

A proposed revision of the laws governing prostitution is a complicated and multi-faceted issue. Feminists for Free Expression advocates the decriminalization of prostitution. This paper sets forth why this position is necessary and why prostitution is a feminist issue. Although decriminalization will not solve all of the problems associated with prostitution, it is a first step in granting women and other members of the sex worker population their basic civil rights.

Definitions

Prostitution: For purposes of this position paper, “prostitution” means any consensual sexual activity among or between adults where money or any other material compensation is involved. Nonconsensual sex acts, whether perpetrated by fraud, threat of force, or force, as well as any sex acts perpetrated against minors are not prostitution, and are referred to instead as criminal sexual acts, collectively.

Prostitute: Anyone who by choice, either because she likes the work, likes the money or chooses it as a way to feed herself and her family, offers consensual sexual activity for money or any other consideration. Women are referred to in this discussion, because prostitutes have most often been identified as women. In reality, the prostitute population also includes men and transgendered persons, and these recommendations hold for those members of the profession as well. The 1996 San Francisco Task Force on prostitution concluded that prostitution is not a monolithic institution. It encompasses people working in the pornographic media industry, live theater, massage parlors, bordellos and through print advertising, as well as the street workers most commonly envisioned when the word “prostitute” is mentioned.

Sex worker is a term of self-definition created by those within the prostitutes’ rights movement in order to find a term that does not carry the pejorative connotations or legal implications of prostitution. The term includes people whose work involves sexual entertainment, art, or education that is not within the ambit of the laws against prostitution, though it might have been in the past. The term “sex worker” also includes all prostitutes.

Decriminalization means the removal of existing laws and is different from legalization, which is the establishment of laws within which prostitution can exist (as in the regulated brothels of Nevada).

Why does FFE favor decriminalization?

Decriminalization allows those who are prostitutes to go into business for themselves. Self-determination is a tenet of feminist politics. Decriminalization removes hypocrisy within the criminal justice system and fosters responsibility, empowerment, self-esteem and self-care.

What are the present laws?

Laws that prohibit prostitution concentrate on Soliciting for the purposes of prostitution. A third party living off the earnings of a prostitute.

What issues are the present laws supposed to address?

1) Quality of life. These laws concern complaints about the adverse impact of street prostitution on neighborhoods: litter, traffic, drugs, and crime.

2) Trafficking, slavery, and protection of our youth.

3) Morality and the undermining of marriage and “traditional” family values.

Why don’t these laws work?

Quality of Life

Police crackdowns on street prostitution simply shift street prostitutes to other neighborhoods at tremendous taxpayer expense.

Arresting street prostitutes is selective prosecution. Some segments of the prostitute population, especially poor women and members of minority groups, are prosecuted more than others are. Street solicitation is prohibited but newspaper ads for prostitutes proliferate in most major cities.

In most cases only the seller of the service is arrested, not the buyer.

The quality of life for the woman who chooses sex work is ignored, as is the quality of life for the person who chooses to purchase the service.

Laws against third parties living off the earnings of a prostitute put prostitutes’ homes and

families in jeopardy because domestic partners and landlords can be charged.

Arrest records stigmatize sex workers, making it difficult for them to find employment in other fields. Fear of arrest prevents sex workers who are victims of crimes from reporting those crimes.

Predators see sex workers as easy targets that “won’t be missed”. For example, Gary Ridgeway, the Green River strangler who murdered 48 women, admitted that he chose mostly prostitutes because he saw them as easy victims.

Trafficking and Slavery

Unscrupulous people dupe women, especially those in poorer countries, with the promise of a good job in another country, and instead force them to work in brothels. This is non-consensual sex trafficking, not prostitution, and those who perpetrate it are guilty of fraud, kidnapping, and criminal sexual acts. Prostitution law does nothing to inhibit such individuals. In fact, these criminals are helped by the prostitution laws because they use the threat of arrest and deportation, as well as the shame these laws promote, to intimidate their victims.

Protection of Our Youth

Many children leave home to escape child abuse or discrimination and abuse based on sexual or gender orientation. Some are runaways and some are thrown away. They arrive in cities and become prostitutes for their survival. Money wasted on prosecution of adult prostitutes could be better used to provide care and services for these needy youths.

Moral Issues

The idea that consensual sex between adults involving financial or other remuneration is symptomatic of moral turpitude is based not on civil code but on religious ethics. Among Americans, there are diverse opinions on religion and sexuality. Any law that respects an establishment of religion violates the First Amendment (1) to our Constitution.

Why does FFE take this position now?

