

1-1-1999

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Norma Jean Almodovar

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Recommended Citation

Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politician and Judges*, 10 *Hastings Women's L.J.* 119 (1999).

Available at: <https://repository.uchastings.edu/hwlj/vol10/iss1/7>

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For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politicians and Judges

Norma Jean Almodovar^{*}

Sexism and apathy have hindered Mexican police investigations into the cases of more than 100 women raped and killed in the border city of Ciudad Juarez The frequently grisly assaults, dating to 1993, have terrified residents of the industrial city south of El Paso, Texas In an open letter Sunday to Chihuahua State officials, the National Human Rights Commission said the assumption by local officials that some of the victims were prostitutes had slowed investigations into the killings.¹

Anyone concerned with human rights should be outraged in reading the preceding excerpt. It is unconscionable that law enforcement agents in other countries do not investigate the rapes and murders of citizens simply because such victims might be prostitutes.

* Norma Jean Almodovar is the President and Founder of the International Sex Worker Foundation for Art, Culture and Education (ISWFACE), a non-profit organization. She has been a prostitutes' rights activist since 1982, after leaving her job of ten years as a civilian traffic officer with the L.A.P.D. Frustrated with her fellow officers for their scandalous behavior and disappointed at what she perceived to be societal apathy and hypocrisy, she became a prostitute to make a social statement. She began writing an autobiographical book, entitled *Cop to Call Girl*, in which she exposed her former colleagues. Incurring their wrath, she was set up in a sting operation and charged with one count of pandering, for which she served eighteen months in the California Institute for Women. Her book was published (Simon and Schuster) in 1993 and in paperback (Avon) in 1994.

She has served as the Executive Director of COYOTE (Call of Your Old Tired Ethics) of Southern California since 1984. In 1995, she was an official Non-Governmental Organization delegate to the United Nations Fourth World Women's Conference on Prostitution (with California State University, Northridge Center for Sex Research). In June, 1998, she co-chaired a panel on sex work with Dr. Smarajit Jana (Calcutta, India) at the 12th World AIDS Conference in Geneva, Switzerland. She frequently lectures at colleges and universities throughout the United States and has been a guest on over six hundred radio and television talk shows around the world. She can be contacted at iswface@iswface.org.

1. Associated Press, *Mexico Blasted in Rape Response*, DAILY NEWS, May 25, 1998, at 14.

In the United States we often believe ourselves to be above such inhumanity that our police safeguard all citizens. Most of us think that we are more concerned about our marginalized citizens because we have enacted protective legislation against prostitution. We also believe that laws against prostitution are meant to protect basic human rights and to preserve our dignity. Are they not for our own good, to prevent all women from being exploited? I argue that rather than meeting these goals, prostitution laws actually serve to further the exploitation of women, and therefore should be repealed.

As long as prostitution laws remain, prostitutes will continue to be marginalized from mainstream society. Their needs will be ignored and brutality against them will be rationalized or even condoned. The stigmatization that goes along with prostitution laws strip these women of their rights. Even those who take an oath to protect all citizens see the prostitute as undeserving of rights that are supposedly guaranteed to all people. This view is typified by Pasadena Superior Court Judge Gilbert C. Alston, a former Los Angeles Police Officer, who stated his belief that

[t]he law did not afford prostitutes protection against rape or sodomy if they had agreed to and were paid for a 'lesser' sex act. . . . [T]he man could force the prostitute to engage in sexual intercourse and sodomy without being criminally liable, as long as he didn't physically abuse her.

