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Regulating Sex Work: Heterogeneity in Legal Strategies

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Abstract

In this article, we examine various legal strategies used to regulate the sale and purchase of sexual services. We use three broad categories to structure our discussion: full criminalization, partial decriminalization, and full decriminalization. In each section, we discuss laws directed toward the control of sellers, buyers, and third parties. We focus on legislation and practices at the highest level of aggregation (i.e., the national, state, or provincial level), and due to limited data, we concentrate on high-income countries. We present a critical assessment of each legal approach and conclude with a call for future research on the consequences of different legal strategies for sellers, buyers, and third parties.

In this article, we review recent developments in legal strategies that regulate the selling and purchasing of sexual services. We discuss relevant statutes, ordinances, and practices that pertain to the activities of three sometimes overlapping groups: sellers, buyers, and third parties (i.e., those who organize, promote, or otherwise benefit from another person's sex work). We limit our discussion to legislation that attempts to control the exchange of sexual services for money, material goods, or nonsexual services among consenting adults. Prominent sites for these activities include street-level sex commerce, escort services, and erotic massage. We set aside laws that pertain to other aspects of the commercial sex industry, including noninteractive media portrayals (text, photographs, and video) and interactive activities in which there is no person-to-person sexual contact (e.g., phone sex, peep shows, erotic dance, and cybersex).

Most of the relevant statutes implicitly assume or explicitly state that females sell sexual services and men purchase them; although this adequately describes the great majority of sales—estimates suggest that approximately 80% of sex workers are female (Vanwesenbeeck 2001)—our discussion assumes that transactions may involve sellers, buyers, and third parties of any gender. Most legislation also refers to prostitution; we prefer the term sex work because it underscores the labor and economic implications of the sex industry; it also challenges accounts that depict sellers only as victims and not, depending on the social context, as active decision makers (Kotiswaran 2011). However, we agree with Sullivan (2010, p. 87) that the term sex work does not “imply a free choice by individuals. . . . [M]ost paid work, including sex work, involves varying degrees of coercion, exploitation, resistance, and agency.” Ethnographies from an array of countries or areas—India (Kotiswaran 2001), the Caribbean (Kempadoo 2004), China (Zheng 2009), Mexico (Katsulis 2008), for example—remind us that the term sex work obscures important cross-cultural, social, and individual differences and too easily suggests a single identity and one-dimensional economic activity. The sell-

ing and buying of sexual services is configured by gendered, racialized, and social class relations of power that intersect with regulatory regimes, and it is imperative that we do not create caricatures of sellers—or of buyers and third parties—that suggest that they share the same experiences, perspectives, or needs.

We are careful not to conflate sex work with human trafficking, a recent pattern in reports by politicians, bureaucrats, scholars, NGOs, the media, and legislative bodies. Although an unknown proportion of people who sell sexual services are victims of human trafficking (Chang & Kim 2007, Guven-Lisaniler et al. 2005, Hagner 2009), many sex workers are not. The assumption that all or most sex workers are victims of human trafficking has encouraged a global “moral crusade” (Weitzer 2006) that reflects a “simplistic understanding” of sex markets, the law, and their relationship to each other (Kotiswaran 2008, p. 580) and that is often based on limited data (Gozdziaik & Collett 2005).

We use three broad categories to structure our discussion: full criminalization (sometimes referred to as proabolition), partial decriminalization (sometimes referred to as partial regulation), and full decriminalization (sometimes referred to as antiabolition or regulation). The latter includes situations in which governments do not explicitly prohibit the sale or purchase of sexual services, situations in which the commercial sex market is perhaps best seen as quasi-legal (i.e., neither explicitly legal nor illegal). There are, however, no countries that treat the selling of sex services exactly like other businesses (Cool 2004). Although these broad categories provide a useful way to discuss relevant legislation, the distinctions between them are blurred rather than distinct, in part because advocates and critics sometimes use competing terms to describe similar legislative approaches when promoting a philosophical or value position (e.g., partial legalization versus partial decriminalization or regulation).

