to trap prostitutes in a cycle of poverty with no hope for escape.

⁴⁸ See Oselin, *supra* note 29, at 188 (explaining the highly negative connotations associated with street prostitutes).

⁴⁹ See Weitzer, *supra* note 41, at 217 (providing a table listing the hierarchy of prostitute positions, with brothel workers in the middle).

⁵⁰ See *id.* (noting that even though rates of violence are lower against brothel workers, “this does not mean off-street work is risk free”).

⁵¹ See *id.* at 221 (“[B]rothel employees make considerably less [than call girls] because a large share (30–50%) goes to the agency.”).

⁵² See *supra* note 39 (providing information on how few management jobs are available for prostitutes in the sex industry).

⁵³ See *supra* note 43 (explaining that the highest paying, most prestigious prostitute positions go to young women).

⁵⁴ See *infra* Part II.B (arguing why prostitution is often a form of violence).

⁵⁵ See *supra* note 38 (noting that streetwalking prostitutes are most often poor minority women).

3. Emotional Abuse as a Trap in Poverty

Third, women in prostitution often suffer severe emotional abuse,⁵⁶ creating an additional barrier to escaping poverty. Those who argue that legalizing prostitution will provide pathways out of poverty do not consider the emotional effects of prostitution, which will not disappear with legalization. Women will still suffer from post-traumatic stress disorder (PTSD) and will often remain reliant on their pimps.⁵⁷ Because of this reliance and emotional trauma,⁵⁸ prostitutes would have a hard time succeeding in another career industry without substantial support. Further, even if the poorest prostitutes began to earn large salaries from prostitution,⁵⁹ they still would not escape poverty if they continue rely on a pimp for their work and earnings.⁶⁰ Emotional abuse and trauma are inherent parts of prostitution that will not go away with legalization and prostitutes will never fully escape poverty while they suffer such abuse.

⁵⁶ See Melissa Farley, “*Bad for the Body, Bad for the Heart*”: Prostitution Harms Women Even if Legalized or Decriminalized, 10 *Violence Against Women* 1087, 1103 (2004) (discussing the emotional violence prostitutes suffer).

⁵⁷ See WEITZER, *supra* note 32 at 25 (explaining the pimps are often “parasite[s] who exercise total and highly abusive control” over prostitutes). See also A. Spidel, et. al., *The Psychopath as Pimp*, 4 *CAN. J. POLICE & SEC. SERVICES* 193, 193 (2006) (providing data showing that up to 95% of prostitutes work under the control of a pimp).

⁵⁸ See Moen, *supra* note 35, at 74 (examining psychological research on prostitutes and finding significant emotional damage in prostitutes, including “panic attacks, eating disorders, depression, and insomnia”).

⁵⁹ It is unlikely that poor prostitutes would experience significant financial gain with legalization because the business structure of prostitution would remain the same. See *supra* Part II.A.2 (explaining the hierarchies within prostitutes and why legalization would not change this structure).

⁶⁰ Some scholars discuss freedom (and thus, freedom from poverty) as the ability to be independent and fully recognize one’s capabilities. Thus, while women are trapped under the control of a pimp, they cannot be free from poverty even if they have a lot of money. See generally, e.g., Amartya Sen, *Human Rights and Capabilities*, 6 *J. HUMAN DEV.* 151 (2005) (assessing the relationship between human rights, freedom, and independence).

4. Support Group Efforts

Additionally, many non-profit organizations work to help women escape prostitution.⁶¹ These organizations recognize the negative effects of prostitution and seek to help women escape poverty and reach safety.⁶² If they thought the issues associated with prostitution could be solved with legalization, they would likely devote some of their time and money to advocate for legalization. These groups realize that legalization will only exacerbate the connection between prostitution and poverty and will not provide pathways out of poverty for prostitutes.

B. Legalization Protects the Dignity of Prostitutes

In addition to living in poverty, most prostitutes live on the fringes of society to protect themselves from prosecution and other public ridicule.⁶³ Prostitutes are “[s]ocially invisible as full human beings” and “often internalize toxic public and private contempt directed against them.”⁶⁴ Another argument in favor of legalizing prostitution holds that legalization protects the

⁶¹ See Oselin, *supra* note 29 (“The majority of these programs [that work to help prostitutes] have the goal of helping women exit the trade permanently.”). See also, e.g., *About Magdalene*, THISTLE FARMS, <http://www.thistlefarms.org/index.php/about-magdalene> (last visited Apr. 14, 2015) (explaining the purpose of a nonprofit organization in Nashville, TN to provide housing and rehabilitate women as they transition out of prostitution); *Reinvent: Bay Area*, NOT FOR SALE CAMPAIGN, <http://notforsalecampaign.org/our-strategy/unitedstates> (last visited Apr. 14, 2015) (providing an overview of the organization’s strategy for helping prostitutes escape “cycles of prostitution”).

