

**PROSTITUTION: A REVIEW OF LEGISLATION
IN SELECTED COUNTRIES**

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INTRODUCTION

Over the last 20 years, the governments of various Western nations have significantly changed their approach to managing prostitution and street solicitation. Several have attempted to tackle the problem through revised legislation. Little consensus exists, however, with regard to the most appropriate legislative response; and in various countries, attempts to adopt new laws (whether to enact or dismantle criminal legislation) have met with fierce controversy.

In June 2003, for instance, the New Zealand Parliament repealed a series of century-old laws prohibiting soliciting, running brothels, and living off the avails of prostitution. The private member's bill passed by a margin of only one vote: 60 to 59, with one abstention.⁽¹⁾ In contrast, France, which licensed brothels during the 19th and early 20th centuries, has recently begun to move towards criminalizing more aspects of the prostitution trade.⁽²⁾

In Canada, there has been long-standing debate over the role of the *Criminal Code* in controlling and/or regulating prostitution. The divergence of opinion in this country over prostitution and street solicitation is perhaps most visible in the large number of special review committees created and laws passed at every level of government over the past two decades.⁽³⁾

On the surface, there appears to be little, if any, common ground among the diverse legislative directions taken by the countries and states examined in this paper. Nonetheless, their governments are largely wrestling with the same set of issues and seeking to balance two often-competing sets of responsibilities. On the one hand, they attempt to prevent

(1) "NZ Votes to Legalise Prostitution," British Broadcasting Corporation, 25 June 2003; available at <http://www.bbc.co.uk>.

(2) SOS Femmes, "Prostitution – Le cadre juridique en France"; available at http://www.sosfemmes.com/sexwork/sexwork_droit.htm.

(3) James R. Robertson, *Prostitution*, Current Issue Review 82-2E, Parliamentary Research Branch, Library of Parliament, Ottawa, 19 September 2003.

the exploitation of prostitutes by pimps and clients. On the other, they aim to eliminate the increased crime (e.g., illegal drug consumption) and “nuisance” (noise, traffic, etc.) that prostitution creates in communities where it takes place.⁽⁴⁾ The following questions underlie a wide range of government reports, critics’ analyses, and specific pieces of legislation:

Protecting Prostitutes

- How can prostitutes be shielded from violence and exploitation? How can prostitutes more easily contact the authorities when they need help?
- How can the involvement of organized crime in prostitution be reduced? How can pimping be controlled?
- How can prostitutes and their clients be protected from the health risks associated with the trade?
- How can prostitutes’ working conditions be improved?
- How can trafficking and the exploitation of young people be prevented?
- How can prostitutes be helped to leave the industry if they so choose?

Protecting Communities

- How can the “nuisance” aspects associated with prostitution be reduced?
- Should the criminal justice system be targeting particular sectors of the prostitution industry?
- How can the ancillary crime typically associated with prostitution (for example, drug dealing) be prevented?

This paper reviews the key legislative approaches to prostitution in a number of Western jurisdictions. In particular, it examines the specific laws and/or regulations these countries and states have instituted, and how they have fared in meeting their objectives.

(4) Sylvia Davis and Martha Shaffer, “Prostitution in Canada: The Invisible Menace or the Menace of Invisibility?” Sex Workers Alliance of Vancouver, Vancouver, 1994; available at www.walnet.org/csis/papers/sdavis.html.

OVERVIEW OF DIFFERENT LEGISLATIVE APPROACHES⁽⁵⁾

Each of the countries and states examined in this paper relies on a variation of one of the following five approaches to prostitution:

Prohibitionism seeks to eliminate prostitution by criminalizing all aspects of the prostitution trade. Under this approach, “prostitution is a violation of human dignity.” Criminal law and effective law enforcement are believed to be critical tools in reducing the number of individuals involved in prostitution.

Decriminalization implies the repeal of prostitution-related criminal law. In Canada, decriminalization would involve repealing all criminal law relating to prostitution, including communicating for the purposes of prostitution, operating a bawdy house and/or brothel, and living off the avails of prostitution.

Legalization refers to the regulation of prostitution through criminal law or some other type of legislation. This approach treats prostitution as a legal occupation, but nevertheless controls it by a set of rules that govern who can work and under what circumstances they can do so. Typically, governments that have adopted the legalization approach regulate the trade through work permits, licensing and/or tolerance zones.

Abolitionism is often described as the middle ground between prohibitionism and legalization. Advocates of this approach maintain that even though prostitutes may choose to enter the trade, it is nevertheless immoral. They believe that governments must take the necessary steps to allow prostitution to take place only as long as it does not infringe on public safety and order. Generally, abolitionists call for the criminalization of public solicitation.

Neo-abolitionism holds that prostitution violates a person’s human rights. Advocates maintain that there is no such thing as free choice in this matter – prostitution in all its forms constitutes the sale and consumption of human bodies. While neo-abolitionists call for the decriminalization of prostitutes themselves, they encourage governments to criminalize the activities of procurers and customers.

AUSTRALIA

Responsibility for criminal legislation in Australia falls primarily on individual states. States may take very different approaches towards the management and regulation of prostitution, as exemplified by the Australian Capital Territory and the state of Victoria.

(5) Ginette Plamondon, *Is Prostitution Work or Exploitation? Further Consideration is Needed*, Conseil du statut de la femme, Québec, 2002, p. 16.

A. Australian Capital Territory (Decriminalization With Controls)

In 1992, the Australian Capital Territory (ACT) adopted the *Prostitution Act*, aimed at managing the worst effects of the prostitution industry.⁽⁶⁾ While the *Prostitution Act* decriminalizes prostitution in private spaces, it nevertheless sets up a series of regulations designed to protect prostitutes and the public at large. Its preamble lays out a number of key objectives:

- (a) to maintain public health;
- (b) to protect the health and safety of prostitutes;
- (c) to limit the operation of brothels to particular places; and
- (d) to eliminate child prostitution and exploitation.

According to Barbara Sullivan, one of the foremost scholars on prostitution in Australia, the ACT has been largely successful in achieving those objectives.⁽⁷⁾

Unlike most other Australian states (such as Victoria), the ACT does not license prostitutes, brothels, or escort agencies. Rather, it requires members of the prostitution industry to register with the Registrar of Brothels and Escort Agencies. Registration is not difficult, nor is it a particularly lengthy process. Every year, individuals who wish to register themselves or their businesses must provide their contact information to the Registrar and pay a small fee. According to the government of the ACT, registration is preferable to licensing because of its ease and efficiency.⁽⁸⁾

By all accounts, the registration system appears to be meeting its goals. While the ACT (like many other Australian states) continues to prohibit street solicitation, very little of it seems to occur in practice. As Sullivan points out, “this is probably because other employment opportunities in the sex industry are readily accessible.” Moreover, due to the relative straightforwardness of the registration process, there appear to be very few illegal brothels and escort agencies.⁽⁹⁾

(6) *Prostitution Act*, Australian Capital Territory, Australia, 1992 (includes amendments up until 15 August 2003); available at <http://www.legislation.act.gov.au/a/1992-64/current/pdf/1992-64.pdf>.

(7) Barbara Sullivan, *The Politics of Sex: Prostitution and Pornography in Australia since 1945*, Cambridge University Press, Cambridge, U.K., 1997, p. 207.

(8) *Ibid.*, p. 206.

(9) Barbara Sullivan, “Prostitution Law Reform in Australia. A Preliminary Evaluation,” *Social Alternatives*, Vol. 18, No. 3, 1999.

Until 2002, the Registrar of Brothels and Escort Agencies did not have the authority to deny registration to any prospective owners of such establishments. Critics charged that the ACT allowed “undesirables” to enter the prostitution industry, particularly those who had been involved in criminal activity.⁽¹⁰⁾ As a result, the government introduced an amendment to the *Prostitution Act* in 2002, requiring employers and operators to submit to a criminal background check. Any individual convicted of a “disqualifying offence” is currently not permitted to own or operate a brothel or escort agency. The “disqualifying offences” listed in the schedules of the *Prostitution Act* include assault, murder, sexual assault and involvement in child pornography and exploitation.⁽¹¹⁾

Another key objective of the *Prostitution Act* is to safeguard the health of prostitutes and the community at large. The Act includes several provisions designed to stem the transmission of HIV/AIDS and other sexually transmitted diseases (STDs). Prostitutes employed in brothels and escort agencies must undergo mandatory STD testing. Those infected with an STD are prohibited from providing sexual services, and owners and managers of brothels and escort agencies must not allow an employee to work if that person is infected.

While some critics have denounced compulsory medical testing, many have applauded the government’s attempt to make all parties responsible for preventing STD transmission.⁽¹²⁾ Rather than targeting just the prostitutes, the *Prostitution Act* makes it illegal for anyone to “provide or receive commercial sexual services” knowing that they are infected with an STD. Consequently, prostitutes are believed to be in a better position to resist pressure from their clients (and/or their employers) not to use a condom.⁽¹³⁾

The *Occupational Health and Safety Code for the Sex Industry* was introduced in 1999 for the further protection of prostitutes and their clients.⁽¹⁴⁾ Employers and/or operators of brothels and escort agencies are required to provide facilities that meet health and safety

(10) Kelly-Anne Collins, *The Prostitution Bill 1999*, Research Note No. 6/99, Research Publications and Resources Section, Queensland Parliamentary Library, Australia, December 1999, p. 3.

(11) Chief Minister, Australian Capital Territory, Press Release, “Sexual Servitude Outlawed in the ACT,” Canberra, Australia, 15 April 2003.

(12) Jackie West, “Prostitution: Collectives and the Politics of Regulation,” *Gender, Work and Organization*, Vol. 7, No. 2, 2000.

(13) Sullivan (1997), pp. 206-207.