Within countries, the regulation of sex work typically involves several levels of government. In the United States, for example, federal

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laws are largely restricted to trafficking or the transporting of people for sex work (e.g., the Mann Act), whereas sex work–related offenses are mostly legislated by state governments (Aronson 2006, Franklin 2007, Kaigh 2009). However, local governments (e.g., cities and counties) have also used bylaws and other legislative apparatus to control sex work (e.g., business license regulations). Similar patterns occur in other nations (e.g., for India, see Kotiswaran 2001; for Mexico, see Katsulis 2008). We focus on legislation and practices at the highest level of aggregation (i.e., the national, state, or provincial level), and although we draw on research from various places around the globe, we concentrate on high-income countries where more studies have been conducted. Although laws about sex work have not dramatically changed in recent years in many of these nations (e.g., the United States), some countries have initiated sweeping transformations in their approach (e.g., Sweden, New Zealand), and others are currently witnessing sustained challenges to their legal framework (e.g., Canada). This volatility means that the laws we describe may change in the next few years.

SELLERS, BUYERS, AND THIRD PARTIES

There is an extensive body of research on the backgrounds and experiences of sex workers. It confirms that commercial sex is a major source of income for some adults in most countries. Estimates of the number of workers must be viewed with caution because of their origin (e.g., arrest records or calculations by advocacy groups), the small size of samples used, a focus on female sellers, and the absence of population counts. These caveats notwithstanding, in the late 1990s, the International Labor Organization estimated that approximately 1.5% of the world's female population—46 million people—were involved in commercial sex work (Lim 1998, cited in Katsulis 2008).

There are far fewer studies of buyers, and those available have typically gathered data ex-

clusively from men, focused on heterosexual sex, and involved small samples. A review of data from studies conducted between 1994 and 2010 provides estimates of the percentage of males from 15 countries who reported buying sex at least once in their lifetime (ProCon.org 2012a, also see Kuosmanen 2011). These estimates range from 5–20% (e.g., the United Kingdom, Sweden, the United States, Australia, China, France) to 21–40% (e.g., Spain, Italy, Japan) to more than 60% (e.g., Cambodia, Thailand).

We know very little about persons involved as third parties in the sex industry. Most prohibitions against third-party activity fall into one of three broad categories: encouraging someone to start selling sexual services (e.g., procuring), benefitting from another person's selling (e.g., living on the avails or pimping), and facilitating the sale and purchase of sexual services (e.g., pandering or owning a building used as a brothel). However, there is little consistency in the definition of these activities or the use of relevant terms. In the United States, for example, states have variously defined pandering to include “intentionally maintaining a place where prostitution is habitually practiced,” “[receiving] the earnings of a prostitute,” “procuring or inducing a female to become an inmate of a house of prostitution or to become a prostitute,” and so on (Hagner 2009, p. 441). Popular perceptions of third parties focus on individuals who act as pimps or brothel operators; however, third party prohibitions have also been used to punish sex workers' romantic partners/spouses, adult children, other adult family members, and friends (Lewis & Shaver 2011, Weitzer 2012).

FULL CRIMINALIZATION

Sellers

Countries that completely ban selling sexual services include more than 30 nations in Africa, more than 25 in Asia, at least 20 in Europe, 11 in North America (includes the Caribbean), 10 in Oceania, and 2 in South America (ProCon.org 2012b, Wikipedia 2012). In most countries, a legal code explicitly condemns the sale of sexual services—in China, the penal code describes

it as an activity that violates women's essential rights to personhood. In other countries, including Cambodia, the constitution has historically prohibited selling, but until recently, there were no penal code punishments.

The penalties for selling sex vary considerably across these countries. In Romania, for instance, selling is typically punishable by fines. Other nations respond more severely: In some countries guided by Sharia or Islamic law (e.g., Iran, Saudi Arabia), sellers can be sentenced to flogging or death. Other national governments have left legislation about selling in the hands of state or provincial governments. In the United States, selling is illegal in all states except in brothels located in 11 rural counties of Nevada that have a population of less than 400,000 (Brents & Hausbeck 2001). In most of the United States, penalties for selling (see ProCon.org 2012c for details) include fines of up to \$1,000 and jail sentences of up to one year (e.g., Georgia, Nebraska). Other states allow for fines of up to \$10,000 (e.g., Indiana, Texas; Illinois is a greater outlier with a fine of up to \$25,000), and imprisonment of three years or more for serial convictions (e.g., Louisiana, Vermont). Most state level legislation defines selling as a misdemeanor (Hagner 2009, Hindle et al. 2008), although some treat first offenses as a petty (e.g., New Mexico) or third-degree violation (e.g., Pennsylvania). In some states, selling is defined as an aggravated misdemeanor (e.g., Iowa), whereas in others (e.g., Florida, Arizona), multiple convictions (e.g., three or more) elevate a subsequent conviction to a felony.