⁶² See, e.g., *About Magdalene*, *supra* note 61 (describing a prostitute rehabilitation program as “a residential program for women who have survived lives of prostitution, trafficking, addiction and life on the streets”).

⁶³ See Michele Alexandre, *Sex, Drugs, Rock & Roll, and Moral Dirigisme: Toward a Reformation of Drug and Prostitution Regulations*, 78 UMKC L. Rev. 101, 105 (2009) (“Poor prostitutes . . . live in hiding due to the criminalization of their activities.”).

⁶⁴ *Id.*

dignity of prostitutes by empowering them to make free choices⁶⁵ and removes the marginalization and indignity associated with the sex industry.⁶⁶ However, legalization would not have these purported effects because prostitution is ordinarily not an autonomous choice; legalized areas of the sex industry still face disparagement and stigma; and the sex industry reinforces gender inequality.

1. Lack of Free Choice

One aspect of dignity is autonomy.⁶⁷ One scholar writes, “[H]uman dignity stems from man’s ability to choose autonomously and with free will.”⁶⁸ Thus, if one is not making free choices, that person will never have full dignity.

Women seldom freely choose prostitution and even when they do, they rarely autonomously control their work.⁶⁹ Most women enter the industry at very young ages⁷⁰ and usually come from very poor backgrounds.⁷¹ If they choose prostitution over homelessness or not

⁶⁵ See WEITZER, *supra* note 32, at 7 (discussing the empower paradigm, which “highlights the ways in which sexual services qualify as work, involve human agency, and may be potentially validating or empowering for workers”).

⁶⁶ See Melissa Farley, “*Bad for the Body, Bad for the Heart*”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 *Violence Against Women* 1087, 1092 (2004) (citing various studies that estimate between 75–94% of prostitutes are raped during their time in the sex industry).

⁶⁷ See Gan Shaoping, *Human Dignity as a Right*, 4 *FRONT. PHILOS. CHINA* 370, 370 (2009) (discussing the relationship between dignity and autonomy).

⁶⁸ *Id.* at 376.

⁶⁹ See *supra* Part II.A.2 (explaining the hierarchy of prostitution positions in the sex industry and mentioning the control pimps exert over many prostitutes). Although some women do choose positions in the sex industry over other careers, those women are in the minority. See *supra* note 42.

⁷⁰ See MacKinnon, *supra* note 27, at 280 (describing the conditions in which many girls enter prostitution at a young age).

⁷¹ See DALLA, *supra* note 18, at 76 (noting the economic conditions that often lead women to enter prostitution).

eating, have they really made a free choice? Catharine MacKinnon writes, “If prostitution were a choice, one would think more men would be found exercising it.”⁷²

Legalization would not cause more women to freely choose to engage in prostitution for a number of reasons, including that prostitution would trap them in poverty and their fear of the negative stigma associated with the work.⁷³ Therefore, legalization would not fully protect the dignity of prostitutes because they would still be unable to make independent choices.

2. Negative Stigma of the Sex Industry

Another reason why legalization would not protect the dignity of prostitutes is because legalization would not erase the stigma associated with prostitution. Legal parts of the sex industry, such as strip clubs and pornography, do not generally carry high social status.⁷⁴ Even with legalization, prostitution would not gain a significantly higher social standing than these other parts of the sex industry. Additionally, zoning requirements that would inevitably come with legalization would continue the stigmatization of prostitution.⁷⁵ Few people would want brothels near their homes, schools, churches, and other community places, leaving prostitution zoning to places on the outskirts of society.⁷⁶ Legalization would neither automatically nor quickly change conventional views about prostitution as a low, dirty, illicit profession and, thus,

⁷² MacKinnon, *supra* note 27 at 292.

⁷³ See *supra* Part II.A.2 & B.2 (discussing problems with the commercial sex industry for prostitutes).

⁷⁴ See WEITZER, *supra* note 32, at 5 (“Despite [the sex industry’s] size, profits, numerous customers, and (gradual and partial) mainstreaming, commercial sex continues to be viewed by many people as deviant and disreputable.”).

⁷⁵ See Farley, *supra* note 66, at 1092 (discussing some of the practical issues with legalizing prostitution, such as zoning brothels).

⁷⁶ See *id.* (predicting what would happen if brothels were zoned).

would not protect the dignity of prostitutes. Prostitutes would still be viewed negatively with low social standing.