A woman who goes out on the street and makes a whore out of herself opens herself up to anybody. . . . She steps outside the protection of the law. That's a basic and fundamental legal concept. . . . Who in the hell is going to believe a whore on the witness stand anyway?²

Even some so-called feminists have expressed similar views. For example, when questioned about a woman's right to choose prostitution as a career, Shayna Moss, President of the Broward County, Florida Chapter of the National Organization for Women responded, "I don't think a hooker has rights."³

It is generally accepted then, in such reputable circles, that prostitutes are without rights or standing before the law. It is therefore possible to conclude that the deaths of prostitutes are meaningless and thus it is not necessary to expend the energy to investigate their murders. In fact, the murders of prostitutes are often referred to as "misdemeanor murders" or

2. Mark Arax, *Judge Says Law Doesn't Protect Prostitutes, Drops Rape Count*, L.A. TIMES, April 24, 1986, at A1.

3. Ronnie Greene, *Fighting for Right to Sell Her Body*, DAILY NEWS, June 11, 1995, at 24.

“NHIs”—meaning “no humans involved.”⁴ Terms like these make it clear that those of us who choose, for whatever reason, to engage in commercial sex are no longer considered a part of the human race. These attitudes are likely to hinder investigations into brutal sexual assaults and murders simply because the police seem unwilling to spend resources for the benefit of those they consider worthless.

If this is the conviction of our own law enforcement agencies, judges and feminist upholders of our human rights, how can we expect our neighbors south of the border to be more empathetic toward raped and murdered women who, in their eyes, were probably nothing more than prostitutes? Viewed in this light, the Mexican police who appeared negligent in their duties toward the 100 or so women raped and killed in Ciudad Juarez look less culpable and barbaric, and more like our very own police.

But even though laws against prostitution serve to brand the prostitute as worthless and inhuman, many of our feminist sisters have been unwilling to support decriminalization as a solution. They claim that prostitution leads to a lifetime of shame and degradation which robs the prostitute of her bodily integrity, personal privacy, self-respect and reputation.⁵ This view fails to understand that some women, even prostitutes, see prostitution differently. It also completely takes the individual out of the equation in determining issues concerning her own life. Whether prostitution is a legitimate choice for these individuals is at the heart of the feminist debate surrounding issues of decriminalization and legalization. Dr. Janice G. Raymond, co-Executive Director of Coalition Against Trafficking in Women, debunked the notion of freedom to choose prostitution in the following manner:

Some treat prostitution as a personal choice, ignoring the sexual exploitation of prostitution while at the same time announcing that the worst thing about prostitution is its stigmatization. But the worst thing about prostitution is its violation of and violence against women and children.

While emphasizing the harm that is done to actual women and children in prostitution, we must also note that the sexual exploitation of prostitution is harmful to all women. The sexual violation of any women is the sexual degradation of all women

4. Steve Wiegand, *43 Women Slain—San Diego Cops Linked*, SACRAMENTO BEE, Oct. 7, 1990, at A1.

5. See Janice G. Raymond Ph.D., *Report to the Special Rapporteur on Violence Against Women*, United Nations Women's Conference, May 1995, at 5-8.

Any form of sexual exploitation, including prostitution, abrogates this human dignity.⁶

But what about women who disagree with Dr Raymond, who do not accept the postulation that their work in prostitution is a violation of their human dignity? What about us women who see the inconsistency in continuing to advocate choice in one arena, while actively trying to squelch freedom of choice in other situations?

This hypocrisy is evident in the abortion debate. Many feminists champion a woman's right to choose—as long as it is abortion that is being discussed.⁷ But let someone suggest that women have a right to sell their bodies and suddenly these women no longer advocate choice.⁸ Prostitution must be the same issue for feminists as abortion. It is the right to choice. Both involve the right of a woman to control what happens to her body. If one claims self-ownership as the basis of a woman's right to choose an abortion, then the logical implication of such ownership cannot be limited to abortion. If a woman owns her body, she should be able to choose to do with it what she will. Once we determine that an individual has a right to choose, this choice must include all options—good, bad, moral or immoral—available to an individual. Otherwise, the right to choose is without meaning.

Some feminists maintain that the choice of prostitution as a career is “degrading” and harmful to all women, and justify their desire to abolish this option as a means to protect women from exploitation.⁹ If such arguments have any validity at all, anti-abortion activists should be able to assert the same claims regarding the degrading and emotionally deleterious effects of abortion on women and demand that women be protected from such harm through its prohibition.