In most of the United States, sexual contact is not necessary to be charged with prostitution; simply offering or agreeing to perform a sexual act is sufficient (Hagner 2009), and in some states, clothed or unclothed physical contact with a person's genitals is all that is required (e.g., New York) (Hagner 2009, Plasencia 2008). Some state courts (e.g., Arizona) have also allowed convictions of individuals who jointly perform a sexual act for a buyer who views through a glass window (Green 2002, Hagner 2009). In a number of states, legisla-

tion addresses only female sex workers (e.g., Louisiana, Alabama); although many of these laws have been ruled unconstitutional, female pronouns continue to be used and courts persist in making rulings based on discriminatory laws (Kaigh 2009).

Buyers

Most governments that criminalize the buying of sexual services from consenting adults use fines and incarceration to punish customers (other penalties include the impounding of a vehicle or cancellation of a driver's license; see Aronson 2006). In the United States, for example, all state governments allow for the use of both types of punishment (ProCon.org 2012c), but similar to the trend in other countries, economic sanctions are more common. In recent years, many governments that once made only selling sex illegal have amended their laws to punish all participants. In South Africa, legislation from 1957 made it a crime to have sex or "commit[] an act of indecency with any other person for a reward"; in 2007, the criminal law was amended to prohibit buying sexual services (Richter 2008, p. 324).

In the United States, most state penalties for buying sexual services now mirror those for selling (ProCon.org 2012c), although some states have retained greater penalties for sellers (e.g., in Nebraska, sellers may be incarcerated for up to one year and fined, whereas buyers may only be fined), and at least one state has greater penalties for buyers (i.e., in Montana, the maximum punishment for a first offense for sellers is six months incarceration and a \$500 fine; for buyers, it is up to one year imprisonment and a \$1,000 fine. New York has also recently increased its pursuit of buyers). In some states, buyers who pose a health risk are also subject to the same penalties as sellers: Under Colorado law, people who know that they are HIV+ and purchase sex commit a felony (Lefler 1999).

Other governments have reduced or eliminated sanctions against selling and criminalized only the purchasing of sex. In the years 1983–1993, the Swedish parliament debated more than 50 different motions relating to sex

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work, over half of which advocated for criminal sanctions for purchasers (Kuosmanen 2011). In 1999, Sweden introduced fines and imprisonment for up to six months for buying or attempting to buy sexual services in any location. The law is extraterritorial: Swedes who buy or attempt to buy sex in other countries that have similar laws can be charged when they return to Sweden (Bindel & Kelly 2003). A subsequent amendment allowed for the same penalties for customers who offered payment in kind rather than money (Hubbard 2008). In 1999, 94 Swedish men were charged under the new legislation; in 2005, 460 men were arraigned (Hubbard 2008).

A factsheet produced by the Swedish government outlines its rationale for the new approach to the purchase of sexual services (quoted in Bindel & Kelly 2003, p. 24):

[Prostitution] is officially acknowledged as a form of exploitation of women and children and constitutes a significant social problem, which is harmful not only to the individual prostituted person but also to society at large. . . . [G]ender equality will remain unattainable so long as men buy, sell and exploit women and children by prostituting them. . . . Prostituted persons are considered as the weaker party, exploited by both the procurers and the buyers.

The view that buying sexual services is by definition exploitive is reinforced by the Swedish government's decision to include prohibitions against it as part of the country's Violence Against Women Act (Hubbard et al. 2008). Survey research suggests that a majority of Swedes continue to support penalties for buyers; however, a majority also supports criminalizing sellers (Kuosmanen 2011). A number of other Nordic governments have followed Sweden's lead: In 2009, Norway and Iceland approved similar laws (Weitzer 2012) after first passing legislation that removed sanctions for selling. Analysis of survey data from Norway collected prior to the new legislation suggests that, similar to Swedes,

a majority of Norwegian adults agree that buying sexual services should be a criminal offense (Jakobsson & Kotsadam 2011).

Government reports from a number of other nations—e.g., the United Kingdom, France, and South Africa—have adopted the perspective of the Swedish government but have not yet followed with similar legislation (Richter 2008, Sanders 2008, Weitzer 2012). In India, legislation that would have criminalized buyers failed to pass in part because several thousand sex workers and supporters marched to Parliament to protest against the proposed change (Kotiswaran 2011).