3. *The Sex Industry as a Form of Patriarchy*

Additionally, legalization would not protect the dignity of prostitutes because the sex industry is inherently patriarchal and reinforces gender stereotypes.⁷⁷ The commercial sex industry represents an assertion of male dominance and patriarchy because males comprise the primary consumers, managers, and controllers of the market.⁷⁸ Lenore Kuo writes, “Prostitution . . . can embody some of the devaluing and dehumanizing presumptions of patriarchy.”⁷⁹ Prostitution often objectifies women, making them nothing more than something to be bought for sex.⁸⁰ It also maintains an ideology that does not fully value women.⁸¹ There is no reason to think legalizing prostitution would not change the patriarchal nature of the sex industry—if anything legalization would just provide a means for government regulation of

⁷⁷ See generally LENORE KUO, PROSTITUTION POLICY: REVOLUTIONIZING PRACTICE THROUGH A GENDERED PERSPECTIVE (2002) (arguing that prostitution is an indicator of patriarchal practices). See also Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1729, 1735 (2010) (“[H]arms suffered by prostituted people are the kind that tend to sustain and perpetuate patriarchal structural inequality. . . .”).

⁷⁸ See ELIZABETH BERNSTEIN, TEMPORARILY YOURS: INTIMACY, AUTHENTICITY, AND THE COMMERCE OF SEX 119 (2007) (“Theorists of gender have sometimes regarded the recent growth of the commercial sex industry as a reactionary reassertion of male dominance . . .”).

⁷⁹ KUO, *supra* note 77, at 36.

⁸⁰ See MacKinnon, *supra* note 27, at 4 (explaining how prostitution objectifies women).

⁸¹ See Dempsey, *supra* note 77, at 1737 (“[A] world in which women are not valued as human beings tends to be a world in which harms to prostituted people will be common; a world in which such harms are common tends to be one in which women are not valued as human beings.”).

gender inequalities. Legalization would perpetuate the inherent patriarchal nature of prostitution and would, thus, not protect the dignity of prostitutes.⁸²

C. Legalizing Prostitution Makes It Safer for Prostitutes

Up to 94% of prostitutes face rape and assault during their work.⁸³ Violence is a serious problem prostitutes deal with on a daily basis.⁸⁴ Their work naturally puts them at risk for health dangers, such as unplanned pregnancy and sexually transmitted diseases.⁸⁵ Streetwalking prostitutes have an especially high risk for rape, assault, and other forms of violence⁸⁶ because they have little to no protection from their clients.⁸⁷

One argument in favor of legalizing prostitution holds that legalization makes the work safer for prostitutes.⁸⁸ Proponents of legalization argue that regulation creates the ability for prostitutes to access help without fear of punishment for their own illegal activities will make

⁸² Additionally, by perpetuating patriarchy and structural gender inequalities, prostitution makes women oppressed, and thus, contributes to the difficulties in escaping poverty. *See* IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 48–63 (describing “faces of oppression” and how they contribute to inequality).

⁸³ *See* Farley, *supra* note 66, at 1095 (citing various studies that estimate between 75–94% of prostitutes are raped during their time in the sex industry).

⁸⁴ *See* Corey S. Shdaimah & Shelly A. Wiechelt, *Crime and Compassion: Women in Prostitution at the Intersection of Criminality and Victimization*, 19 *INT’L R. VICTIMOLOGY* 23, 31 (2012) (describing some of the many forms of violence prostitutes face as a part of their work).

⁸⁵ *See id.* at 24 (listing some of the health diseases prostitutes have a high risk for, such as “HIV/AIDS, hepatitis, cervical cancer, other sexually transmitted diseases, [and] dental problems”).

⁸⁶ *See* Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 *S. CAL. L. REV.* 523, 529 (2000) (“[Streetwalkers] are most likely to be controlled by pimps, and to be subjected to violence in their work.”).

⁸⁷ *See* Oselin, *supra* note 29, at 188 (explaining that street prostitutes face the highest risk of violence because they have no ability to “pre-screen clients or have staff members providing protection”).

⁸⁸ *See* Beran, *supra* note 7, at 34–35 (discussing the arguments that legalizing prostitution creates “a sound, respectful, and safe institutionalized occupation”).

prostitution safer if legalized.⁸⁹ However, prostitution is a form of violence and legalization will not change this reality.⁹⁰

1. Violence Inherent in Prostitution

Society should recognize prostitution as a form of violence.⁹¹ Melissa Farley writes, “When prostitution is understood as violence . . . unionizing prostituted women makes as little sense as unionizing battered women.”⁹² Regardless of its legal status, prostitution exposes prostitutes to rape and assault. Factors associated most often with violence in prostitution are not its legal status, but poverty and length of time in prostitution.⁹³ Although legalization may allow more access to protection and other resources for prostitutes, there is no way to completely remove the dangers of sexual exploitation and rape that come with prostitution.