(14) *ACT Sex Industry Code of Practice*, Australian Capital Territory, 1999; available at http://www.workcover.act.gov.au/pdfs/code_of_practice_sex_industry.pdf.

standards. The standards, which were developed by a collective of prostitutes, police officers and health officials, include regulations on cleanliness and safety, as well as the purchase and disposal of “personal protective equipment” (such as condoms and other prophylactics). There remains some concern, however, that not all members of the prostitution industry are aware of their rights and responsibilities. One organization, Workers in Sex Employment (WISE), has called upon the government to take “a [more] proactive role in the education of brothel owners and sex workers.”⁽¹⁵⁾

Sullivan argues that, in sum, “[t]here are some clear advantages to the ACT system.” There appear to be very few illegal brothels and very little street solicitation. Brothels are largely confined to industrial areas, because of the ACT’s zoning requirements. Moreover, prostitutes’ advocacy groups are satisfied with the ACT’s focus on occupational health and safety. A collective of stakeholders in the sex industry continues to consult the government on ongoing issues.⁽¹⁶⁾

In assessing the ACT’s approach, it is important to note the Territory’s distinctive history with regard to this issue. Even before 1992, the ACT pursued “a policy of toleration and control.” Prostitutes and others in the industry were not charged unless a complaint had been lodged. Moreover, prostitutes already enjoyed a fairly cordial relationship with the police and other community members. According to Sullivan,

The good relations which prevail between the industry, the government and the public ... are probably unique in Australia. Only in Canberra do brothels organise well-attended public open-days (complete with barbeque) and host contemporary art shows⁽¹⁷⁾

It is likely, therefore, that this history helped to iron out issues that could have provoked much more controversy in some other parts of Australia, such as Victoria.

(15) Sera Pinwill, “Occupational Health and Safety in the Australian Sex Industry: The ACT Experience,” *Social Alternatives*, Vol. 18, No. 3, 1999.

(16) Sullivan (1999).

(17) Sullivan (1997), pp. 207-208.

B. Victoria (Legalization)

While some forms of prostitution have been permitted in Victoria since 1986 with the introduction of the *Prostitution Regulation Act*, the sex industry is currently governed by the more recent *Prostitution Control Act*, which came into force in 1995.⁽¹⁸⁾ Some debate remains, however, over exactly what approach Victoria has chosen to take. While some commentators refer to the *Prostitution Control Act* as “decriminalisation with controls,”⁽¹⁹⁾ others suggest it more closely resembles legalization.⁽²⁰⁾ Regardless of the definition, it is clear that the government of the state of Victoria seeks to control the sex industry through legislation.

The government sets out a number of aims in the introduction to the *Prostitution Control Act* (1994). They include:

- (a) to prevent the sexual exploitation of children as well as limit their exposure to the prostitution industry;
- (b) to shield communities from the negative aspects associated with prostitution;
- (c) to reduce criminals’ involvement in the running of the prostitution industry; and
- (d) to safeguard the occupational health and safety of prostitutes while protecting their clients from any health risks.

Contrary to the situation in the ACT, however, questions have arisen from all sides about whether the *Prostitution Control Act* is actually meeting its goals. Critics have questioned the Act’s ability to ensure that prostitutes are provided with proper working conditions, as well as its capacity to shut down illegal brothels and escort agencies.⁽²¹⁾

In Victoria, individual prostitutes and businesses are required to be licensed. The licensing process is much more in-depth than registration in the ACT. The Business Licensing Authority requires prospective owners to submit to a police check and an assessment of their financial affairs. Applicants must also demonstrate the business know-how to manage their new brothel or escort agency. Finally, and most generally, the *Prostitution Control Act* requires

(18) *Prostitution Control Act*, Victoria, Australia, 1994 (includes amendments up until 20 September 2001); available at http://www.austlii.edu.au/au/legis/vic/consol_act/pca1994295/index.html#p3.

(19) Sullivan (1997), p. 186.

(20) Mary Lucille Sullivan and Sheila Jeffreys, “Legalization: The Australian Experience,” *Violence Against Women*, Vol. 8, No. 8, 2002.

(21) Sullivan (1997), p. 213, and Sullivan and Jeffreys (2002), p. 1142.

applicants (and their associates) to be “of good repute, having regard to character, honesty and integrity.” These requirements are designed in part to prevent organized crime from infiltrating the prostitution industry. The government also hopes that licensing will prevent individuals from flouting the regulations set out by the *Prostitution Control Act* and the state’s occupational health and safety code.⁽²²⁾ Sole operators and two-person brothels are “exempt,” and thus do not have to apply for a licence.

Some critics argue that Victoria’s licensing system discourages prostitutes from setting up their own small brothels. The stringent licensing requirements are one deterrent. Another is the often-high costs of running a legal brothel or escort agency.⁽²³⁾ According to the Business Licensing Authority, the annual licensing fee for a brothel with more than two people starts at A\$400 (approximately C\$378). It costs prostitution service providers another A\$167 (C\$157) for each additional room.⁽²⁴⁾ All brothel owners must comply with specific regulations dealing with cleanliness and hygiene, as outlined in the *Health (Infectious Diseases) Regulations*.

Yet another critical factor in discouraging prostitutes from starting their own businesses is the requirement for all brothels and escort agencies (whether large or small) to obtain a planning permit from their local city council. While city councils are not permitted to deny prospective owners a permit on moral grounds, they must follow the strict zoning requirements outlined in the *Prostitution Control Act*. Prostitution establishments are prohibited from operating in any residential neighbourhood and must be located more than 200 metres away from any school, hospital or place of worship. Prostitutes who live in residential areas are thus forbidden to establish a business in their own homes. Moreover, the strict limits attached to the planning permits tend to facilitate the development of large brothels at the expense of small ones. According to Marcia Neave:

(22) *Health (Infectious Diseases) Regulations*, Victoria, Australia, 2001; available at http://www.dms.dpc.vic.gov.au/12d/H/STAT00907/0_1.html.

(23) Interestingly, similar critiques have been levelled at Canadian municipalities that have introduced by-laws in order to license the escort industry. See Jacqueline Lewis and Eleanor Maticka-Tyndale, “Licensing Sex Work: Public Policy and Women’s Lives,” *Canadian Public Policy*, Vol. 26, No. 4, 2000, p. 441.

(24) Business Licensing Authority, Prostitution Service Provider’s Licence Application, Victoria, Australia, 2003; available at [http://www.bla.vic.gov.au/bla/blaforms.nsf/ac3260eab9065902ca25680a0016ae5a/b2b4d5bcc04b06a3ca256a9900286341/\\$FILE/bla_prost_applic.pdf](http://www.bla.vic.gov.au/bla/blaforms.nsf/ac3260eab9065902ca25680a0016ae5a/b2b4d5bcc04b06a3ca256a9900286341/$FILE/bla_prost_applic.pdf).

The form of the prostitution industry has ... been influenced by the reluctance of local councils to be seen to be condoning prostitution by granting planning permits to brothels. ... A shortage of areas in which brothels may operate lawfully has artificially increased the price of premises with an associated brothel permit. [T]his exacerbates the trend towards large-scale prostitution, since only operators with substantial resources can afford to operate legally.⁽²⁵⁾

Consequently, critics argue, legal prostitution in Victoria tends to be monopolized by large, expensive brothels.⁽²⁶⁾ For example, the Daily Planet in Melbourne operates a hotel-style facility with 18 rooms. Its management estimates that between 100 and 150 women work there regularly.⁽²⁷⁾

Currently, an estimated 44 licensed brothels operate in Victoria, and approximately 1,600 prostitutes have registered for “exempt” status.⁽²⁸⁾ Those unable or unwilling to work either in large or “exempt” legal brothels must risk significant criminal penalties by either running their own illegal brothel or engaging in street solicitation.⁽²⁹⁾

Critics have also questioned Victoria’s approach to prostitution in light of the seemingly uncontrollable expansion of illegal prostitution within its borders. Recent estimates suggest that up to 400 illegal brothels are currently operating in the state.⁽³⁰⁾ Communities across the state have called upon the government to strengthen the *Prostitution Control Act* in the hope of cracking down on unlawful prostitution.⁽³¹⁾ Street solicitation is also a major problem in Victoria.

(25) Marcia Neave, “The Failure of Prostitution Law Reform,” *Australian and New Zealand Journal of Criminology*, Vol. 21, 1988, p. 211.

(26) Under the *Prostitution Control Act*, new brothels are limited in size to six rooms apiece; but previously established brothels can exceed this limit. This new regulation may in part explain why one of the older brothels fetched over A\$1,000,000 (C\$933,000) in 1994. One facility, the Daily Planet, is the first bordello in the world to become a publicly traded company. See Sullivan and Jeffreys (2002), p. 1144.

(27) The Daily Planet is not a brothel in the strict sense of the word. It charges guests approximately \$120 an hour in room fees, while leaving the client and the prostitute to negotiate any “sexual services” they may desire. See “About the Daily Planet”; available at http://www.dailyplanet.com.au/content2/hm_aboutdp.html.

(28) “Sex in Our City? Plenty Apparently,” *The Age*, Melbourne, Australia, 8 June 2003.

(29) For example, some prostitutes may choose to work in the illegal sector in order to safeguard their anonymity. See Alison Arnot, “Legalisation of the Sex Industry in the State of Victoria: The Impact of Prostitution Law Reform on the Working and Private Lives of Women in the Legal Victorian Sex Industry,” M.A. Thesis, University of Melbourne, Australia, 2001.

(30) “New Squad to Police Sex-Trade Boom,” *The Age*, Melbourne, Australia, 22 May 2003.

(31) “Brothels Rife in Residential Areas,” *Herald Sun*, Melbourne, Australia, 18 August 2003.

The government of Victoria continues to grapple with how best to regulate, and ultimately control, the prostitution industry. While the *Prostitution Control Act* was designed to curb many of most harmful aspects of prostitution (including street solicitation, criminal involvement in the trade, and risks to health and safety), it is not clear that the legislation has achieved its desired effect. Neither prostitutes' rights groups nor community organizations have been particularly supportive of the law since its inception. Nevertheless, it does not appear that the state is planning to revamp its approach to prostitution in the near future. Rather, the government appears to be concentrating its efforts on enforcing the current provisions of the Act, in the hope of bringing about long-term social change.

FRANCE (Abolitionism)

France has experimented with a number of different legislative approaches in its efforts to address prostitution.