Governments also use imprisonment to punish buyers, even when buying sex is a misdemeanor rather than a criminal offense. China, for example, uses a policy of “detention for education” in which public security organs sanction people for activities that “offend public morality,” “harm public order,” are “conducive to criminal activity,” or undermine the Chinese Communist Party's goals of achieving a “socialist spiritual civilization” (Biddulph 2002, pp. 220, 237; Enshen 2010). Customers may be detained for up to two years and may be required to “engage in productive labor to give up this evil habit” (Biddulph 2002, p. 251). Analysis of data from Shanghai for the period 1983–1999 indicates that the numbers of people detained for buying sexual services generally exceeded the number detained for selling such services (e.g., 1,863 buyers compared with 1,556 sellers in 1993).

Third Parties

The available information suggests that pimping, procuring, and brothel ownership and management are fully criminalized in more than 80 countries (ProCon.org 2012b). Legislation that prohibits third-party involvement may be enacted in settings in which selling or buying sexual services is permitted in at least some contexts (e.g., Fiji, India, Columbia, the Dominican Republic, France), or it may be part of a larger set of laws that prohibits all of these activities (e.g., Saudi Arabia, South Africa, the United States).

Penalties for third-party involvement typically exceed those for selling or buying. In the United States, pimping or operating a brothel are felonies in most states (ProCon.org 2012c); in the few states in which third-party involvement in prostitution is a misdemeanor, it is classed as a more serious offense than selling or buying (e.g., in Kansas, it is a misdemeanor of a “high and aggravated nature”). Jail sentences for third-party offenses can reach ten years (e.g., Connecticut, Texas) and fines can surpass \$100,000 (e.g., Colorado, Oregon). In only a few states do the punishments for some of these offenses mirror those for buying or selling (e.g., New Hampshire, Oklahoma), and it is most common that the punishments for third-party offenses are the same. However, in a handful of states (e.g., Colorado, Florida, Nebraska, Wisconsin), pimping is more severely punished than operating a brothel.

Many third-party statutes are reverse-onus laws in which the accused have the burden of proving their innocence. For example, under the Sexual Offences Act of Antigua and Barbuda, people who are “habitually in the company of a prostitute” are assumed to be benefitting economically, unless they can prove otherwise (Antigua and Barbuda Parliam. 1995). Similar legislation exists in Canada, France, and Kenya.

Legislation that prohibits an individual from gaining economically from a seller’s activities is typically defended as a means of protecting sellers from exploitation by pimps (Hindle et al. 2008). However, these laws also allow governments to punish others who are intimately connected to sellers. Laws that criminalize “living on the avails of prostitution,” for example, can be used to sanction romantic partners/spouses, adult children and roommates, or other adults who may directly or indirectly benefit economically from a seller’s activities.

Similarly, laws concerned with creating conditions for selling sexual services primarily target people who provide spaces, such as brothels, common bawdy houses, massage parlors, and other off-street sites, for the sale and purchase of sexual services. These laws are typically

used to sanction businesses owners and operators, but they have also been used to punish property owners who rent premises to these businesses and to sanction people who provide other resources involved in the selling of sexual services (Lewis & Shaver 2011). Individuals who provide a sex worker with transportation to and from or during work may be charged with pandering, as may people who offer access to condoms and other safer-sex supplies or who act as look-outs, provide protection, or otherwise assist sex workers while they sell. Police who warn sellers about potential “bad dates” or provide other help but do not arrest them also may be guilty of practices “conducive to prostitution” (Craig 2011, Lewis & Shaver 2011).

CRITICAL ASSESSMENT

Governments have used a variety of religious or moral arguments, as well as concerns about the exploitation of sellers and about externalities or secondary effects, to justify criminalizing the selling and buying of sexual services by consenting adults. The list includes the desire to protect the general female population (and often the general youth population) from vice and exploitation; concerns about community health, safety, and moral decay; the wish to protect customers (e.g., from sexually transmitted infections or STIs); concerns about other types of crime connected to the sale of sex (e.g., drug trafficking and use); and the need to protect sellers (with a focus on women) from exploitive and violent buyers and third parties (Cook 2005). These views are reflected in the contemporary abolitionist arguments that sex work always involves the economic exploitation of lower-status or marginalized individuals and in particular of women, racial and sexual minorities, immigrants, and the socially outcast (Vanwesenbeeck 2001).