Additionally, legalizing prostitution would likely not remove the violent behaviors by the pimps and buyers. One study found “psychopaths to be particularly drawn to pimping activities.”⁹⁴ Pimps may entice women to their business through kindness and charm, but

⁸⁹ See Alexandre, *supra* note 63, at 126 (explaining some of the benefits of legitimizing prostitution as a trade).

⁹⁰ See *infra* Part II.C.1. (arguing why prostitution is a form of violence). See also Melissa Farley, Symposium, *Sex for Sale: Prostitution, Trafficking and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 109 (2006) (“Prostitution is sexual violence that results in massive economic profit for some of its perpetrators.”).

⁹¹ See Farley, *supra* note 66, at 1094 (noting the connection between prostitution and violence, regardless of whether the prostitution is legal).

⁹² See *id.* at 1089.

⁹³ See Farley, *supra* note 90, at 114 (“Violence is commonplace in prostitution whether it is legal or illegal. . . . Researchers have found that two factors are consistently associated with greater violence in prostitution: poverty and length of time in prostitution.”).

⁹⁴ Spidel, et al., *supra* note 57, at 194.

eventually turn to violence to maintain control over the prostitutes.⁹⁵ Because many pimps are violent by nature,⁹⁶ legalization would not reduce their violence against prostitutes and, thus, legalization would not make prostitution safer for women.

2. *The Safety Argument Fails*

There is no strong evidence from countries where prostitution is legalized showing that legalization actually keeps prostitutes safe. For example, New Zealand does not have lower rates of violence against prostitution than the United States.⁹⁷ Similarly, after Germany passed a law allowing prostitution, a government report found “hardly any measureable, positive impact” in working conditions of prostitutes.⁹⁸ While the Netherlands have seen some positive trends in prostitute safety, the upward tick is minimal and in large part due to preventative measures, such as providing prostitutes with bodyguards.⁹⁹ Additionally, in these countries where prostitution is legal, prostitutes themselves say that they do not feel safer because of the legalization.¹⁰⁰ There is no reason to think legalizing prostitution in the United States would have different results than it has had in the rest of the world.

⁹⁵ See *id.* (“Although the ability to smooth-talk and charisma are often used to con women into the sex trade, they eventually are controlled through violence and the threat of violence.”).

⁹⁶ See generally M. Alexis Kennedy et al., *Routes of Recruitment: Pimps’ Techniques and Other Circumstances that Lead to Street Prostitution*, 15 J. AGGRESSION, MALTREATMENT & TRAUMA 1 (2007) (describing the violent tendencies of pimps).

⁹⁷ See Farley, *supra* note 66, at 1117 (discussing effects of legalization on prostitutes in New Zealand).

⁹⁸ *Does Legalizing Prostitution Protect Women and Girls?*, EQUALITY NOW (last visited Mar. 30, 2015), http://www.equalitynow.org/sites/default/files/Does_Legalizing_Prostitution_Protect_Women_and_Girls_EN.pdf (last visited Apr. 14, 2015).

⁹⁹ See Patrick Jackson, *How the Dutch Protect Their Prostitutes*, BBC (Dec. 19, 2006), <http://news.bbc.co.uk/2/hi/europe/6178793.stm> (assessing the safety of prostitutes in the Netherlands).

¹⁰⁰ See Farley, *supra* note 66, at 1089 (“Often they [prostitutes] do not think that their health has benefited or that they are offered more protection under legalized or decriminalized prostitution.”).

Further, even if their actions are legal, prostitutes will still be unlikely report abuse for a variety of other reasons, such as embarrassment or fear of retaliation by their pimps.¹⁰¹ Also, they might also not know how to get help for diseases: women in prostitution often have little knowledge about birth control, sexually transmitted diseases, or how to access protection.¹⁰² Thus, even if government regulated prostitution and required safe sex practices, prostitutes may not know their rights or the importance of taking such precautions. Legalization would neither reduce violence against prostitutes nor cause a significant increase in prostitutes seeking help and, thus, would not increase prostitute safety.

3. Link Between Prostitution and Human Trafficking

Another problem intimately connected with prostitution is human trafficking.¹⁰³ Women often work in the commercial sex industry because someone else sold them into it, either domestically or internationally.¹⁰⁴ When prostitution is legalized, rates of trafficking do not decrease. Notably, countries that have legalized prostitution have experienced significantly

¹⁰¹ See Spidel, *supra* note 57, at 194 (describing the ways pimps manipulate and control prostitutes).