This prostitute as “victim” theory, now deeply imbedded into law, and espoused by so-called feminists like Catharine MacKinnon and Andrea Dworkin, involves the irrational belief that all women are inherently incapable of self-determination and need “big sister” protection.¹⁰ This protection is not against men who would exploit her for free, but against men who know her value and pay her accordingly. How is she protected? Is it by being led to jail in handcuffs and having her freedom taken away?

Even though I strongly advocate the right to choose, I fully acknowledge that some women and girls, perhaps even quite a few, enter

6. *Id.* at 8-9, 11.

7. *See, e.g.*, STEPHEN M. KRASON, ABORTION POLITICS, MORALITY, AND THE CONSTITUTION 12 (1984).

8. *See* Raymond, *supra* note 5, at 5-8.

9. *See* United Nations Fourth World Conference on Women, U.N. Doc. A/CONF. 177/L.1, at 103 (1995).

10. *See generally* ANDREA DWORKIN & CATHARINE MACKINNON, PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY (1988).

into prostitution against their will. Furthermore, some prostitutes may find the work emotionally taxing or disagreeable. They may have violent confrontations with their clients or pimps. However, some of these lamentable conditions are also shared by women who are in violent noncommercial relationships. Many women are forced to work in sweatshops, clean toilets, are sexually exploited by their bosses or are in abusive marriages. There is a potential for coercion in any relationship. Nevertheless, it would be imprudent to suggest that such unpleasantness be resolved by prohibiting these relationships altogether. It would be hard to imagine outlawing marriage, clothing manufacturing, janitorial professions and coed workplaces.

It is the continued threat of arrest, extortion and forced sex with the police that is more emotionally damaging—and violative of human rights and dignity—than the exchange of money for otherwise lawful activity. Therein lies the true source of degradation and absence of choice. For mutually agreed upon financial transactions it should not matter to anyone outside the relationship how many times sexual activity occurs, or with how many sexual partners. If mutual agreement is not present in a relationship, there already exists an abundance of applicable laws specifically relating to coercion.¹¹ Laws against prostitution are extraneous and do nothing to protect women. If we want to protect women, we should concentrate on enforcing laws designed to punish offenders truly infringe on a woman's right to choose—such as laws against spousal abuse and rape.

However, many do not agree with this view. They continue to support criminalization because they misunderstand and misapply facts about prostitution. In a letter dated October 10, 1997, responding to an editorial piece in the Los Angeles Times written by COYOTE attorney Edward Tabash, Los Angeles Police Chief Bernard C. Parks argues his case for the continued criminalization of prostitution:

It is estimated that 95 percent of all prostitutes who work in the City of Los Angeles are working for a pimp or madam. These individuals (the prostitutes) earn only a small part (approximately 20 percent) of the income derived from their prostitution activities. Those who exploit prostitutes prey on the young males and females who are vulnerable to the controlling influence of drugs and physical/sexual abuse. The average age of a person—male or female—who becomes involved in prostitution is 15 to 18 years old. By the time these individuals reach the age of 25 to 30, they are of marginal use to their pimps or madams and are no longer employable. With no skills, they often become involved in other illegal activity or survive on the largess of society.

11. See, e.g., CAL. PENAL CODE §§ 261, 266 (West 1988).

. . . [I]t has been shown statistically that there is a direct correlation between prostitution and other serious crimes in areas where high levels of streetwalking prostitution are allowed to occur. . . .

I would like to point out that laws prohibiting prostitution are not merely meant to . . . protect women from being exploited by pimps and panderers. Laws are generally enacted to deter people from certain behavior which society deems contrary to its quality of life. . . . Legalizing prostitution will not result in attracting a better class of person to this profession. . . .

Whether one advocated arresting and incarcerating prostitutes to protect them from exploitation or because their conduct is offensive to society, the undeniable fact remains that the act itself is indicative of a greater problem that will not be solved by approving the practice.¹²

Below, I respond to these wholly inaccurate remarks made by Chief Parks. These claims are fairly typical of the arguments made by those who do not want prostitution decriminalized. I will demonstrate the inherent fallacies in Parks' argument and thereby show why prostitution should not be a criminal offense.