Governments that criminalize buying sexual services use many of the same justifications employed to punish selling such services; these include religious and moral justifications, as well as negative externalities or secondary effects (Cook 2005). In addition, many argue that

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buyers take advantage of sellers' disadvantaged position (economic or other) and that they are directly responsible for sex workers' higher rates of violence (Weitzer 2012).

Critics of criminalization charge that it ignores the economic and social heterogeneity of the sex industry, and results in an array of negative consequences (Weitzer 2012). Even where it is completely prohibited, a clandestine sex market typically thrives. The failure to regulate the consensual sex market ensures that purchasers and third parties are considerably advantaged relative to sellers; they have greater economic, social, and cultural power and resources than sellers, who are disproportionately drawn from disadvantaged groups (Harcourt et al. 2005). Criminalization also makes it difficult to assess the degree of agency and personal choice of the most vulnerable sellers and may increase the likelihood of violence (Sanders 2005, Shaver 2005).

In settings where selling and buying are both prohibited, police discretion has often resulted in selling being sanctioned more frequently and severely (Lefler 1999). In 1983, Massachusetts amended its laws to make buyers and sellers of sex equally culpable; in 1990, 263 female sellers were arraigned, but no males were charged (Aronson 2006). In many countries, potential charges against buyers are dropped if they testify against sellers (Aronson 2006), a practice that has been legally sanctioned by some governments (e.g., Egypt). Punishments for buyers are also typically less severe than those for selling. Arrest data from China for 1993 indicate that 24% of 56,351 sellers were placed in a detention center, compared with only 10% of 131,345 buyers (Biddulph 2002). Police often enforce prohibition against sex work episodically, ignoring infractions much of the time and then using dramatic sweeps to arrest a large number of sellers or buyers, often in well-publicized raids. Recent examples of such sweeps suggest that this approach continues to be widely used (Buettner 2012). Laws that prohibit selling but not buying reinforce status hierarchies (e.g., class, gender, and race) and ignore the cultural and structural

realities that encourage people to sell sexual services. They also ignore variation in sellers' motivations; although economic necessity contributes to some people's decision to sell sexual services, others are also influenced by the lack of alternative opportunities, working conditions, and other concerns (Sanders 2005).

There are additional problems with laws that sanction buying, but not selling (Ekburg 2004). Critics argue that the Swedish approach encourages buyers to purchase sex in more clandestine, geographically remote or hidden markets; these markets often involve third parties who are more likely to exploit sellers; in these markets, sellers are also less likely to receive police protection (Hubbard et al. 2008, Kilvington et al. 2001). Moreover, these laws may encourage buyers to travel to other nations in which buying sex is legal and where sellers may be more disadvantaged relative to sellers in the buyer's home country (Marttila 2008).

Laws that fully criminalize buying have encouraged the police and the courts to use stigmatization as further punishment. The most common form of stigmatization involves publication of the identity of people who purchase sexual services. In 2008, at least 280 US cities used some system of shame to punish customers (Weitzer 2012). Practices have included placing arrested buyers' pictures on posts (e.g., New Haven, Connecticut), freeway billboards (e.g., Miami, Florida), and local TV stations (e.g., Kansas City). Other means of stigmatization include extending the life of formal sanctions: A 2009 Rhode Island statute that allowed for six months of jail time (and a fine of up to \$1,000) for customers and sellers included a provision that allowed for sellers' but not purchasers' records to be expunged after one year (Weitzer 2012).

Government practices also include attempts to foster self-stigmatization in which purchasers self-regulate their behavior. The most popular approach, so-called John School, typically allows people arrested for buying or attempting to buy sexual services to avoid a record and imprisonment if they admit guilt, pay a fine, attend the program, and do not

recidivate within a specified period (Weitzer 2012). The programs usually include graphic slides of STIs, community member lectures on the ways sex work destroys neighborhoods, police presentations on how buying sex contributes to other nonviolent (e.g., drug selling and theft) and violent crimes, and accounts by former sex workers who describe traumatic, violent experiences. Although these programs are presented as rehabilitative, Fischer et al. (2002) argue that they are more accurately described as involving blaming and shaming. Reintegrative shaming is a central component of Braithwaite's (1989) and others' ideas on reformatory justice; however, advocates argue that shaming must be reintegrative to be successful, and warn against using shaming for crimes that involve sex (Sanders 2008). Portraying buyers as wicked, immoral, and insensitive to their communities' standards ignores variation in buyers' motivations for participating in the sex market.