¹⁰² See Farley, *supra* note 66, at 1098 (“Often, women who enter prostitution as adolescents know very little about pregnancy, birth control, and STDs. Although they may have been cautioned about HIV, adolescents in prostitution often have had no reliable education regarding sexuality, pregnancy, and contraception and may lack information about non-HIV-related STDs.”).

¹⁰³ See Síle Nic Gabhan, *Human Trafficking—A Twenty-first Century Slavery*, 57 THE FURROW 528, 530 (2006) (explaining that many prostitutes are trafficked into the sex industry against their will). Some even argue that prostitution is synonymous with trafficking. See Farley, *supra* note 90, at 141 (“A false distinction between prostitution and trafficking has hindered efforts to abolish prostitution.”).

¹⁰⁴ See Lehti & Aromaa, *supra* note 9, at 133 (explaining that many women are trafficked into the sex industry).

higher rates in human trafficking.¹⁰⁵ Because a higher demand for the services of prostitutes develops, the industry needs more prostitutes. And because prostitution is not a highly sought-after job—particularly in the developed countries, such as the Netherlands, Germany, and New Zealand, that have legalized prostitution—the people managing the industry must look to other places to find prostitutes. Thus, legalization of prostitution actually increases trafficking, an extreme form of violence.

D. Sex Should Be a Market-Exchange Commodity

A final argument in favor of legalizing of prostitution holds that the law should “treat prostitution as an ordinary business transaction.”¹⁰⁶ This approach holds that nothing about the nature of sex work distinguishes it from other economic transactions.¹⁰⁷ For example, market forces, such as demand, drive prostitution just as they do any other industry or service.¹⁰⁸ However, sex should not be a market-exchange commodity for several reasons, including the difficulty in applying contract theory to sex and that society should not commoditize sex.

1. Contract Theory Applied to Sex

Supporters of applying contract theory to sex argue that people are free to contract for economic goods and services and should, therefore, be able to contract for sex just as they can

¹⁰⁵ See MacKinnon, *supra* note 27, at 304 (“[E]xperience shows that when prostitution is legalized, trafficking goes through the roof.”).

¹⁰⁶ Beran, *supra* note 7, at 31. See also WEITZER, *supra* note 32, at 47 (questioning why prostitution is illegal when sex is legal and selling is legal).

¹⁰⁷ See WEITZER, *supra* note 32, at 7 (explaining the empowerment paradigm).

¹⁰⁸ See Michael Shively, et al., *A National Overview of Prostitution and Sex Trafficking Demand Reduction Efforts*, DEP’T OF JUST. (June 2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/238796.pdf> (last visited Apr. 14, 2015) (discussing some effects of market forces on the commercial sex industry).

for most any other product.¹⁰⁹ They do not see prostitutes as selling their bodies, but argue that prostitutes freely choose to sell their services, just as other industries sell services.¹¹⁰ However, there are two major problems with applying contract theory to sex: prostitutes generally do not freely choose the sex industry and difficult ramifications occur when this theory is considered on a large scale.

First, those applying contract theory to prostitution assume that women freely choose to engage in these contracts. This assumption, however, is false. As discussed above, women often choose prostitution because they have no other options.¹¹¹ Because women usually do not enter prostitution freely and then do not have a lot of control over their work, it is inappropriate to think that the contracts are free.

Second, those applying contract theory to prostitution do not consider the large-scale ramifications. For example, major social costs come with commoditizing sex, such as violence against and objectification of women.¹¹² Additionally, it would be difficult and problematic to apply business principles, such as contract failure, to prostitution. The customer should not be able to bring a claim of dissatisfaction if he is not pleased with the sexual services, even though that approach is standard in other industries to ensure customer satisfaction. It would be arduous to determine the standard of required services or how to determine when the services go beyond

¹⁰⁹ See WEITZER, *supra* note 32, at 47 (explaining one argument for why prostitution should operate under traditional contract theory); Satz, *supra* note 44, at 68 (discussing an economic approach to prostitution).

¹¹⁰ See Carole Pateman, *What's Wrong With Prostitution?*, 72 WOMEN'S STUDIES QUARTERLY 53, 54–55 (1999) (comparing prostitution to other industries where workers provide services).

¹¹¹ See *supra* Part II.A (arguing that women often enter the commercial sex industry for lack of any other option, not because they truly want to). See also ROGER MATTHEWS, PROSTITUTION, POLITICS AND POLICY 29–33 (2008) (debunking the myth that “women enter prostitution out of free choice”).