1) *"95 percent of all prostitutes who work in the City of Los Angeles are working for a pimp or madam."*

If prostitution was not illegal, working through or for a person or agency would be no different than it is for those in other professions who have agents or managers. Prostitution is indistinguishable from "legitimate" professions in this respect. Even if it were true that we all worked for pimps or madams (which we do not), it would not justify criminalization. Other laws apply to pimps or madams who use coercion and force to maintain the relationship.¹³ Therefore, if prostitution were legalized, those who wanted to could work with an "agent," and those who were victimized by these individuals would still have legal recourse.

2) *"These individuals (the prostitutes) earn only a small part (approximately 20 percent) of the income derived from their prostitution activities."*

Parks is alleging that pimps and madams take up to 80% of the monies that we make! If this were true, it would undermine Parks' argument and make a good case for legalization or decriminalization. If the legislature

12. Letter from Bernard C. Parks, L.A. Police Chief, to Edward Tabash, COYOTE attorney (Oct. 10, 1997) (on file with author).

13. See CAL. PENAL CODE § 266 (h), (i) (West 1988).

removed prostitution laws from the books, we would have the opportunity to form unions and take greedy managers to court just like individuals in other professions. As it is now, prostitutes have no such recourse because their activities are outside the law.¹⁴

Furthermore, combined federal, state and local government agencies take nearly 50% or more of the income from those who earn a higher than average salary.¹⁵ Surely no one would suggest that we criminalize government agencies for the very activities Chief Parks uses as justification for keeping prostitution illegal.

3) *“Those who exploit prostitutes prey on the young males and females who are vulnerable to the controlling influence of drugs and physical/sexual abuse.”*

Parks ignores that there are counterparts to those predators in sports and show business, to name only two other professions, and that drug use is also prevalent in those fields. Watching the eleven o'clock news reveals these occurrences. Apparently, Park has never heard of the casting couch in which vulnerable young men and women, seeking their fame and fortune in Hollywood, are exploited by unscrupulous people who demand sexual favors in exchange for movie and TV roles. Should we criminalize sports and show business to prevent potential exploitation or possible drug use? Why do we seek to “protect” prostitutes through legislation and not the vulnerable young people who want to enter these other professions?

And what about the horrible abuse that occurs in some marriages? Why should prostitutes be “protected” from such potential abuse when wives are not? No one would suggest that spousal abuse is less of a problem for women than the abuse which might occur in a prostitute-pimp relationship. If the prohibition of certain activities is a proven method for protecting women, shouldn't we support the criminalization of marriage as a way to combat spousal abuse? If we advocate the arrest of clients because they have the potential for violence, what is to stop us from arresting husbands for the same reason?

4) *“The average age of a person—male or female—who becomes involved in prostitution is 15 to 18 years old.”*

Surely Chief Parks is aware that there are already laws which allow the police to arrest the adult individual who has sex with a minor, regardless of whether money is involved.¹⁶ Arresting the victim does not assist her, it just inflicts additional victimization.

Furthermore, the case of 15 to 18 year olds is not helped by arresting adults in their twenties, thirties and forties who are working as prostitutes.

14. See, e.g., CAL. PENAL CODE § 647 (West 1988).

15. See I.R.C. § 1 (West 1997).

16. See CAL. PENAL CODE § 261.5 (West 1988).

It would be more effective to utilize scarce police resources to pursue those who hire underage people. The argument that arresting adult prostitutes discourages clients from engaging in sex with minors is ludicrous. Most men who want to have sex with minors are probably not interested in hiring someone in their twenties or beyond.

- 5) *"By the time these individuals reach the age of 25 to 30, they are of marginal use to their pimps or madams and are no longer employable."*

Most of the people who are arrested for prostitution are well into adulthood,¹⁷ and well past the age of being "no longer employable" in our profession. To argue that a person should be arrested because she might someday be beyond the age of employability strains logic. Returning to the similarities in sports, many athletes have a very short career after which they are of marginal use to their manager or team. The general public would not accept incarceration of all those who have become unemployable as a result of their age, physical disabilities or other condition outside of their control. All prostitution laws do is create an arrest record, virtually guaranteeing that we will be unemployable when we do want to leave the profession.