Sex Workers’ Rights Movement

There exists today a unified international sex workers’ rights movement, consisting of thousands of members, including those in the United States, who have organized to demand their basic human rights. So far, this activism has resulted in the decriminalization of prostitution in Australia, New Zealand, and the Netherlands, with very strong movements in other countries such as India and Taiwan, where tens of thousands demonstrate for prostitutes’ rights. In the United States, lobbying efforts by sex workers themselves are strongest in San Francisco, California. In 1996, a report by the city of San Francisco’s Task Force on Prostitution recommended decriminalization. The “Angel Initiative” to decriminalize prostitution nearly passed when it was put on the ballot in the city of Berkeley in 2004. We believe this will be the first of many more initiatives in this country, and FFE is in support of such initiatives. Among the many rallying points for this movement, the strongest is the fight to save the lives of prostitutes in jeopardy because of laws that silence them for fear of arrest or lead those who prey on women to believe that this is a “disposable” segment of the population.

Decriminalization models

We can benefit by using other countries that have decriminalized prostitution as research models.

Lawrence vs. Texas

The June 2003 ruling by the Supreme Court in *Lawrence vs. Texas* upheld the right of individuals to engage in consensual sexual acts in private. Before *Lawrence*, the courts held that one must prove that liberties not mentioned by the Constitution are valid to be pursued. Thus far, the Court has been silent on whether consensual sexual acts between consenting adults in which the participants also agree on financial remuneration are protected liberties; we question whether these activities are so different.

Model Penal Code

In his majority opinion in *Lawrence vs. Texas* Justice Kennedy cited the American Law Institute that in 1955 promulgated a Model Penal Code

and made clear that it did not recommend or provide for "criminal penalties for consensual sexual relations conducted in private." It justified its decision on three grounds: (1) The prohibitions undermined respect for the law by penalizing conduct many people engaged in; (2) the statutes regulated private conduct not harmful to others; and (3) the laws were arbitrarily enforced and thus invited the danger of blackmail.

The New Sex Education Model

Left in the hands of the entrepreneurs and free from prosecution, the concept of the back alley bookstores has evolved into women-owned sexuality boutiques that are also centers of learning. The Adult Industry Medical Clinic (AIM), which offers medical care and education for members of that industry, is another fine example of the good that can come when practitioners are permitted to govern themselves. From these examples, we may assume that providers of sexual service left to govern themselves could also offer a great benefit to society. There are many prostitutes and others who consider sex work a healing art that enhances our quality of life on many levels, physical, mental, emotional, and spiritual. It follows that those who are responsible providers of this service contribute to society's health, not society's ills, and should be given support and not condemnation. Prostitution laws have turned a social asset into a liability. It can be argued that this has been done for community hygiene, but we believe anti-prostitution laws, by keeping sex information underground, have only helped maintain a dangerous ignorance that breeds disease. Feminists For Free Expression supports the efforts of the organized sex worker movement. We believe that sex workers allowed to govern themselves have the greatest potential to promote positive change. Decriminalization fosters an environment where education, growth, and good health can flourish.

Whose Body is it anyway?

Some Comparisons

Reproductive Rights analogy: Some argue the state has an interest in a woman's use of her own body for reproduction (Roe vs. Wade). Some may also argue that anti-prostitution laws are for the

protection of women. In actuality, these laws infantilize women and usurp their power, undermining women's rights to self-determination and liberty under the Fifth (2) and Fourteenth (3) Amendments. Whether a woman uses her body for reproduction, recreation or remuneration is her business, not the state's.

Athletes choose to subject their bodies to physical stress that is not only within the law, but widely praised and financially compensated.

Cosmetic surgery that greatly changes the body is not against the law; moreover, it is very popular and doctors are handsomely paid for this service.

Adult Movies: Hardcore adult movies in which people engage in sex acts for fun and profit are widely accepted and enjoyed by a very large segment of the population.

Gender Parity: Women do not have equal rights under the Constitution. The Equal Rights Amendment was never passed. It is, therefore, more difficult for women to fight for and retain their rights to equality and autonomy under the law. Women fight for equal pay in almost every field. Yet, society arrests women for performing the only job in which they can set their own rates and make more than men who provide the same service. Many women who do not identify as prostitutes need and are able to use prostitution for a limited time in their lives to support themselves, be it for one night, one year, one semester, etc. The fact that so many women are prosecuted for exploiting this asset reinforces the position of women as second-class citizens.

It is for the reasons set forth in this paper that Feminists For Free Expression advocates the decriminalization of prostitution.

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1 First Amendment: *Congress shall make \ no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.*

2 Fifth Amendment: *No person shall be held to answer for a capital, or otherwise infamous crime, unless on a*

presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3 Fourteenth Amendment: *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

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Feminism and Free Speech: Prostitution



FEMINISTS FOR FREE EXPRESSION

*To suppress free speech
In the name of
Protecting women
Is dangerous and wrong*

-Betty Friedan