¹¹² See *supra* Part II.C (providing examples of negative sides of legalization of prostitution).

what is agreed to in the contract.¹¹³ Additional problems come when thinking about how and when a prostitute could bring a sexual harassment claim in her workplace.¹¹⁴ Bringing prostitution into the fold of contracts and business principles creates more difficulty than ease.

2. Sex Should Not Be for Sale

Another problem with integrating prostitution into the market is that society should not commoditize sex. Those who suggest sex should be exchanged in the marketplace undermine the inherent differences between sex and other market items.¹¹⁵ For example, the market does not sell friendship rights; having them as market commodities would likely decrease their value.¹¹⁶ Further, if the market sold friendship, it would remove some key characteristics of the relationship, such as intimacy, and would thus devalue the relationship.¹¹⁷ Similarly, children are not market commodities.¹¹⁸ Commoditizing the parent/child relationship would lead to social instability by devaluing a key relationship. Likewise, sex should not be a market commodity. If

¹¹³ If a buyer seeks more than what the prostitute agreed to, this would constitute nonconsensual sex, but determining what crosses past the line of consent would be extremely difficult.

¹¹⁴ Some may respond by saying that the prostitutes will just need to bargain for workplace conditions. However, prostitutes rarely have much bargaining power with their pimps and legalization would not change this power imbalance. *See supra* Part II.C (considering violence as an inseparable part of prostitution).

¹¹⁵ *See Satz, supra* note 44, at 69 (providing the example of comparing selling sex with selling a car and noting the inherent differences).

¹¹⁶ *See id.* (noting that some commodities would lose value if they were sold on the market).

¹¹⁷ *See id.* at 72 (“[I]f the marks signs of affection and intimacy were frequently detached from their usual meaning, such signs might well become more ambiguous and easy to manipulate. The marks of an intimate relationship . . . would no longer signal the existence of intimacy.”).

¹¹⁸ Some argue that international adoptions are a form of selling children on the market. *See generally, e.g.,* Jonathon G. Stein, *A Call to End Baby Selling: Why the Hague Convention on Intercountry Adoption Should Be Modified to Include the Consent Provisions of the Uniform Adoption Act*, 24 T. JEFFERSON L. REV. 39 (2001). However, whether adoption transforms the parent/child relationship into a market commodity is beyond the scope of this paper. On the whole, familial relations are not—and should not be—for sale.

sex is going to be treated as a commodity, the price for sex should be returning mutual sex—not money.¹¹⁹

A further issue with commoditizing sex on the market is the domino effect. Margaret Radin provides examples of the risks of commoditizing sex: “Suppose the sexual partner of your choice could be ordered through a catalog, or through a larger brokerage firm that has an ‘800’ number, or at a trade show, or in a local showroom.”¹²⁰ Putting sex onto the market would negatively impact the overall conception of sex in society.¹²¹

III. Decriminalization as an Alternative to Legalization

The United States criminalizes both sides of prostitution—the johns are punished for buying sexual services, as are the prostitutes for selling the services.¹²² However, in reality, prostitutes are punished far more than buyers, further exacerbating the poverty and negative stigma associated with their work.¹²³ A potential solution to improving the conditions of prostitutes without completely legalizing prostitution is to decriminalize it for those selling sex.¹²⁴ Decriminalization calls not for completely legalizing prostitution, but stopping

¹¹⁹ See MacKinnon, *supra* note 27, at 281 (“[T]he consideration for sex is sex. Where sex is mutual, it is its own reward.”).

¹²⁰ Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1922 (1987).

¹²¹ See *id.* (“The argument for noncommodification of sexuality based on the domino effect, in its strongest form, is that we do not wish to unleash market forces onto the shaping of our discourse regarding sexuality and hence onto our very conception of sexuality and our sexual feelings.”).

¹²² See Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. CAL. L. REV. 523, 526 (2000) (explaining how the United States criminalizes prostitution).

¹²³ See *id.* at 527 (“In nearly all prostitution prosecutions arrest occurs when a male undercover officer seeks out women he thinks are willing to offer sex for money.”).