- 6) *"With no skills, they often become involved in other illegal activity or survive on the largess of society."*

Many middle-aged, divorced women—particularly those who married young, have several children and did not pursue a higher education—have no job skills, do not have the youth and looks that are required in today's job market and are forced to "survive on the largess of society." Should we arrest women if they have no job skills, get divorced and become a financial drain on society, or those who are abused by their spouses and seek outside help? Should we prohibit women from entering into marriage at all? Obviously this is absurd. Yet this is essentially the same argument that Parks is making.

- 7) *"It has been shown statistically that there is a direct correlation between prostitution and other serious crimes in areas where high levels of streetwalking prostitution are allowed to occur."¹⁸*

If one were to rephrase the above argument it could read as follows: "It has been shown statistically that there is a direct correlation between bank robberies and other serious white collar crimes in areas where banks are allowed to exist." Or how about: "It has been shown statistically that there

17. See KATHLEEN MACGUIRE & ANN L. PASTORE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, 1995 (1996).

18. It isn't clear if Chief Parks is talking about other countries when he states, "where high levels of streetwalking prostitution are allowed to occur," because streetwalking and other forms of prostitution are illegal in California. Thus, they are never "allowed" to occur.

is a direct correlation between hold-ups and other serious crimes in areas where there are liquor stores and 7-11 stores.” I suppose that if you were to close down banks you wouldn’t have to worry about any bank-related crimes. Similarly, closing 7-11 and liquor stores would probably eliminate most convenience store-related crimes. It is irrational to continue to criminalize prostitution because of the ancillary crimes that may occur in connection with it.

Police also rely on valuable and limited resources to arrest and incarcerate prostitutes, while diverting attention from other serious crimes. Police departments should not reallocate their scarce resources—at the possible expense of domestic violence cases, rapes, assaults, robberies, homicides and other violent crimes—to arrest the non-violent clients of prostitutes when no complaint against him has been made.

Those prostitutes who are truly the victims of violence are denied access to help because they are outside the law. Help is not available because the police department is too busy making prostitution arrests of women who: (a) are not 15 to 18; (b) have no pimp; (c) do not work on the streets; (d) keep all the money they make (except for that which they have to pay to attorneys to defend them); (e) do not have drug habits; (f) are not abused by anyone other than the police officers who demand sexual favors or money from them; (g) are not committing any other criminal activity.¹⁹ If we are so concerned about other criminal activities, why not focus our attention in that direction?

8) *“Legalizing prostitution will not result in attracting a better class of person to this profession.”*

Is Chief Parks suggesting that people should be thrown into jail because they are, in his opinion, a “lower class of people?” Perhaps society would be well advised to hire a better class of police officer who will not let the stress of the job lead him or her to alcoholism, drug use, spousal abuse and suicide. The latest study on police suicide rates is indicative of a greater problem among law enforcement agencies that has not been solved despite both the societal approval and legality of police work as a career.²⁰

9) *“Laws are generally enacted to deter people from certain behavior which society deems contrary to its quality of life.”*

“Quality of life” is a subjective concept and the least impressive argument for the continued harassment, arrest and incarceration of a group of people who are trying to improve their quality of life by earning a living. Again, this comes down to choice. Others should not determine what

19. See UNIFORM CRIME REPORTS, CRIME IN THE UNITED STATES (1994). The average age of prostitutes arrested has steadily increased from 24.7 in 1970 to 29.9 in 1993. *Id.* at 285.

20. See Patrick McGreevy, *LAPD Acting to Curb Suicides; 14 Officers Killed Selves in 6 Years*, L.A. DAILY NEWS, Nov. 3, 1997, at N1.

"quality of life" means for us.

The current enforcement of prostitution laws goes well beyond any justifiable prevention of inappropriate public activity which would concern society. Sting operations such as the one conducted by a consortium of law enforcement agencies to arrest Heidi Fleiss and her employees,²¹ do not result in an improved quality of life for anyone other than the officers who get to ogle semi-naked women, drink alcohol while on the job, rent fancy hotel rooms and order expensive room service. No one is safer because Heidi Fleiss or anyone like her is behind bars!