There is also a dearth of evidence about the effectiveness of these programs (Sanders 2008). In one of the few studies that compares rearrests of men who attended John School with those who were given other punishments (e.g., a fine), Monto & Garcia (2001) report that few men (less than 3%) in any group were rearrested and that the groups did not significantly differ in the rate of subsequent convictions. Critics are also wary of the suspension of due-process rights common to the John School approach. A requirement that arrestees confess in order to avoid a trial increases the program's coerciveness (Fischer et al. 2002, Wortley et al. 2002). John Schools that charge "tuition" and allow police to generate income create incentives for police to use arrest to ensure that programs are full. Similar programs, such as the United States's asset forfeiture laws that allow police to seize the money and material possessions of people suspected of drug crimes, have contributed to police misuse of arrest and funds (Benson et al. 1995).

Laws that criminalize buying may be based on unsupported assumptions. For example, the Swedish approach assumes that buyers always exploit sellers and that buyers are uniformly

abusive, violent victimizers. Weitzer (2012, pp. 19–20) notes that analyses of American men arrested for buying sex find that only a small proportion had a previous conviction for a violent or sexual offense. Monto (2010, p. 243) likewise states that there is "no evidence to suggest that more than a minority of customers assault prostitutes."

Finally, Sieberg (2005) argues that anti-imping laws discourage nonabusive managers from working with sex workers, and encourage exploitive relationships between sex workers and pimps. Ironically, it is nonabusive managers who are most likely to provide safe and healthy working conditions (e.g., supplying gloves, condoms, lubrication), actively screen clients, and help sex workers access services designed to help and protect them.

PARTIAL DECRIMINALIZATION

Sellers

Other governments have adopted a more nuanced approach that assumes that the nature of sex work depends on its context (Bonthuis & Monteiro 2004). These governments allow selling in some situations but prohibit it in others, essentially trying to manage sex work rather than abolish it (Phoenix 2009). Partial decriminalization has been adopted by at least 6 nations each in Asia, Africa, and North and Central America, 15 or more in Europe, and 3 each in Oceania and South America (ProCon.org 2012b, Wikipedia 2012). We write at least because, as noted earlier, people have used different definitions of partial and full decriminalization; moreover, some governments are currently being challenged to revamp their criminal codes relating to sex work (e.g., Canada).

The two most common partial decriminalization approaches allow for the sale of sex in some locations but criminalize its sale in others and permit some types of selling but punish others. For example, in 2000, the Netherlands legalized the selling of sexual services but imposed limits on both where selling can occur and who can sell. Cities are permitted to use

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zoning laws to create tippelzones, areas where people can sell sex from some, but not all, streets (Daalder 2007). Street workers do not have to attain a license, but they must register with the city and obtain a registration pass. Many tippelzones include features to enhance the safety of street-level selling, such as easy access to police, shelters, condoms, and STI testing (Scoular 2010). Selling sex outside of a tippelzone is a misdemeanor (Weitzer 2012).

The Dutch approach allows municipalities to license brothels but also to restrict them to specific areas, cap the number of brothels in an area, and close them if they have negative consequences for communities (Hubbard et al. 2008, Wonders & Michalowski 2001). Brothels must meet federal labor law requirements for occupational health and safety regulations, including those for fire safety, building codes, hygiene, and security (Hubbard et al. 2008, Klivington et al. 2001, Weitzer 2012). Brothel workers may provide outcalls only if they have a license. Legalizing brothels has also allowed a number of cities—Amsterdam, Rotterdam, and Herleen, for example—to close their tippelzones and prohibit selling sexual services from the street (Daalder 2007, Hubbard et al. 2008).

Selling some sexual services is also partly decriminalized in some of the eight regions of Australia (Perkins & Lovejoy 2007, Sullivan 2010). In 1979, New South Wales decriminalized selling in many locations, including some street settings (e.g., cities may still prohibit street selling near public institutions, such as schools, churches, and hospitals). Street selling remains illegal in the rest of Australia, but five areas license brothels and/or escort agencies (e.g., Victoria, Western Australia), whereas other areas prohibit brothels (e.g., South Australia). Tasmania allows up to two adults to sell sexual services from the same premises and does not require that they have a brothel license (Perkins & Lovejoy 2007).