¹²⁴ See generally Alexandre, *supra* note 63 (discussing decriminalization of certain acts and the societal implications).

prosecutions of prostitutes.¹²⁵ Decriminalizing the selling of sex would stop the punishment of women who do not freely choose prostitution,¹²⁶ while punishing the pimps and buyers who “are undermining society’s commitment to equality.”¹²⁷ This decriminalization would serve as a good solution because it would achieve many of the positive effects of legalization without commoditizing sex and reinforcing patriarchies.¹²⁸

A. Why is Prostitution Criminalized?

Certain behaviors are criminalized because they cause harm to society.¹²⁹ So what societal harms do each side of prostitution cause? The buyers cause harm to both society and the women from whom they buy sex. They harm the women harming the women by perpetuating the commodification of women and damaging them psychologically.¹³⁰ If—or perhaps when—the buyers rape or otherwise cause violence on the women, they further inflict harm on the prostitutes’ bodies and psyches.¹³¹ The buyers cause harm to society because they create a

¹²⁵ See *id.* at 105 (describing decriminalization). An alternative form of decriminalization decriminalizes both sides of the prostitution transaction. However, this paper argues for only the decriminalization of the selling side. For an overview of decriminalization, including for both the buyer and the seller, see generally WEITZER, *supra* note 32.

¹²⁶ See *infra* Part II.B.1 (explaining why women do not freely choose prostitution).

¹²⁷ Beverly Balos & Mary Louise Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U.L. REV. 1220, 1300 (1999).

¹²⁸ This model of decriminalization is known as the Swedish model. An in-depth discussion of Sweden and its approach to prostitution is beyond the scope of this paper. For background information, see Barbara Havelkova, *Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes*, 18 CARDOZO J.L. & GENDER 55, 58–59 (2011) (explaining the Swedish model).

¹²⁹ The societal harms caused by why certain crimes, such as murder, robbery, etc., are clear. We do not want to live in a society where violence is tolerated and property rights can be freely infringed upon.

¹³⁰ See Farley, *supra* note 90, at 115 (“When women are turned into objects that men masturbate into, profound psychological harm results for the person who is acting as receptacle.”).

¹³¹ See *id.* at 113 (“Sexual violence are physical assault are the norm for women in all types of prostitution.”).

market where sex trafficking, violence, and gender inequality is acceptable.¹³² Even if an individual buyer does not physically harm a prostitute, he still participates in the system that perpetually abuses and objectifies women.¹³³ The harm the buyers cause, both to society and the prostitute, is clear. What is more difficult is determining the harm caused by the prostitute.

Who does the prostitute harm in selling her sexual services? She harms herself by opening herself to sexually transmitted diseases.¹³⁴ Perhaps she hurts herself by putting her services on the market or harms the buyer's family by participating in an extramarital affair. Overall, though, the harm to society is less clear from the acts of the prostitutes than the acts of the buyers. Moreover, because most prostitutes do not freely choose prostitution,¹³⁵ they should not be punished for making a choice that allows them to survive. The act of selling sex should not be criminalized because the harms to society are not clear, but the harms caused by the buyer are clear and thus, the buyer's actions should be criminalized.

Some compare prostitutes to drug dealers because they both take part in illegal activities. However, prostitution differs from drug trade because the seller of sex does not carry the power.¹³⁶ In the drug trade, the seller has the power in the transaction; the buyer is often a junkie

¹³² See Dempsey, *supra* note 77, at 1752–53 (arguing the societal harms of prostitution and, thus, why buyers should be punished).

¹³³ See *id.* at 1752 (“People who buy sex . . . are complicit in the harms directly inflicted by traffickers and abusive pimps, in virtue of the market demand generated by the buyers’ purchase of sex and the influence this demand has on the conduct of traffickers and abusive pimps.”).

¹³⁴ See Havelkova, *supra* note 128, at 78 (explaining that prostitutes put themselves at risk for STDs).

¹³⁵ See *supra* Part II.B.1 (explaining why entering prostitution is rarely an autonomous choice).

¹³⁶ See Havelkova, *supra* note 128, at 78 (comparing selling sex to selling drugs).

looking for a fix. In prostitution, on the other hand, the buyer carries the power because the seller is the one acting in desperation¹³⁷ and the buyer often takes advantage of the seller.¹³⁸

B. Positive Effects of Decriminalization

As discussed above, many women enter prostitution for lack of any other option.¹³⁹ If prostitution is their only source of a wage, society should not punish them for trying to make a living.¹⁴⁰ With decriminalization, prostitutes would not have a criminal record for selling sex and the government would be able to provide social services to support them.¹⁴¹ Decriminalization has the potential to help the prostitutes because it would position them as the victims they are rather than criminals society currently holds them to be. This in turn might reduce stigma and help them escape poverty because the stigma plays a significant role in trapping them in poverty.

The enforcement of prostitution laws often disproportionately affects the poorest prostitutes.¹⁴² Streetwalkers comprise approximately 20% of all prostitutes, but account for nearly 90% of prostitution arrests.¹⁴³ Thus, decriminalization would give these women who need the most help a chance to access such help and potentially start a new career. Further, decriminalization also allows law enforcement to focus on major crimes. In 1985, “police in

¹³⁷ While people can be addicted to sex in similar ways that they are addicted to drugs, the different nature of the two transactions still creates a power imbalance in favor of the buyer in prostitution.