10) *"Whether one advocates arresting and incarcerating prostitutes to protect them from exploitation or because their conduct is offensive to society, the undeniable fact remains that the act itself is indicative of a greater problem that will not be solved by approving the practice."*

Neither, of course, is it solved by the continued incarceration of prostitutes! Just because society does not approve of a practice does not mean should be criminalized. Undoubtedly society does not approve of alcoholism, yet we rightfully repealed alcohol prohibition laws. Does society approve of the continued reproduction of offspring by parents who cannot feed or clothe their babies and who must depend on the "largess of society?" It does not. We most often think this is irresponsible yet we do nothing to prevent it. We celebrate the union of two more potential victims or perpetrators of spousal abuse and the birth of yet another hungry child, joyously reaffirming "family values." We do not always penalize or prohibit behavior that is unacceptable to the majority of society.

Not that long ago, laws prohibiting homosexuality were actively, although selectively, enforced.²² Well-meaning people believed that a stint behind bars would convince homosexuals to modify their offensive, immoral behavior.²³ Usually the arrest and subsequent incarceration destroyed the life of the individual, but what the heck . . . it was for his or her own good, not to mention the good of the collective sensibilities of society.²⁴ The question is, who determines which values, opinions and preferences become law in this society? Who decides what is offensive to us all? If there is a sufficient number of people who do not like gays, and they are vocal enough, should we return to incarcerating homosexuals because they offend society? If there are enough Born Again Christians to whom abortion is offensive and contradictory to their Christian beliefs, should we overturn abortion rights? Is it appropriate to once again criminalize women for terminating the lives of their unborn babies?

21. See Shawn Hubler & Nora Zamichow, *Fleiss Convicted on 3 Pandering Charges*, L.A. TIMES, Dec. 3, 1994, at 1.

22. See, e.g., *Bowers v. Hardwick*, 478 U.S. 186 (1986).

23. ROGER S. MITCHELL, *THE HOMOSEXUAL & THE LAW* 60 (1967).

24. See *id.* at 61-62.

When private acts, like the ones above involving consenting adults, are criminalized, the police are forced to resort to intrusive and often unconstitutional methods to garner an arrest and obtain a conviction. Further, the laws regulating adult human sexuality are so difficult to enforce without using selective prosecution that many states have repealed most so-called moral laws against sodomy and oral copulation.²⁵ The California Constitution explicitly grants a right to privacy,²⁶ and although this right is not absolute,²⁷ it should be interpreted to say that as long as no coercion is involved, any private consenting adult activity is none of the government's business. But this is apparently not the case when private activity involves money! It seems that the government believes that money is the root of all evil, particularly if the government thinks it is not getting any of it.

To combat the "evils" of prostitution, law enforcement agents needed more effective legislative tools. To them, the proliferation of prostitutes' rights organizations made prostitutes far too savvy. They knew what a police officer was legally permitted to do and what he could not do to make an arrest. So, a few years ago in California, a law was enacted that amended the penal code to allow a police officer to "legally entrap" a person suspected of prostitution.²⁸ The nickname for the new law was the 'use a smile, go to prison' law, because the law states:

[a] person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution.²⁹

No longer are words necessary to commit this crime of which the prostitute is the "victim"—facial expressions such as smiling or winking, or even body gestures are sufficient to violate the law!

As if that law were not adequate to make an arrest, a new law went into effect on January 1, 1996³⁰ that gives police unlimited power to arrest anyone they suspect of possessing the intent to commit prostitution! Liberal Democrat State Assemblyman Richard Katz's law made it a

25. See Arthur A. Murphy & John P. Ellington, *Homosexuality and the Law: Tolerance and Containment*, 97 DICK. L. REV. 693, 696 (1993).

26. CAL. CONST. art. I, § 1 (West 1983) declares: "All people are by nature free and independent and have inalienable rights. Among these are: enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

27. See, e.g., *Garstang v. Superior Court*, 39 Cal. App. 4th 526 (1995) (right to privacy under California Constitution is not absolute, but may be abridged only when there is compelling and opposing state interest).