Starting in the early 19th century, the French government began to regulate prostitution through the licensing of brothels (“maisons de tolérance”) and the registration of prostitutes. Prostitutes employed in brothels, along with women who were arrested twice for solicitation, had to register with the authorities.⁽³²⁾ The conditions attached to registration were fairly extensive, requiring prostitutes to place their name on a national registry, agree to state regulations, and submit to medical exams twice a week.⁽³³⁾ While some historians view this approach as progressive, others suggest that the women were forced to endure long hours, poor working conditions, and harassment by the police.⁽³⁴⁾

In 1946, due to the intense lobbying efforts of Marthe Richard, a former prostitute and World War I spy, the French government decided to close its famed brothels, citing health and safety concerns.⁽³⁵⁾ Registration, however, formally ceased to exist only in 1960, when France decided to adopt an abolitionist policy towards prostitution. After acceding (in 1960) to

(32) John S. Kiedrowski and J. M. van Dijk, *Working Papers on Pornography and Prostitution, Report 1: Pornography and Prostitution in Denmark, France, West Germany, The Netherlands and Sweden*, Department of Justice, Ottawa, 1984, pp. 14-15.

(33) Pasqua Scibelli, “Empowering Prostitutes: A Proposal for International Legal Reform,” *Harvard Women’s Law Journal*, Vol. 10, 1987, p. 146.

(34) Joelle Diderich, “France Mulls Switching Off Red-Light Districts,” Reuters, 18 August 2002.

(35) “Hard on the Ladies of the Night,” *The Economist*, Vol. 365, No. 8298, 9 November 2002.

the United Nations *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*,⁽³⁶⁾ the French government passed legislation that criminalized pandering, procuring, living off the avails of prostitution, and operating a bawdy house or brothel. While prostitution per se remained legal, solicitation did not.⁽³⁷⁾ These prostitution-related provisions remained untouched until 1994.

In 1994, the French National Assembly passed two key amendments to the *Penal Code*. Until that time, “proxénétisme” was defined so broadly that prostitutes’ partners risked being charged with living off the avails. After the law was amended, prostitutes no longer hid their family lives.⁽³⁸⁾ France also began to distinguish between “active” and “passive” solicitation. While prostitutes could still be charged for overtly seeking out clients, they were now permitted to walk slowly up and down the street, stand suggestively at corners, and stare intently at men as they passed by.⁽³⁹⁾

This legislative history likely played a key role in organizing the prostitution industry in France today. Approximately 80% of France’s 15,000 to 18,000 prostitutes work on the streets.⁽⁴⁰⁾ While prostitution takes place openly on the streets of Paris and other urban centres, a much smaller number of prostitutes work in underground brothels that are disguised as “lounge bars,” “private clubs” and “massage parlours.”⁽⁴¹⁾ Recent law reform, however, has begun to change the industry.

Over the past 10 years, French citizens have become increasingly troubled by a swift rise in criminal activity. Between 1994 and 2001, violent crime quadrupled from 100,000 to 400,000 incidents per year. Police officers and fire officials began avoiding certain districts, known as “no-go areas,” for fear of being assaulted.⁽⁴²⁾ Residents were also alarmed by the jump in the number of young women working the streets, most of them illegal immigrants. It is estimated that 50% of prostitutes nationally (and 75% of prostitutes in Paris) are foreigners, most of whom have been trafficked from Eastern Europe.⁽⁴³⁾ While French residents objected to the

(36) Canada is not a signatory to this convention; available at <http://www.unhchr.ch/html/menu3/b/33.htm>.

(37) Scibelli (1987), p. 149.

(38) Hannah Godfrey, “French Working Girls Lose their Privileged Role,” *The Observer*, 19 January 2003.

(39) SOS Femmes, “Prostitution – Le cadre juridique en France”; available at http://www.sosfemmes.com/sexwork/sexwork_droit.htm.

(40) “Le débat sur la prostitution brouille les clivages politiques,” *Le Monde*, 16 January 2003.

(41) Keith B. Richburg, “France May Limit Prostitution,” *Washington Post*, 11 August 2002, p. A20.

(42) Alan Freeman, “The Next French Revolution,” *The Globe and Mail*, 4 May 2002, p. F1.

(43) “Le debat sur la prostitution brouille les clivages politiques” (2003).

nuisance associated with the growth of the sex trade, French prostitutes complained about their immigrant colleagues' low prices and disregard for health and safety. In some respects, they found "a new and unlikely champion" in Nicolas Sarkozy, the Interior Minister, whose amendments to the French *Penal Code* will likely affect the working lives of prostitutes for years to come.⁽⁴⁴⁾

In 2002, France was immersed in a debate about prostitution and, in particular, street solicitation. A number of cities, including Lyon, Orléans, Strasbourg and Metz, had issued city ordinances prohibiting prostitution, arguing that it disrupted the lives of their residents.⁽⁴⁵⁾ One member of the French National Assembly, Françoise de Panafieu, began emphasizing the merits of legalization, including reopening Paris's brothels. Other members of the Assembly advocated prohibition, on the grounds that prostitution is nothing more than "modern slavery."⁽⁴⁶⁾ In the end, the French government, elected on a platform of getting tough on crime, chose to use the *Penal Code* to crack down on prostitution and other "menace[s] to public security and tranquility."⁽⁴⁷⁾

The new crime bill, introduced by Nicolas Sarkozy, had two critical objectives: it was intended to reassure French citizens that the government was taking their safety concerns seriously; and it was designed also to fill in a series of gaps in the *Penal Code* that left France vulnerable to "insecurity."⁽⁴⁸⁾ According to the Interior Minister, comprehensive legislation was needed in order "to create a sense of security throughout France."⁽⁴⁹⁾ The new crime bill was far-reaching, criminalizing behaviours ranging from begging and squatting, to insulting the French flag or anthem.

The proposed legislation also revisited an earlier decision to repeal the law prohibiting passive solicitation. Once again, it would be an offence to engage in any type of solicitation.⁽⁵⁰⁾ While the bill did not specifically explain what passive solicitation entailed, most

(44) Richburg (2002), p. A20.

(45) Diderich (2002).

(46) Richburg (2002), p. A20.

(47) Nicolas Sarkozy, Interior Minister, quoted in "French War on Immorality Targets Porn, Prostitutes and Pay-TV," *Europe Intelligence Wire (Financial Times)*, 26 October 2002.

(48) "Le Sénat adopte le projet de loi sur la sécurité intérieure," Ministère de l'intérieur; available at http://www.interieur.gouv.fr/rubriques/c/c2_le_ministere/c21_actualite/2002_10_23_projloi_secint.

(49) Philippe Le Coeur, "Sécurité : les nouveaux interdits de la loi Sarkozy," *Le Monde*, 14 February 2003, p. 8.

(50) *Code Pénal*, France, Article 225-10-1; available at <http://www.legifrance.gouv.fr>.

critics suggested that it referred to a “way of dressing or ... attitude.”⁽⁵¹⁾ Those charged with solicitation would be liable to fines of up to 7,500 euros (C\$11,500) and/or six months’ imprisonment.

As the crime bill made its way through the National Assembly, French prostitutes protested against the new legislation. On 5 November 2002, approximately 500 prostitutes participated in a national demonstration in Paris, demanding that Sarkozy leave them alone.⁽⁵²⁾ The law came into effect in early 2003, however. The final version was virtually unchanged from the original, except that maximum penalties were reduced to two months’ imprisonment and/or a fine of 3,750 euros (C\$5,700). In response to complaints that the bill did not distinguish between French prostitutes and illegal immigrants, the Interior Minister maintained that the law’s “primary target is foreigners.”⁽⁵³⁾ The French government also pledged to help the victims of trafficking by sheltering them in safe houses for 48 hours, in the hope that they would decide to denounce their traffickers.⁽⁵⁴⁾ Finally, the Ministry announced plans to expand the resources dedicated to enforcing the laws against procurers and traffickers.⁽⁵⁵⁾

Six months after the legislation came into effect, the French government claimed that street prostitution in Paris had dropped nearly 20% and that the new law had enabled enforcement officials to wage war on traffickers and procurers. According to Nicolas Sarkozy, officials dismantled 13 international prostitution rings between February and September 2003.⁽⁵⁶⁾ The law-and-order approach taken by the French government also has the support of the majority of citizens.

Nevertheless, the new law has come under severe criticism – specifically with regard to its provisions on solicitation – from prostitution advocacy organizations, residents’ associations and human rights groups.⁽⁵⁷⁾ Many residents have complained that it has done little to stem the tide of (mostly foreign) prostitutes selling their services on the streets.⁽⁵⁸⁾ In one

(51) Godfrey (2003).

(52) Joseph Coleman, “French Prostitutes Protest Crackdown,” Associated Press, 5 November 2002.

(53) “Sécurité: faut-il punir les prostituées et les clients?” *Le Monde*, 16 January 2003.

(54) Le Coeur (2002), p. 8.

(55) “Prostitution: le gouvernement veut aussi s’attaquer aux proxénètes,” *Le Monde*, 31 October 2002.

(56) John Lichfield, “French Prostitutes Take to the Streets Over New Vice Law,” *The Independent* [London], 27 September 2003, p. 13. See also “Prostitution – M. Sarkozy promet de ‘régler le problème’ dans le XVIII^e arrt.,” Agence France- Presse, 25 September 2003.

(57) “French Parliament Passes Tough New Anti-Crime Law,” Associated Press, 13 February 2003.

(58) “Prostitution – M. Sarkozy promet de ‘régler le problème’ dans le XVIII^e arrt.” (2003).

neighbourhood, residents “threatened to erect barricades” if policing authorities did not take serious steps to address street prostitution. Residents have also argued that non-prostitutes are now more likely to be approached by potential clients, given that prostitutes have to dress more conservatively.⁽⁵⁹⁾

The French government has also had very little success in prosecuting prostitutes for passive solicitation. In an indication of what was to come, the first three prostitutes charged with passive solicitation were acquitted.⁽⁶⁰⁾ By the end of September 2003, only 33 prostitutes had been convicted for passive solicitation – out of the nearly 1,000 who had been arrested on that charge.⁽⁶¹⁾ While only a small number have been convicted, prostitutes’ rights groups nonetheless argue that the new law has made prostitutes more vulnerable to exploitation and abuse.