¹³⁸ *See supra* Part II.C.1 (discussing the many forms of violence inflicted upon prostitutes during their work).

¹³⁹ *See supra* Part II.B.1 (explaining why the choice for prostitution is not a true choice for most women).

¹⁴⁰ *See* KUO, *supra* note 77, at 134 (“For poor women . . . , prostitution is one of the few, and sometimes the only, sources of livable wages.”).

¹⁴¹ *See id.* at 135 (explaining some of the benefits of decriminalization).

¹⁴² *See* Law, *supra* note 122, at 529 (explaining the disparate impact of enforcement of prostitution laws).

¹⁴³ *Id.*

Boston, Cleveland and Houston arrested twice as many people for prostitution as they did for all homicides, rapes, robberies, and assaults combined.”¹⁴⁴ By having half as many people to prosecute for sex crimes, police and judicial resources can be used to reduce other criminal activities.

Sweden, which has followed this model of decriminalizing the sale of sex but not the purchase, has experienced success: two years after selling sex was decriminalized, there was a 50% decrease in the number of women prostituting, a 75% decrease in the number of men buying sex, and an overall decrease of human trafficking into Sweden.¹⁴⁵

C. Counterarguments to Decriminalization

While decriminalization has many benefits,¹⁴⁶ it does not come without its downsides. The main criticism of decriminalizing the sale of sex is that there would no longer be demand for the services and, thus, prostitutes would be out of work.¹⁴⁷ While it is problematic to limit options for poor women, the demand problem assumes that legalizing prostitution will help women escape poverty.¹⁴⁸ Legalizing prostitution would not address some of the core issues that trap women in prostitution, such as sexism and patriarchy.¹⁴⁹

Another criticism of decriminalization is that decriminalization falsely assumes that prostitution will go away. Critics of decriminalization argue that prostitution is inevitable so it

¹⁴⁴ *Id.* at 527.

¹⁴⁵ Farley, *supra* note 90, at 139.

¹⁴⁶ *See supra* Part III.B (discussing some positive effects of decriminalization).

¹⁴⁷ Satz, *supra* note 44, at 67 (noting that “banning prostitution may remove a poor woman’s only option,” but would not remove the circumstances which put her there).

¹⁴⁸ *See supra* Part II.B (explaining why legalizing prostitution would not provide pathways out of poverty).

¹⁴⁹ Dempsey article, at 1737 (“[A] world in which are not valued as human beings tends to be a world in which prostituted will be common. . .”).

should be legalized to more fully protect prostitutes.¹⁵⁰ While decriminalization does not provide a complete solution because prostitution likely will be a part of society indefinitely, decriminalization would serve as a better solution than total legalization of prostitution. Decriminalization provides some of the positive effects of legalization, such as removal of the criminal status of prostitutes and higher accessibility to resources, without full government regulation and backing of the patriarchy that is the commercial sex industry.

IV. Conclusion

Prostitution may empower some women, particularly ones who earn large amounts of money from the work; but for the vast majority of prostitutes, the work traps them in poverty and exposes them to physical violence and emotional isolation.¹⁵¹ Most prostitutes are victims of poverty, classism, and racism and should not be punished for trying to survive. Legalization would not solve the problems associated with prostitution and in fact, may actually exacerbate some problems.¹⁵² However, decriminalization of selling sex would solve problems by providing more resources to prostitutes without condoning systematic gender inequalities and perpetual violence.

Perhaps some day, through technology and other means, prostitution could be completely safe and fully consensual.¹⁵³ But with vast amount of violence, poverty, and inequality associated with prostitution, that day is not coming anytime soon. To solve the issues associated with

¹⁵⁰ See Havelkova, *supra* note 128, at 66 (“[P]rostitution is a phenomenon that cannot be eradicated. Legalizing it would enable guarantees of equal rights for sex workers.”).

¹⁵¹ See *supra* Part II (explaining the negative effects prostitution has on prostitutes).

¹⁵² See generally Dempsey, *supra* note 77 (arguing that prostitution is a form of patriarchy and legalizing it would further develop gender inequalities).

¹⁵³ See generally Scott Peppet, *Prostitution 3.0?*, 98 IOWA L. REV. 1989 (2013) (describing technological innovations that could make prostitution significantly safer for prostitutes).

prostitution, society must address a number of other large-scale issues, including poverty and gender inequality. Thus, for now the best solution to protect and empower prostitutes is to decriminalize prostitution for sellers.