Other governments that allow the selling of sexual services in some contexts make it virtually impossible to do so without breaking a number of laws. In the United Kingdom, adults can legally sell to other adults, but soliciting to

purchase in public is illegal, as is persistently soliciting in public. In Canada, the exchange of sexual services for money does not violate any criminal statutes; however, the Canadian criminal code prohibits solicitation by sellers and buyers in public, and bawdy-house laws make it illegal for them to sell from one location repeatedly (Barnett 2008, Lewis & Maticka-Tyndale 2000, Shaver 2005, Van der Meulen & Durisin 2008). Sellers in Canada are also subject to laws that make “indecent acts” and “nudity in a public place” criminal offenses (Lewis & Shaver 2011). In 2011, a justice from one province, Ontario, ruled that Canada’s criminal code provisions deprive sellers of their “security of the person” and “liberty interests,” and increase their risk of violent victimization; moreover, the justice ruled that the laws operate in a manner that is inconsistent with the principles of fundamental justice (Craig 2011). An Ontario supreme court agreed and overturned the laws, but the federal government is currently seeking leave to appeal the decision.

Buyers

A common partial decriminalization approach to sex markets is to allow the buying of sexual services in certain areas and to prohibit it in others. In the United Kingdom, it is illegal to purchase sexual services from a street seller, but it is legal to do so in private locales (Sanders 2008). Similarly, in India, current law allows buyers to purchase services from a person who voluntarily sells in a “discrete manner in a place that is not in or near any public place” (Kotiswaran 2008, p. 589). Other governments prohibit buying on some streets but not on others. Many governments adopt an approach akin to that of the Netherlands, Austria, or Mexico and allow buyers to arrange a purchase on streets in designated areas or tolerance zones (Katsulis 2008, Weitzer 2012).

Another common strategy is to restrict buying to registered businesses that are allowed only in certain areas. A number of governments (e.g., Nevada, Greece, Turkey) permit buying only in registered brothels located in

designated areas. Other governments permit on-street buying but prohibit purchasing sexual services in brothels (e.g., Armenia, Israel, France). In Argentina, for example, Article 19 of the Constitution states, “The private actions of men which in no way offend public order or morality, nor injure a third party, are only reserved to God and are exempted from the authority of judges”; nonetheless, it is illegal for buyers to purchase sex in a brothel.

Other regulatory legislation includes prohibitions on the movement of buyers. In Antwerp, it is illegal for buyers to bring a motor vehicle into designated sex work areas (Weitzer 2012). In 1985, the United Kingdom passed legislation against kerb crawling, and in 2001, legislation allowed for the arrest of people who cruise in areas where street sex work is common (Sanders 2008). British police have also used Anti-Social Behaviour Orders (ASBO) to restrict customers from traveling through or being in certain areas (Matthews 2005). Police often prefer to use ASBOs rather than prosecuting with kerb-crawling laws because the former require a lower standard of proof. Although the stated aim of an ASBO is to prevent persistent antisocial behavior without recourse to criminal sanctions, breach of an ASBO can result in up to five years imprisonment; moreover, conditional discharge is often unavailable (Sagar 2007).

Governments have also regulated other aspects of buying sexual services. In 2009, the United Kingdom made it illegal for buyers to pay for sexual services from a person who has been subjected by a third party to force, threats, or deception (Weitzer 2012). The law assumes strict liability and makes this type of buying a crime, regardless of whether the customer knows of the coercion. In 2006, Finland passed a similar law and allowed for a maximum sentence of six months in prison (Niemi 2010). In 2011, the Netherlands considered but did not pass a bill that would have allowed for a fine (up to \$7,600 Euros) or up to six months in jail for customers who bought sexual services from a nonregistered sex worker (Weitzer 2012).

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Third Parties

As mentioned above, third parties are sanctioned in most countries (ProCon.org 2012b). The few countries mentioned above that allow brothels in some areas are instances where brothel ownership, management, and living on the premises are not criminalized. For example, several areas in Australia permit licensed brothels and escort agencies (Sullivan 2010) but prohibit others from economically benefitting from the earnings of a sex worker. Individuals with a “disqualifying offense” (e.g., violence or child pornography) are banned from owning or operating a brothel or escort agency (Hindle et al. 2008). Columbia, Belgium, and the Netherlands have also partly decriminalized third-party involvement in sex work, allowing brothel ownership and operation with a license in certain jurisdictions. The United Kingdom has similarly moved away from prosecuting those who live with workers by limiting sanctions to those who control workers and take their earnings (UK Parliament 2003).