According to many prostitutes, and prostitutes’ advocacy organizations such as Cabiria, prostitution has become much more dangerous since legislation banning passive solicitation came into effect. They worry, in particular, that the new crime bill is driving prostitution underground. Even before the law came into effect, Cabiria argued that prostitutes would have to work in more isolated areas so as to not attract the attention of the police. Prostitutes would also likely not have the time to assess their clients properly, nor would they be able to demand protection from HIV and STDs.⁽⁶²⁾ Even in the short time since the crime bill came into effect, available evidence suggests that Cabiria’s predictions were correct. While the government initially claimed that the passive solicitation law would be employed primarily as a device to bring down international prostitution rings, “the law has been applied unevenly and inconsistently” against both French prostitutes and illegal immigrants. Prostitutes are now less likely to seek help from the police for fear of being prosecuted themselves. Many prostitutes have also argued that clients are now more likely to take advantage of them. In the words of one prostitute, “The customers ... won’t wear condoms. Some don’t pay. They know we can’t do anything about it.”⁽⁶³⁾

(59) Lichfield (2003), p. 13.

(60) “Prostitutes Cleared in First Paris Trial over Law Against ‘Passive’ Solicitation,” Associated Press, 6 May 2003.

(61) Lichfield (2003), p. 13.

(62) Gaëlle Téqui, Cabiria, quoted by Elaine Sciolino, “Streetwalking, en Masse, for the Right to Tempt,” *New York Times*, 5 November 2002.

(63) Lichfield (2003), p.13.

Human rights organizations have also questioned the French government's war on trafficking, arguing that it does little but harm trafficked women. Whereas foreign women were able to apply for temporary asylum before the enactment of the new crime bill, they are now at increased risk of being arrested and deported.⁽⁶⁴⁾ Moreover, while the safe houses may be a good first step, they have been criticized for doing little to protect trafficked women. According to Patrick Hauvuy, director of the Service de Prévention et de Réadaptation Sociale in Nice, "given the climate of distrust, victims are unlikely to decide to denounce their trafficker within 48 hours!"⁽⁶⁵⁾

The reintroduction of passive soliciting into the *Penal Code* marks a move towards strengthening the criminal laws that apply to prostitution. The long-term ramifications of the new crime legislation remain unclear. Nevertheless, there is an evident divergence of opinion between the government, on the one side, and residents' associations and prostitutes' rights groups on the other. Nicolas Sarkozy promised that a comprehensive evaluation of the legislation's effectiveness would be undertaken in the fall of 2003. The results have not yet been released.⁽⁶⁶⁾

THE NETHERLANDS (Legalization)

The Netherlands is well known for its "liberal" stance on prostitution. However, it is less well known that brothels were illegal in The Netherlands for most of the 20th century. In 1911, the Dutch government criminalized brothel keeping – even though prostitution per se remained legal.

Although theoretically brothels were banned in The Netherlands, in practice they continued to flourish. The Dutch approach to prostitution at that time has been described as one of "pragmatic tolerance" or *gedogen*.⁽⁶⁷⁾ Rather than turning a blind eye to the prostitution industry, *gedogen* limited prosecution under specific circumstances. Written government

(64) Françoise Guillemaut, Cabiria, "Repercussions of the New Bill in France," *Europap News Newsletter*, No. 4, April 2002, p. 4.

(65) "Le debat sur la prostitution brouille les clivages politiques" (2003).

(66) "Prostitution – M. Sarkozy promet de 'régler le problème' dans le XVIII^e arrt." (2003).

(67) Chrisje Brants, "The Fine Art of Regulated Tolerance: Prostitution in Amsterdam," *Journal of Law and Society*, Vol. 25, No. 4, 1998, p. 624.

policies and local by-laws regulated the operation of brothels and kept them within certain areas. However, it is important to note that:

Gedogen ... is a subtle means of social control. Although it is often translated as “pragmatic tolerance,” it does not mean that criminal offences are simply ignored. Neither should the word “tolerance” be taken to imply downright approval. The emphasis lies on pragmatism which, to a large extent has its roots in a certain scepticism with regard to criminal law as a effective solution to criminal problems.⁽⁶⁸⁾

Organized prostitution in private premises was thus permitted so long as it did not become a public nuisance. Brothels and other prostitution establishments were required to follow municipal by-laws, and exploitation and coercion of prostitutes continued to be prosecuted.⁽⁶⁹⁾

While the principles of *gedogen* underlay the management of prostitution for most of the 20th century, the Dutch government came under considerable pressure to reform the *Penal Code* during the 1980s and 1990s. Prostitutes’ advocacy groups had been pushing for better working conditions and labour rights, and other concerns also entered the fray.

According to the Ministry of Justice, between 15,000 and 30,000 prostitutes were working in The Netherlands in the late 1990s.⁽⁷⁰⁾ By that time, many Dutch prostitutes had left the red-light districts for establishments that afforded them better pay and higher status. Immigrants (in particular, illegal immigrants) took their place in the windows and cheaper brothels.⁽⁷¹⁾ It was estimated that illegal immigrants and trafficked men and women made up approximately 40% of the country’s prostitution industry during the late 1990s.⁽⁷²⁾ Government officials and communities were also keen to dismantle the “peripheral crime” that surrounds prostitution – drug abuse and dealing, street solicitation, and the spread of STDs, including HIV/AIDS.⁽⁷³⁾

(68) *Ibid.*

(69) Dan Gardner, “Coffee? Prayers? Sex?: Part One: Church and Brothel Make for Odd Bedmates in Amsterdam, but Tolerance is the Key in the Liberated Dutch Society That Threw Out the Rule Books the Rest of Us Follow,” *Ottawa Citizen*, 23 February 2003, p. C3.

(70) Ministry of Justice, Netherlands, “Ban on Brothels to End Officially on 1 October 2000,” 28 December 1999.

(71) Brants (1998), p. 627.

(72) Ministry of Justice, Netherlands (1999).

(73) Ministry of Justice, Netherlands, “Combating Sexual Abuse in The Netherlands,” December 1996. See also Brants (1998), p. 631.

Consequently, in 2000, The Netherlands repealed its long-standing criminal law banning brothels and adopted a licensing scheme to regulate the prostitution industry. For the Ministry of Justice, law reform was necessary because “prostitution exists [as] a given fact, even for the government. That requires a realistic approach, without moralism.”⁽⁷⁴⁾

Article 250a of the Dutch *Penal Code* was designed to distinguish between voluntary and involuntary prostitution.⁽⁷⁵⁾ Prostitutes who chose sex work as an occupation were to be given the same rights as other workers, while those individuals who coerced or exploited prostitutes were to be severely punished (up to eight years’ imprisonment). According to the Ministry of Justice, it was hoped that the new legislation would fulfill six objectives:

- (a) to protect prostitutes from commercial exploitation;
- (b) to fight involuntary prostitution and trafficking;
- (c) to combat the sexual abuse of juveniles;
- (d) to advance the position of individuals working as prostitutes;
- (e) to eliminate criminal involvement in the prostitution industry; and
- (f) to limit the number of non-European Union residents working as prostitutes in The Netherlands.⁽⁷⁶⁾

While the *Penal Code* punishes brothel owners and operators who coerce or induce someone into prostitution, municipalities are primarily responsible for regulating sex work within their boundaries. For the vast majority of these communities (approximately 95%), prostitution is regulated through the issuing of licences.⁽⁷⁷⁾

In order to promote consistency across the country, the Ministry of Justice developed a handbook on prostitution, meant to help municipalities to develop their own policies for dealing with the sex industry. Some of the most common local regulations include: restricting the number and location of brothels; imposing criminal background checks on prospective owners and managers; introducing stringent health, hygiene, and safety requirements;⁽⁷⁸⁾ and limiting whom brothel owners can employ. In particular, brothel owners

(74) Bureau Nationaal Rapporteur Mensenhandel, “Trafficking in Human Beings: First report of the Dutch National Rapporteur,” The Hague, Netherlands, 2002, p. 15; available at <http://www.victimology.nl/onlpub/national/nl-nrmengels2002.pdf>.

(75) Article 250a, *Dutch Penal Code*, available at <http://www.mrgraaf.nl>.

(76) Ministry of Justice, Netherlands (1999).

(77) Bureau Nationaal Rapporteur Mensenhandel (2002), p. 20.

(78) A brothel owner must satisfy an extensive number of conditions in order to obtain (and keep) his/her licence. These can be typically broken down into a number of different categories: building regulations (e.g., fire safety measures), hygiene (e.g., providing hot and cold water), and safety (e.g., installing alarm buttons in the rooms). See Judith Kilvington, Sophie Day, and Helen Ward, “Prostitution Policy in Europe: A Time of Change?” *Feminist Review*, No. 67, Spring 2001, p. 82.

and operators are to be held responsible for minors or illegal immigrants working in their establishments. The penalties range from a warning, to a fine, to a temporary or permanent revocation of the licence. In cases involving involuntary prostitution, the owner and/or operator can be charged under the *Penal Code*.

Contrary to other states where prostitution has been legalized, The Netherlands does not impose STD or HIV/AIDS testing on prostitutes. According to the Mr. A. de Graaf Foundation, a research and advocacy group that stopped its operations in January 2005, many feel that the government is responsible for making medical checkups and treatment available, but it is the responsibility of the individual to use them.” Clinics and medical outreach services are available in the red-light districts and “lounges” where street solicitation is permitted.⁽⁷⁹⁾

The legalization of prostitution in The Netherlands has had its share of successes and setbacks. In particular, critics note that while legalization benefits prostitutes who are residents of the European Union (EU) – who are now able to obtain legal, health, and social services – illegal immigrants and other “undesirables” have been pushed further underground⁽⁸⁰⁾ and are thus even more vulnerable to violence and exploitation.

As a result of legalization, most Dutch and EU prostitutes benefit from the rights accorded to other workers. Dutch brothels must now comply with a host of occupational health and safety regulations. There is even some indication that prostitutes’ incomes have increased. Prostitutes no longer need to compete for a share of the illegal economy, nor need they pay pimps for “support” and “protection.”⁽⁸¹⁾ Dutch prostitutes sit on advisory boards and committees, helping to develop local policy.