28. See CAL. PENAL CODE § 647(b) (West 1988).

29. *Id.*

30. CAL. PENAL CODE § 653.22 (West Supp. 1998).

misdemeanor to loiter³¹ in any public place³² in a manner and under circumstances manifesting the purpose and with the intent to commit prostitution. It is now a crime to harbor thoughts about breaking the law without actually violating the law. According to the law's author, the law was

enacted for the purpose of assisting local law enforcement in controlling prostitution-related activities and to minimize the adverse effect these activities have upon local communities. The Legislature finds and determines that loitering for the purposes of engaging in a prostitution offense constitutes a public nuisance which, if left unabated, adversely affects a community's image, public safety, and residential and business development, and tends to encourage further criminal activity. Furthermore, prostitution-related activities consume an inordinate amount of limited law enforcement resources.³³

To reduce the expense of catching a person in the act of soliciting prostitution, it seems that the legislature wants police officers to be able to circumvent our constitutional rights and to arrest us for merely possessing an intent to break the law!

California Penal Code § 653.22 provides that the circumstances that can be considered in determining whether a person loiters with the intent to commit prostitution are:

(1) "*The person repeatedly beckons to, stops, engages in conversations with or attempts to stop or engage in conversations with passersby.*"³⁴ Apparently, if I stop to talk to several friends in succession I may have violated the law.

(2) "*Repeatedly stops or attempts to stop motor vehicles by hailing the drivers, waving arms or making any other bodily gestures, or engages or attempts to engage the drivers or passengers of the motor vehicles in conversation.*"³⁵ An innocent 'Hi, how are you, can you help me fix my car? I need a ride to a service station,' becomes a criminal conversation!

(3) "*Has been convicted of violating this section, or any other offense relating to or involving prostitution within five years of the arrest under*

31. CAL. PENAL CODE §653.20(c) (West Supp. 1998). The law defines loitering as follows: "to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered."

32. See CAL. PENAL CODE § 653.20(b). Public place is defined as, [a]n area open to the public, or an alley, plaza, park, driveway, or parking lot, or an automobile, whether moving or not, or a building open to the general public, including one which serves food or drink, or provides entertainment, or the doorways and entrances to a building of dwelling, or the grounds enclosing a building or dwelling.

33. S. Res. A.B. 1035, 1995-96 Cal. Sess.

34. CAL. PENAL CODE § 653.22 (West Supp. 1998).

35. *Id.*

this section."³⁶ Not a conviction, merely an arrest! The police can arrest me for intent, and then arrest me later because they arrested me before!

(4) "*Circles an area in a motor vehicle and repeatedly beckons to, contacts, or attempts to contact or stop pedestrians or other motorists.*"³⁷ Am I breaking the law if, looking for a parking space, I drive around the block several times, stop, and ask someone in a parked car if they are leaving?

This list of circumstances is not exclusive, meaning that any other relevant circumstances may be considered in determining whether a person has the requisite intent to commit a prostitution offense.³⁸ Thus, intent is evaluated based on the particular circumstances of each case. Selective enforcement seems sure to follow since police officers have no clearly defined guidelines and can thus misinterpret a person's behavior however they choose.

If the above law was applied to any other group of people besides prostitutes, undoubtedly the American Civil Liberties Union and other civil rights organizations would protest. But the voices of these tireless defenders of equality are strangely silent. Could it be that they believe that most prostitutes do not want prostitution legalized or decriminalized? Do they actually believe that anyone would prefer to go to jail than to work as a prostitute? Anyone who contends this should spend a few hours behind bars and rethink this nonsense. Do these busy-body feminists believe that it is necessary to erode the constitutional rights of all members of society just to get prostitutes to quietly accept their protection? And do they believe that by shuffling us off to jail we will realize how exploited we are when we accept money for what we could otherwise legally give away?