Some prostitutes have also stated that they are now more likely to approach the authorities if they are harassed, assaulted or robbed. However, it is important to note that the prostitutes’ degree of trust in dealing with police officers has been cultivated over a number of

(79) In 1996, Amsterdam’s municipal government created a zone where public solicitation would be allowed. In this area, prostitutes can take their clients to special stalls where they can park in some privacy and can gain access to a shelter. The shelter, or “lounge,” allows the prostitutes to socialize, obtain health and safety information, and obtain fresh needles and condoms. Public solicitation is illegal in any other part of the city. See City of Amsterdam, The Netherlands, “Public Order and Safety”; available at <http://www.amsterdam.nl/asp/get.asp?ItmIdt=00001124&SitIdt=00000005&VarIdt=00000002>. See also Mr. A. de Graaf Foundation, “Prostitution Policies in The Netherlands”; available at <http://www.mrgraaf.nl/>.

(80) Kilvington, Day, and Ward (2001), p. 86.

(81) Celeste Perri, “Legalizing Dutch Brothels Brings Credit Cards, Taxes,” *The Gazette* [Montréal], 18 June 2002, p. D3.

years. According to one former prostitute, even before legalization, “most of the prostitutes had quite a positive feeling about [the police] because they knew they were there to help them.”⁽⁸²⁾

Nevertheless, legal prostitutes experience their share of problems. As in Victoria, The Netherlands is witnessing a concentration of prostitution in large brothels. While the regulations help to ensure the health and safety of prostitutes, they also in effect deny them the opportunity to run their own businesses. The high costs associated with renovations and rent in red-light districts will likely, in the long run, lead to a “greater concentration of power and money” in the hands of fewer and fewer people.⁽⁸³⁾

Moreover, while prostitution has been legalized, this development has done little to combat the stigma associated with the trade. Prostitutes in The Netherlands continue to experience considerable difficulty in obtaining the services of accountants, banks, and health insurance companies.⁽⁸⁴⁾ Many prostitutes now also find it difficult to keep their occupation a secret. Given their marginalized status, prostitutes are wary of measures such as identification cards that threaten their privacy.⁽⁸⁵⁾ Some prostitutes have even left the business because they did not want to register with the police and tax authorities.⁽⁸⁶⁾

Despite these drawbacks, the position of legal prostitutes is significantly better than that of their illegal counterparts. For many years, illegal immigrants and prostitutes with substance abuse problems were able to work with relative impunity. With the introduction of Article 250a of the *Penal Code*, however, the police have focused their efforts on “clean[ing] up” the industry.⁽⁸⁷⁾ In order to evade detection by the police and immigration officials, illegal prostitutes have “disappear[ed]” by working either in illegal brothels or on the street. While some window renters fear that their businesses will have to shut down due to their dependence on illegal prostitutes,⁽⁸⁸⁾ advocates worry that the illegal prostitutes will not obtain the health and

(82) Gardner (2003), p. C3.

(83) Brants (1998), p. 633.

(84) Geraldine Coughlan, “Dutch OK Sex for Sale,” *BBC News*, 30 September 2000.

(85) Bureau Nationaal Rapporteur Mensenhandel (2002), p. 23.

(86) Suzanne Daley, “New Rights for Prostitutes, But No Gain,” *New York Times* (late edition), 12 August 2001, sec. 1, p. 1.

(87) *Ibid.*

(88) Saskia Sissons, “The Oldest Profession Turns Kosher,” *New Statesman*, Vol. 128, No. 4433, 1999, p. 27.

social services they need.⁽⁸⁹⁾ There is also concern that these prostitutes are at high risk of violence and exploitation by customers and pimps. Finally, fear of deportation may discourage prostitutes from pressing charges or coming forward about trafficking activities.⁽⁹⁰⁾

The Netherlands continues to deal with some of the same problems that face its neighbours. While legal sex workers have begun to obtain rights and services afforded to other labourers, illegal prostitutes' invisibility makes them more vulnerable than ever.

SWEDEN (Neo-abolitionism)

Along with The Netherlands, Sweden has received much international attention since its new law on prostitution came into effect in 1999. However, its neo-abolitionist approach is quite distinct from that of The Netherlands or any other country. While prostitutes cannot be charged with soliciting or offering sex for payment, clients can be charged. In other words, Sweden has criminalized the activities of customers rather than those of the prostitutes.

The *Act Prohibiting the Purchase of Sexual Services* (1998) is part of larger government legislation on violence against women.⁽⁹¹⁾ The decision to include this particular act in the larger law was a conscious one. It reflects the government's definition of (and position on) prostitution. According to the Deputy Prime Minister, the Act demonstrates the government's commitment to eradicating gender inequality in all its forms, including prostitution. Sweden now defines "prostitution [as] a form – a serious form – of male violence against women."⁽⁹²⁾

The Swedish government believes that criminalizing the buyer serves two key purposes. First, it targets those individuals whom the government deems responsible for prostitution – the buyers. Second, it should help to make it clear that prostitution is a commodification of human beings. The Act seeks to send a message to prostitutes' clients that:

(89) Thérèse van der Helm, "Migration and Mobility of Sex Workers in The Netherlands," *Research for Sex Work*, Vol. 5, 2002, p. 6; available at <http://www.nswp.org/pdf/R4SW-05.pdf>.

(90) Mr. A. de Graaf Foundation, "Research and Projects."

(91) This legislation includes provisions to strengthen the law applying to genital mutilation and sexual harassment. It also gives a mandate to welfare services programs to provide increased support to women who have left their partners due to violence and other forms of abuse. A copy of the act is available from the authors.

(92) Margareta Winberg, Deputy Prime Minister of Sweden, "Keynote Speech," Address to the Conference on Pathbreaking Strategies in the Global Fight Against Sex Trafficking, Washington, D.C., 24 February 2003; available at <http://www.protectionproject.org/t5a.htm>.

A woman's body is not the same as a glass of brandy or an ice cream after a good dinner. And there is a difference between shoelaces and girls' bodies. Brandy, ice cream and shoelaces are inanimate objects. Women and girls are something else they are human beings and therefore not for sale!⁽⁹³⁾

It is thus believed that if demand is reduced, the sexual oppression of prostitutes will end.

The Swedish government considers prostitutes to be victims, exploited by both their procurers and purchasers. Prostitutes are not criminals; rather, they are trapped by particular social and economic circumstances. As a result, Sweden endeavours to provide prostitutes with the support they need to leave the trade. This includes, but is not limited to, access to education, alternative employment and outreach programs.⁽⁹⁴⁾ Criminal sanctions are not seen as constructive because they are barriers that prevent prostitutes from pursuing other work opportunities.⁽⁹⁵⁾

While the *Act Prohibiting the Purchase of Sexual Services* has received much publicity, and the Swedish government has urged other countries to follow its lead,⁽⁹⁶⁾ the available evidence on the state of prostitution in Sweden since the law's inception is mixed.

In comparison to other European countries, the prostitution industry in Sweden has never been large. In 1996, approximately 2,500 prostitutes were working in Sweden.⁽⁹⁷⁾ However, since the Act came into effect in 1999, Sweden has witnessed a dramatic decrease in street prostitution. For instance, an official in the Social Services Department in Stockholm has estimated that street prostitution in that city has dropped by nearly 75%.⁽⁹⁸⁾ At the national level, Gunilla Ekberg, Sweden's Special Advisor on Issues of Prostitution and Trafficking in Human

(93) *Ibid.*

(94) Even before the introduction of the *Act Prohibiting the Purchase of Sexual Services*, the Swedish government funded programs designed to counsel and retrain prostitutes. See Kilvington, Day, and Ward (2001), pp. 82-83.

(95) Margareta Winberg, Minister for Gender Equality Affairs, Sweden, Address at the First Joint Seminar of the Nordic and Baltic Countries "Against Trafficking in Women," Tallinn, Estonia, 29 May 2002; available at <http://www.norden.org/gender/n-jam-arb/uk/winberg290502.asp>.

(96) To date, no other country has adopted a similar neo-abolitionist approach towards prostitution.

(97) It is estimated that there are 1/3,600 prostitutes per capita in Sweden, as compared to approximately 1/533 prostitutes per capita in The Netherlands. See The Protection Project, "Sweden" and "Netherlands," 2002; available at <http://www.protectionproject.org>.

(98) Karin Grudberg, "Sweden's Prostitutes Ply Their Trade on the Internet," Agence France Presse, 13 January 2003.

Beings, has stated that approximately 60% of the prostitutes working on the street before the Act no longer do so.⁽⁹⁹⁾ While similar data are not available on the number of customers, Camilla Örndahl of the National Criminal Investigation Department has said that “[t]he law has definitely had a disruptive effect on the customers.”⁽¹⁰⁰⁾ Prosecution of clients has also been aided by the more cordial relationship between prostitutes and the police. It appears that prostitutes are now more likely to approach the police if victimized.⁽¹⁰¹⁾

The *Act Prohibiting the Purchase of Sexual Services* enjoys significant support from Swedish citizens. A 2001 public opinion poll found that 81% of the populace endorsed the legislation.⁽¹⁰²⁾ Critics have questioned, however, whether the legislation is really achieving its stated goals.

The Swedish police have experienced considerable difficulty in laying charges under the Act. According to one police official, “The law is toothless. It is almost impossible to charge anyone for buying sex.”⁽¹⁰³⁾ A government report suggests that two key factors have impeded policing efforts thus far. First, there remains much uncertainty as to what specific activities fall under the Act. Second, the courts have been reluctant to convict purchasers when the client (and/or the prostitute) denies that the act actually took place. It may be some time before the courts clarify the scope of the Act.⁽¹⁰⁴⁾ Until that time, conviction rates may remain low. Since the Act came into force in 1999, fewer than 200 people have been convicted of purchasing the services of a prostitute.⁽¹⁰⁵⁾

Moreover, some critics point out that prostitution has not really “disappeared.” While the number of women involved in street prostitution has declined since 1999, many of them are now believed to be involved in more hidden types of prostitution. Popular solicitation methods now include the use of cell phones and the Internet. Prostitution also appears to be

(99) “Backing for Swedish Vice Law,” *BBC News*, 7 October 2003.

(100) Ingmarie Froman, “Sweden’s Fight Against Trafficking in Women,” 14 May 2003; available on the Web site of the Swedish Institute at http://www.sweden.se/templates/cs/Article_6076.aspx.

(101) Kilvington, Day, and Ward. (2001), p. 85.

(102) Ministry of Industry, Employment and Communications, Sweden, “Prostitution and Trafficking in Women Fact Sheet,” 2004; available at <http://www.sweden.gov.se/content/1/c6/03/16/13/110ab985.pdf>.

(103) Belinda Goldsmith, “Swedish Law Fails to Curb Prostitution,” Reuters, 5 July 1999.

(104) Swedish Government Offices, “Follow-up of the Violence Against Women Reform,” 2001.

(105) “In Sweden, a Prostitute pays her Taxes, but Chides Government for Accepting the Money,” Associated Press, 15 April 2003.

taking place in hotels, restaurants and apartments rather than on the street.⁽¹⁰⁶⁾ Critics therefore argue that the legislation has not reduced the number of prostitutes in Sweden. It has instead “led to a reorganization of the sex industry.”⁽¹⁰⁷⁾

For social services and health outreach workers, the recent changes to the prostitution industry are also troublesome. While such workers continue to receive funding from the Swedish government, they have not been particularly successful in maintaining contact with the prostitutes themselves.⁽¹⁰⁸⁾ Some prostitutes have complained that these services continue to focus on street workers.⁽¹⁰⁹⁾ It may be some time, therefore, before access to support services returns to the levels attained before the introduction of the Act.

ENGLAND (Abolitionism)

England relies, by and large, on prostitution legislation first enacted during the 1950s. As in Canada, prostitution per se is not illegal in England. However, most activities surrounding the trade are illegal. Provisions in the *Sexual Offences Act* (1956) and *Street Offences Act* (1959) make it an offence for prostitutes to either solicit or loiter.⁽¹¹⁰⁾ Moreover, clients (or “punters”) can be charged with kerb crawling, which consists of soliciting a prostitute from a motor vehicle or in a public place. It is also illegal to procure, pimp, operate a brothel, and live off the avails of a prostitute.

That said, it is important to note that, in England, a single prostitute working alone out of his or her own home is not performing an illegal act. Such an arrangement is not considered a brothel, which is illegal under the legislation.⁽¹¹¹⁾ A brothel is defined as existing where more than one individual is working together to offer sexual services. Thus,

(106) Goldsmith (1999).

(107) Kilvington, Day, and Ward (2001), p. 84.

(108) *Ibid.*, p. 85.

(109) Socialstyrelsen [National Board of Health and Welfare, Sweden], “Knowledge of Prostitution 1998-1999 Summary,” 2000; available at <http://www.sos.se/sos/publ/REFERENG/0003005E.htm>.

(110) *Halsbury’s Statutes of England and Wales – Criminal Law*, 4th ed., Butterworths, LexisNexis, London, U.K., 2002.

(111) Home Office, *Paying the Price: A Consultation Paper on Prostitution*, London, U.K., July 2004, p. 58. Additional information is available at <http://www.sw5.info/morelaw.htm>.

provided that a prostitute is working alone in his or her home and is over 18, this activity is absolutely legal.

However, there are a number of caveats to this blanket statement. First, if more than one person provides sexual services within that property, whether or not they are working at the same time, the activity becomes illegal – such an arrangement would be classified as a brothel. Thus, roommates who provide sexual services from their home on alternate days will be held criminally liable. As well, if rooms in a particular building are let out to more than one person offering sexual services, this will be considered a brothel if it can be proven that the individuals are effectively working together. A hotel in which more than one prostitute is working on a given night could be considered a brothel if it can be proven that the prostitutes are working together.

This legislation has been criticized from all sides of the prostitution debate. Many critics argue that the Acts are now antiquated and do not reflect the realities of today's prostitution industry. Moreover, the unclear wording and poor coherence of the legislation are believed to have created much confusion in its interpretation.⁽¹¹²⁾ In late 2002, the Home Office recognized that the sexual offence laws needed to be revised. Home Secretary David Blunkett, when introducing the government's proposal for new legislation in the area, said that:

The law on sex offences is widely recognised as archaic, incoherent and discriminatory. Much of it belongs to an age before the light bulb or motor car yet we now live in a world of global communications, with children two clicks away from Internet porn sites generated by a multi-million pound sex industry.⁽¹¹³⁾

The resulting *Sexual Offences Act* (2003), which came into force in May 2004, does not radically change the government's position on prostitution. Rather, it focuses on creating a new offence – the commercial sexual exploitation of adults – and making current legislation more gender-neutral.⁽¹¹⁴⁾

(112) Maggie O'Neill, "Literature Review of Research on Offences of Sexual Exploitation," Appendix to *Setting the Boundaries*, Home Office, London, U.K., 1999, p. 178.

(113) Home Office, Press Release, "Protecting the Public: Strengthening the Law on Sex Offenders and Sex Offences," London, U.K., 19 November 2002.

(114) Home Office, *Protecting the Public*, The Stationery Office, Norwich, U.K., 2002, pp. 30-31.

Under the amended Act, the offence of keeping a brothel used for prostitution was consequently bolstered. The new offence relates to the control and management of a brothel, rather than to the sex work itself, and carries a penalty of up to 7 years' imprisonment. As well, owners and managers of brothels are criminally liable under the "exploitation of prostitution" provisions of the 2003 Act, which provide for penalties of up to 7 years' imprisonment.

It is important to note that although the owning and management of a brothel are illegal, and thus all brothels are illegal, it is not illegal to work as a prostitute in a brothel provided that the prostitute plays no role in the management of the operation. Prostitutes themselves are not targeted under the brothel provisions.

Like many countries, England has grappled with how to protect prostitutes from abuse and exploitation while ensuring that communities are not victimized in the process. There is much controversy over whether enforcement strategies benefit prostitutes or communities.

For many critics, the key problem is the apparent absence of any sort of national prostitution law enforcement policy. It seems that, by and large, local enforcement practices are dictated by residents' complaints (or lack thereof).⁽¹¹⁵⁾

In some communities, residents associations and municipal governments have called upon their police forces to "crack down" on prostitution. Concerned for residents' safety, and alarmed by the proliferation of drugs and crime in their area, these groups have been successful in pressing for more vigilant enforcement of the sexual offence laws. City councils, along with the police, have pursued various strategies in order to reduce the number of prostitutes within their boundaries. Some cities have adopted "automatic prosecut[ion]" policies, and others have begun "naming and shaming" kerb crawlers.⁽¹¹⁶⁾ Some municipalities have even begun to use civil measures to limit the trade, including issuing compulsory purchase orders for properties being used by prostitutes⁽¹¹⁷⁾ and serving court orders on prostitutes banning them from working in certain locations.⁽¹¹⁸⁾

Other communities, however, have examined very different options to manage the prostitution industry. Some cities have turned a blind eye to certain types of off-street

(115) Catherine Benson and Roger Matthews, "Street Prostitution: Ten Facts in Search of a Policy," *International Journal of the Sociology of Law*, Vol. 23, No. 4, 1995, p. 407.

(116) Helen Carter, "Crackdown Forces Out Prostitutes," *Guardian Unlimited*, 29 January 2001.

(117) Jon Silverman, "Sex Workers Say 'Let Us Stay,'" *BBC News*, 18 February 2003.

(118) "The A-Z of Sex," *Guardian Unlimited*, 20 December 2001.

prostitution, while others are considering instituting tolerance zones in order to confine prostitution to certain areas.⁽¹¹⁹⁾

The lack of coherence and consistency in England's enforcement of its prostitution laws has meant that neither prostitutes' rights organizations nor residents associations are satisfied with the way that prostitution is controlled and/or regulated. Communities, for the most part, are troubled by the local noise, traffic, and crime that prostitution generates. Prostitutes' rights advocates, on the other hand, worry that prostitutes both on and off the streets are facing serious threats to their health and safety.

Prostitutes – particularly those who work on the street⁽¹²⁰⁾ – are at increased risk of violence, including verbal humiliation and physical and sexual assaults from their pimps and clients. Prostitutes' rights groups argue that the current legislative approach in England augments these risks. They emphasize the fear of arrest actually undermines street prostitutes' ability to protect themselves. Because most activities surrounding prostitution are illegal, prostitutes must isolate themselves (so as to not arouse suspicion) and/or rely on a pimp for protection.⁽¹²¹⁾ They may also take less time to evaluate their customers, increasing the risk of violence and exploitation – particularly since their assailants know there will be little, if any, legal recourse against them.⁽¹²²⁾ Consequently, critics argue, street prostitutes are finding themselves increasingly vulnerable.

Street prostitutes face other important risks. For instance, in Birmingham, health outreach organizations are not permitted to operate on the streets. Banning health and other support workers from the streets can limit prostitutes' access to important health and safety information (for example, “bad tricks” sheets).⁽¹²³⁾

(119) “‘Brave’ Debate over Prostitution,” *BBC News*, 10 October 2002. See also Carter (2001).

(120) For more information on the threat of violence against prostitutes, see John Lowman and Laura Fraser, *Violence Against Persons Who Prostitute: The Experience in British Columbia*, Research, Statistics and Evaluation Directorate, Department of Justice Canada, Ottawa, 1995.

(121) “U.S. Prostitutes Collective,” in *Sex Work: Writings by Women in the Sex Industry*, ed. Frédérique Delacoste and Priscilla Alexander, Cleis Press, Pittsburgh, PA, 1987, p. 283.

(122) Some prostitutes have also noted that if they do try to contact the authorities, their victimization experience is either ignored or “not taken seriously.” See O’Neill (1999), p. 181.

(123) Hilary Kinnell, “Murderous Clients and Indifferent Justice: Violence Against Sex Workers in the UK,” *Research in Sex Work*, Vol. 4, June 2001, p. 24.