I say that most prostitutes do not want to get arrested and go to jail! But as long as prostitution remains illegal the police will continue to take away our freedom. That is why the laws must change. Most activists within the prostitutes' rights movement favor decriminalization over legalization.³⁹ Legalization is a system whereby the state regulates taxes, and licenses whatever form of prostitution is legalized.⁴⁰ It means that the government would enact new laws that put the control of prostitution in the hands of the police or the state.⁴¹ Nevada is the only state that has adopted legalization, but only on a limited basis.⁴² But I do not advocate that other

36. *Id.*

37. *Id.*

38. *See id.*

39. *See* Micloe Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE L. J. & FEMINISM 69, 90-91 (1998).

40. *See id.* at 91.

41. *See id.* at 88, 93-94 (describing various county ordinances in Nevada and demonstrating how government intrusion under Nevada regulatory scheme leaves prostitutes with little control over their lives).

42. *See* Jessica N. Drexler, *Governments' Role in Turning Tricks: The World's Oldest*

states follow Nevada's lead since neither the police department nor the criminal justice system has any business running or regulating prostitution anymore than they should run restaurants, grocery stores or the movie industry. These are all businesses, subject to business regulations and under civil authority. Prostitution is a business within the service industry. It should be subject only to the same kinds of business laws and regulations as other businesses.

Decriminalization would allow this to happen. It would repeal all existing criminal codes applying to non-coercive adult commercial sex activity.⁴³ It would require no new legislation to deal with harmful effects of prostitution, as there are already plenty of laws which cover problems outside the realm of personal choice.⁴⁴ Such laws could continue to be enforced against anyone, in any business, who violated them. Priscilla Alexander writing for California NOW points out; "decriminalization offers the best chance for women who are involved in prostitution to gain some measure of control over their work. It would also make it easier to prosecute those who abuse prostitutes either physically or economically, because the voluntary, non-abusive situations would be left alone."⁴⁵

A woman's body belongs to herself and not to the government. The individual's rights to own, use and enjoy her body in any manner that she deems appropriate, as long as she does not violate the rights of others has long been protected in this country. Everyone has a right to make moral decisions regarding her life and property (including her body) even if others find that decision disagreeable, disgusting or immoral.

Until we return the control of all personal choices to the individual, the presumably unintended consequences of protectionist legislation will be the continued victimization of those whom the laws were designed to protect. The devastation to the lives of those unfortunate enough to be "protected" by the law enforcement officers charged with upholding the law is enormous. This should outrage anyone who claims to be concerned with the well-being of the less fortunate. As Peter McWilliams said in his book, *Ain't Nobody's Business if You Do*, "[w]hat the enforcement of laws against consensual activities does to the individuals is nothing short of criminal. The government is destroying the very lives of the people it is supposedly helping and saving."⁴⁶

The bottom line is that we as a free society cannot afford morally, ethically or financially—to continue to enforce laws that clearly have no

Profession in the Netherlands and the United States, 15 DICK. J. INT'L 201, 224-25, 234 (1996).

43. See Bingham, *supra* note 39, at 91.

44. See, e.g., CAL. PENAL CODE §§ 261, 484. (West 1998) (e.g. fraud, force, theft, negligence, collusion etc.).

45. Working on Prostitution, California NOW Inc., National Organization for Women, Economic Justice Committee (prepared by Priscilla Alexander) July 1983.

46. PETER MCWILLIAMS, *AIN'T NOBODY'S BUSINESS IF YOU DO* 197 (1993).

rational basis for existing. Whether or not we as individuals find the notion of prostitution repugnant, immoral, sexist or degrading, it is not in the best interest of women to continue to allow the use of the criminal justice system to be used as a remedy for these so called social ills. In *Inherit the Wind*, Jerome Lawrence and Robert E. Lee said, "I say that you cannot administer a wicked law impartially. You can only destroy. You can only punish. I warn you that a wicked law, like cholera, destroys everyone it touches—it's upholders as well as it's defilers."⁴⁷ The prohibitions against prostitution are wicked laws. For the sake of all women let's repeal them.

47. *Id.* at 534. (quoting JEROME LAWRENCE & ROBERT E. LEE, *INHERIT THE WIND* (1955)).