In light of these risks, some researchers have noted a movement towards indoors prostitution (e.g., in brothels, saunas and massage parlours).⁽¹²⁴⁾ The advantages of working off-street are significant. Prostitutes who work for escort agencies or massage parlours have the added security of being able to request identification from their clients, and they may also keep their employer and/or colleagues apprised of their movements.⁽¹²⁵⁾ Prostitutes who work in indoor locales also tend to make more money than those who work on the street.⁽¹²⁶⁾

Certain police initiatives, however, have begun to erode some of these benefits. Although the police had largely ignored off-street prostitution until recently, growing concerns about juvenile prostitution and trafficking have put pressure on the authorities to police red-light districts more vigorously. In 2001, for example, Scotland Yard raided more than 50 London brothels in a move described as “the biggest simultaneous crackdown on brothels and prostitution in [England] in recent times.”⁽¹²⁷⁾ This “crackdown” has strained relations between the police and the country’s prostitutes. Prostitutes’ rights organizations also argue that these raids have forced women out onto the street, where their safety and well-being are endangered.⁽¹²⁸⁾

Other policing practices are believed to threaten indoor prostitutes’ health and safety. Some prostitutes who participate in the off-street trade choose not to report crimes to the police for fear of identifying themselves, and others do not stockpile prophylactics because condoms continue to be used as evidence in prostitution cases.⁽¹²⁹⁾

Overall, there is growing frustration that the government is not dealing effectively with the prostitution industry. While there is a consensus that something must be done, there remains much debate and disagreement over what steps the government should actually take. The Home Office recently undertook a study of prostitution initiatives, in the hope of

(124) Tiggey May, Mark Edmunds, Michael Hough and Claire Harvey, *Street Business: The Links Between Sex and Drug Markets*, Policing and Reducing Crime Unit, Research, Development and Statistics Directorate, Home Office, London, U.K., 2000, p. 4.

(125) John Lowman, “Canada,” in *Prostitution – An International Handbook on Trends, Problems, and Policies*, ed. Nanette J. Davis, Greenwood Press, Westport, CT, 1993, p. 75.

(126) O’Neill (1999), p. 182.

(127) “Police Raid Soho Brothels,” *BBC News*, 15 February 2001.

(128) Silverman (2003).

(129) Kinnell (2001), pp. 22, 24.

determining “what works” and what does not.⁽¹³⁰⁾ It remains unclear, however, what direction the government will eventually follow to try to reduce the crime and disorder associated with prostitution.

UNITED STATES

The United States relies on prohibitionist and abolitionist policies to control the prostitution trade.

At the federal level, the United States government has enacted prostitution laws in order to protect servicemen and women from the prostitution industry, as well as to satisfy the country’s international treaty obligations.⁽¹³¹⁾ It is an offence to engage in, or solicit for, prostitution within what is deemed to be a “reasonable distance” from a military detachment or operation. It is also illegal to transport individuals across state or international lines for the purposes of prostitution.⁽¹³²⁾

While the federal government does sanction prostitution under certain circumstances, most of the specific laws governing prostitution fall under state jurisdiction. With the exception of Nevada, every state prohibits prostitution and/or its related activities. The legislation, however, varies from state to state. For instance, only some states specifically criminalize prostitution.⁽¹³³⁾ The following sections of this paper examine prostitution laws in two states with very different approaches: California and Nevada.

A. California (Prohibitionism)

In California, prostitution is illegal. According to the California *Penal Code*, it is an offence to agree to engage in prostitution and to actually engage in prostitution.⁽¹³⁴⁾ Solicitation is prohibited, whether it occurs in a public or private space. A recent amendment to

(130) Home Office, *Paying the Price: A Consultation Paper on Prostitution* (2004).

(131) Daniel Sansfaçon, *Working Papers on Pornography and Prostitution, Report #2: Pornography and Prostitution in the United States*, Department of Justice, Ottawa, 1984, p. 29.

(132) Richard A. Posner and Katharine B. Silbaugh, *A Guide to America’s Sex Laws*, University of Chicago Press, Chicago, 1996, p. 187.

(133) *Ibid.*, p. 155.

(134) *Penal Code*, California; available at <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=pen&codebody=&hits=20>.

the California *Penal Code* also criminalizes loitering for the purposes of prostitution. While these offences are all misdemeanours, a person can be charged with a felony if he or she has previously tested positive for HIV. Finally, the California *Penal Code* lays out extensive provisions criminalizing pandering (which includes procuring through intimidation, physical force, or persuasion) and living off the avails of prostitution.

Certain jurisdictions in California, moreover, have supplemented these criminal sanctions with additional civil measures to deter prostitution. For example, the city of Oakland can seize the cars of individuals involved in soliciting.⁽¹³⁵⁾ San Bernardino can issue restraining orders against prostitutes, barring them from participating in specific activities in certain areas.⁽¹³⁶⁾ San Francisco was among the first cities to set up a “john’s school,” designed to “shame, educate, and deter” johns from seeking out the services of prostitutes.⁽¹³⁷⁾ Many cities have implemented (or are considering implementing) “drug-free,” “gang-free” and “prostitution-free” zones; prostitutes can face additional charges for being found in those neighbourhoods.⁽¹³⁸⁾

There are many reasons for the criminalization of prostitution in California and, more generally, in the United States as a whole. While limiting the spread of disease has traditionally been an overarching goal, Richard Posner and Katharine Silbaugh argue that other justifications for prohibition include

... suppressing the organized crime surrounding prostitution, protecting the integrity of the family, protecting non-participants from unwelcome solicitations, protecting prostitutes, and protecting minors who are coerced into a life of prostitution.⁽¹³⁹⁾

In addition, Pasqua Scibelli points out that prohibition begins with an important assumption – namely, that criminal sanctions are essential to reducing the number of men and women involved in the prostitution trade.⁽¹⁴⁰⁾

(135) American Civil Liberties Union, “California Council Backs Seizure of Vehicles,” 19 June 2001.

(136) Michael S. Scott, “Street Prostitution,” *Problem-Oriented Guides for Police Series*, Guide No. 2, U.S. Department of Justice, Office of Community Oriented Policing Services, Washington, D.C., 2002, p. 22.

(137) Ronald Weitzer, “Prostitution Control in America: Rethinking Public Policy,” *Crime, Law & Social Change*, Vol. 32, 1999, pp. 96-97.

(138) Sandra L. Moser, “Anti-Prostitution Zones: Justifications for Abolition,” *Journal of Criminal Law and Criminology*, Vol. 91, No. 4, 2001, p. 1101.

(139) Posner and Silbaugh (1996), p. 155.

(140) Scibelli (1987), p. 117.

Very little evidence is available, however, to suggest that prohibitionist laws (such as those enacted by the California legislature) have met their objectives. As in the United Kingdom, there is little, if any, consistency in the enforcement of prostitution-related laws. Enforcement of the *Penal Code* against street prostitutes as well as those operating in indoor locales appears to be largely dictated by citizens' complaints.

As the most visible members of the prostitution industry, street prostitutes are more likely to be arrested than any other type of prostitute, or their clients.⁽¹⁴¹⁾ The policing of street prostitutes is not uniform, however; nor it is consistent. Some studies indicate that the police tend to adopt a "laissez faire" attitude towards prostitution unless public attention focuses on it. As a result, street prostitution tends to be concentrated in more isolated areas, as well as in communities that do not have the voice (or the resources) to lobby the proper authorities.⁽¹⁴²⁾ "Prostitution-free zones" and the occasional police sweeps appear to do little but displace prostitutes from one area to the next.⁽¹⁴³⁾ Given the lack of housing and employment resources available to prostitutes in the United States, most of them simply end up back on the street.⁽¹⁴⁴⁾

Generally, prostitutes who work in escort agencies, massage parlours and illegal brothels are much less likely to come into contact with the criminal justice system than their counterparts who work on the street.⁽¹⁴⁵⁾ However, enforcement policies, at least in some cities, appear to be changing. Some police forces have begun to delegate a considerable amount of resources towards cracking down on indoor prostitution, "ostensibly to go after the 'big fish.'" These operations have been criticized not only for the costs involved, but also for the risk of driving indoor prostitution out onto the street.⁽¹⁴⁶⁾

(141) According to data collected in the late 1980s, street prostitutes, while comprising only between 10 and 20% of the industry, make up between 85 and 90% of those who are arrested by the police. See Eleanor Miller, Kim Romenesko, and Lisa Wondolkowski, "The United States," in Davis (1993), p. 313.

(142) Miller, Romenesko, and Wondolkowski (1993), p. 312. See also Scott (2002), p. 8.

(143) Moser (2001), p. 1117.

(144) Weitzer (1999), p. 93.

(145) According to one report prepared for the National Institute of Justice, prostitution in cities such as San Francisco thrives in spite of the criminal prohibitions. Noted indoor venues include strip clubs, massage parlours, health clubs, nail salons, restaurants, warehouses, and even mobile trailers that enable brothel owners to move from place to place. See Janice G. Raymond and Donna Hughes, *Sex Trafficking of Women in the United States – International and Domestic Trends*, Coalition Against Trafficking in Women, March 2001; available at http://www.ojp.gov/nij/international/programs/sex_traff_us.pdf.

(146) Weitzer (1999), pp. 90-91.

Prostitutes working under American prohibitionist laws face many of the same challenges as prostitutes working in countries such as Canada and the United Kingdom. Street prostitutes may work in more dangerous areas in order to escape the notice of the police. They are less likely to report victimization to the authorities, for fear of being identified or charged.⁽¹⁴⁷⁾ Prostitutes may also be less likely to seek out the services of visible social support and health outreach groups, thus increasing their risk for engaging in practices such as sharing needles or not using condoms.⁽¹⁴⁸⁾

Finally, many critics question the level of resources dedicated to policing the prostitution industry. One estimate pegs the cost of prostitution law enforcement at approximately \$180 million annually.⁽¹⁴⁹⁾ According to a study conducted in 1985, some cities spend more money on controlling prostitution than on education and welfare.⁽¹⁵⁰⁾ The processing costs for each individual arrest lie in the thousands of dollars.⁽¹⁵¹⁾ There are also substantial costs associated with incarceration. Prostitutes (most of whom are typically incarcerated for 30 days) make up at least one-third of all female inmates in the United States.⁽¹⁵²⁾ Many of these women are visible minorities and immigrants.⁽¹⁵³⁾

While criminal sanctions and incarceration may form important elements of the U.S. authorities' "anti-prostitution arsenal," there is little evidence to suggest that they deter prostitutes from engaging in the trade.⁽¹⁵⁴⁾ A criminal record may, in fact, subvert a prostitute's attempt to leave the industry. Some may continue in the trade in order to earn money to pay their fines. Moreover, for many prostitutes, being arrested is more of a "business expense and an

(147) Scott (2002), p. 5.

(148) Melissa Ditmore, "Report from the USA: Do Prohibitionary Laws Promote Risk?" *Research in Sex Work*, Vol. 4, June 2001, p. 13.

(149) This estimate does not include the cost of arrests for loitering and disorderly conduct. See Ronald Weitzer, "The Politics of Prostitution in America," in *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, ed. Ronald Weitzer, Routledge, New York, 2000, p. 160.

(150) Moser (2001), p. 1124.

(151) Scott (2002), p. 16.

(152) David R. Simon, "Prostitution – Female," in *Encyclopedia of Criminology and Deviant Behavior*, Vol. 3, ed. Clifton D. Bryant, Brunner-Routledge, Philadelphia, 2001, p. 264.

(153) Barbara G. Brents and Kathryn Hausbeck, "State-Sanctioned Sex: Negotiating Formal and Informal Regulatory Practices in Nevada Brothels," *Sociological Perspectives*, Vol. 44, No. 3, 2001, p. 309.

(154) Moser (2001), pp. 1116-1117.

inconvenience, [rather than] a significant deterrent.”⁽¹⁵⁵⁾ The result is a vicious cycle whereby prostitutes enter the criminal justice system, pay the requisite penalty and then return to the trade.⁽¹⁵⁶⁾

Prostitution remains a contentious topic in the United States. While many Americans agree that eliminating prostitution (or at least visible forms of it) is a long-term goal, there is little agreement over the best way to achieve it. Legalization and decriminalization, proposed in many other countries, are rarely seen to be palatable options.⁽¹⁵⁷⁾ For the most part, then, the United States appears to be committed to “rid[ding]” itself of prostitution by introducing more severe sanctions and widening the net of criminal and civil prohibitions.⁽¹⁵⁸⁾

B. Nevada (Legalization)

Nevada remains the only state in the United States to have legalized one type of prostitution venue. It relies on a combination of state criminal laws, administrative laws, local ordinances and informal traditions to govern the prostitution industry. As such, some argue that “the brothel system [in Nevada] is really a consortia of formal and informal, modern and traditional brothel regulatory systems that together construct this unique service industry and subculture.”⁽¹⁵⁹⁾

In Nevada, prostitution is permitted only in licensed brothels. All other forms of prostitution (for example, street prostitution, escort agencies and massage parlours) are illegal. The state’s laws and local ordinances aim to provide an effective framework through which to manage the medical risks associated with the trade while keeping brothels relatively divorced from the day-to-day activities of their communities.⁽¹⁶⁰⁾

(155) Scott (2002), p. 17.

(156) *Ibid.*, p. 5.

(157) Weitzer (1999), pp. 86-87.

(158) Moser (2001), p. 1101.

(159) Brents and Hausbeck (2001), p. 312.

(160) *Ibid.*, p. 314.

Section 244.345 of the *Nevada Revised Statutes* gives individual counties with a population of fewer than 400,000 residents the authority to license brothels.⁽¹⁶¹⁾ Prostitution and solicitation outside of these legal venues are misdemeanours.⁽¹⁶²⁾ Prostitution is also illegal in Las Vegas and Reno.

Not every county in Nevada licenses brothels. Moreover, those counties that do allow brothels to operate legally generally impose strict conditions on the brothels, their owners and their employees. However, these regulations vary considerably from one county to the next.⁽¹⁶³⁾

License application requirements are fairly extensive. Prospective brothel owners must provide information about their family, employment, military and criminal history, their financial records and their management team. The county may also request any additional information it deems necessary to determine whether the operation of a new brothel will be “contrary to the health, welfare, or safety of the City [County] or its residents.”⁽¹⁶⁴⁾

Most counties have also instituted zoning provisions that limit the location and the number of brothels within their boundaries. While section 201.380 of the *Nevada Revised Statutes* prohibits the operation of brothels within 400 yards of any school or place of worship, some individual counties have imposed additional restrictions. In some counties, brothels can be operated only in specific buildings or on specific properties. Consequently, most of the existing licensed brothels began operating before legalization came into effect in the 1970s. Far from inciting massive growth, legalization has actually enabled counties to contain the size of the industry. The overall number of legal brothels has remained virtually unchanged since the 1970s (33 in 1973 and 36 in 2000), meaning that “[i]t is virtually impossible to build a new brothel.”⁽¹⁶⁵⁾

(161) *Nevada Revised Statutes* 244.345; available at <http://www.leg.state.nv.us/NRS/NRS-244.html>.

(162) *Nevada Revised Statutes* 201.354; available at <http://www.leg.state.nv.us/NRS/NRS-201.html>.

(163) Eleanor Maticka-Tyndale and Jacqueline Lewis, “Escort Services in a Border Town: Transmission Dynamics of Sexually Transmitted Infections Within and Between Communities – Literature and Policy Summary,” report prepared for Health Canada, 1999, p. 22.

(164) Brents and Hausbeck (2001), p. 317.

(165) *Ibid.*, p. 322.

Many counties also regulate the day-to-day business of their licensed brothels. While specific ordinances vary from county to county, most brothels face restrictions on their size, the number of prostitutes they employ, and their working hours.⁽¹⁶⁶⁾ Sections 201.430 and 440 of the *Nevada Revised Statutes* also restrict brothels' right to advertise. According to state law, brothels cannot advertise on public streets and highways or in theatres, nor can they advertise in those counties where prostitution remains prohibited. Most counties, moreover, place additional limits on advertising.⁽¹⁶⁷⁾

Individual prostitutes are also subjected to regulation and controls. All prostitutes working in Nevada's brothels must register with the police. Work permits are issued to every prostitute, conditional on passing a mandatory HIV/STD screening. State law requires that each prostitute submit to HIV testing each month and STD testing each week. If a prostitute is infected with an STD, she must submit to treatment. It is a felony for an individual who is HIV-positive to engage in prostitution. While many prostitutes support compulsory HIV/AIDS testing,⁽¹⁶⁸⁾ some critics have questioned its potential impact on prostitutes' civil liberties.⁽¹⁶⁹⁾

Counties have traditionally restricted prostitutes' mobility, including placing limits on when they may go into town and where they can go. Recent research suggests, however, that most counties no longer police the activities of prostitutes. Prostitutes nevertheless continue to be governed by rules devised by their brothels' owners and managers.⁽¹⁷⁰⁾ While the specific regulations vary from one brothel to another, some examples include: requiring prostitutes to work three weeks, followed by one week off; to live on the compound or "ranch"; and to pay the owners between 40 and 50% of their earnings, on top of room and board.⁽¹⁷¹⁾ Prostitutes' status as independent contractors means that they do not have access to health

(166) Miller, Romenesko, and Wondolkowski, in Davis (1993), p. 309.

(167) Brents and Hausbeck (2001), pp. 313, 319.

(168) Since the introduction of compulsory HIV testing in 1986, there has been no known case of legal prostitutes testing positive for HIV; *ibid.*, p. 321.

(169) Special Committee on Pornography and Prostitution, *Pornography and Prostitution in Canada*, Vol. 2, Supply and Services Canada, Ottawa, 1985, p. 520.

(170) Kathryn Hausbeck and Barbara G. Brents, "Inside Nevada's Brothel Industry," in Weitzer (2000), pp. 231-232.

(171) Federal/Provincial/Territorial Working Group on Prostitution, *Report and Recommendations in respect of Legislation, Policy and Practices Concerning Prostitution-Related Activities*, Department of Justice, Ottawa, 1998.

insurance, sick leave, or unemployment and retirement benefits. Furthermore, because they are not covered by the state's labour laws, they may be subjected to poor working conditions and/or threats to their health and safety.⁽¹⁷²⁾

Prostitutes working in the illegal sector face even greater risks. While prostitution has long been an offence in the state's largest cities (Las Vegas and Reno), an underground industry continues to thrive. In Las Vegas, street solicitation, once concentrated in the Strip, has begun to expand into other busy areas. Escort agencies advertise their services on billboards and in the *Yellow Pages*. Prostitutes also work the floor of casinos and other tourist destinations.⁽¹⁷³⁾ Some argue that while little is known about illegal prostitution in Las Vegas and other parts of Nevada, it is clear that this sector has "grown tremendously in recent years, and ha[s] undoubtedly contributed to Las Vegas's stunning growth."⁽¹⁷⁴⁾ These prostitutes likely face conditions similar to those of their counterparts working in other parts of the country.

While the state legislature has not officially reopened the prostitution debate, there has been recent discussion of extending legalization to Nevada's larger counties. Spearheaded by the current mayor of Las Vegas, Oscar Goodman, this discussion has focused on whether legal brothels could revitalize a decaying downtown core. It has been proposed that legal brothels would also "provide safer, regulated and revenue-generating sex" in comparison to the current illegal sector.⁽¹⁷⁵⁾ However, this debate is still in its infancy, making any major change to state law unlikely in the near future.

CONCLUSION

There is little consensus as to how the state should monitor and/or control prostitution. Most countries appear to be grappling with one underlying question: what role should legislation (in particular, criminal law) play in regulating prostitution? Legislative directions have ranged from strengthening the criminal provisions relating to prostitution to repealing those same types of laws. There is little evidence that any particular approach has met all of its objectives.

(172) Brents and Hausbeck (2001), p. 326. For a more general overview of the working conditions of sex workers in the United States, see Wendy Chapkis, "Power and Control in the Commercial Sex Trade," in Weitzer (2000).

(173) Bob Shmeligian, "Welcome to the Jungle," *Las Vegas Mercury*, 21 August 2003.

(174) Barbara G. Brents and Kathryn Hausbeck, "Prostitution – Nevada," in Bryant (2001), p. 280.

(175) Erin Neff, "Legalized Prostitution: Vegas Brothels Suggested," *Las Vegas Review-Journal*, 24 October 2003.

None of the countries and states examined in this paper have repealed all of their prostitution-related criminal laws. However, a number of governments have chosen to supplement criminal legislation with local by-laws, city ordinances, and other measures – thereby suggesting that, for many of these countries, prostitution is not simply a legislative concern. It is also a social and economic issue that calls for the use of public policy and other social intervention measures in order to address the needs of both individual prostitutes and their communities.