CRITICAL ASSESSMENT

Those who argue in favor of partial decriminalization maintain that legal strategies should focus only on penalizing conduct that is violent or threatens force against sex workers or creates a public nuisance and potentially harms local communities (Cool 2004). They note that partial decriminalization reduces victimization of sex workers by no longer forcing them to work in dangerous isolation and that sex trafficking does not appear to increase as a result of partial decriminalization (Sanders & Campbell 2007, Weitzer 2009). Legal permission to congregate in the safety of a brothel or massage parlor or their own homes and to hire staff to protect them from dangerous clients, expands sex workers’ rights and increases their safety at work (Bretns & Hausbeck 2005, Sullivan 2010). Partial decriminalization also better positions sex workers to challenge discriminating municipal regulations and to report victimization to police (Craig 2011).



A number of problems have nevertheless been identified with partial decriminalization. Legislation that prohibits selling or buying in public places, but allows it in other locations may perpetuate preferential treatment based on economic status, effectively creating a two-tiered system of legal and illegal sex workers (Weitzer 2009). Sellers and buyers who have greater financial resources relative to their poorer counterparts can afford to sell or purchase more expensive and discreet sexual services in indoor markets where the likelihood of arrest is low (Lowman & Atchison 2006, Sanders 2008).

In Australia and other places that allow selling only in state-sanctioned brothels, regulation may lead to an increase in the use of criminal sanctions against sellers who work in unlicensed settings (e.g., against older, male, transgender, or immigrant workers who have more limited access to licensed brothels) (Sullivan 2010). Laws that allow for the selling of sexual services, but that also require sellers to register, may encourage people who do not wish to or who cannot register to work in more precarious settings (Kilvington et al. 2001).

Partial decriminalization does not necessarily address issues of police discretion or stigmatization, and it often relies on the same questionable assumptions used to justify full criminalization. For example, data from 2002 for England and Wales indicate fewer than 1,000 convictions for kerb crawling compared with 2,678 for solicitation (Matthews 2005, Sanders 2008). The police in the United Kingdom have mailed letters to the homes of purchasers (Matthews 2005, Sanders 2008), and in London, they released to the press the name, address, and occupations of arrested men; details were published by one newspaper under the headline “29 Kerb-crawlers to be Named, Shamed in Vice Crackdown” (Sanders 2008, p. 88). Sanders (2008) notes that a UK government report describes buyers as abusive “users” who degrade, take advantage of, and victimize sellers; yet, the limited available data on UK buyers suggest that the average buyer is a middle-aged, employed, married man with

no criminal record (Brooks-Gordon 2010, Sanders 2008). In a Canadian Internet study of buyers, Lowman et al. (1997) find that only a small percentage of men reported that they had used violence against a seller (e.g., six percent had assaulted and eight percent had forcibly confined a seller) (see also Lowman & Atchison 2006). These samples are by no means representative and self-report data likely underreport the extent of aggression; nonetheless, the results suggest that a minority of buyers commit most of the violence against sellers.

Partial decriminalization may also indirectly contribute to the high rates of violence common among some groups of sellers. Data from Canada and the United Kingdom indicate higher rates of victimization among street selling compared with off-street work (Lewis et al. 2005, O’Doherty 2011). Sellers who work on the street report higher rates of physical and sexual violence, have an elevated risk of homicide, and are less able to avoid harassment from police and residents because of their high visibility (Church et al. 2001).

Analyses of police use of powers to restrict people from spending time in a specific area (e.g., the use ASBOs in the United Kingdom or the use of Stay Out of Areas of Prostitution Orders in the United States; see Beckett & Herbert 2010) have focused more on their use to control street workers than to control buyers, but it is clear that the use of these acts targets one class of sellers and buyers—those who communicate about sexual transactions in public places—while ignoring others (Hubbard et al. 2008, Lowman 2000).

FULL DECRIMINALIZATION

Sellers

Some national governments have taken little interest in criminalizing the sale of sexual services between consenting adults. In Venezuela, the voluntary selling of sexual services by adults is not regulated by the penal code. Sellers are, however, required to undergo free monthly health checks for syphilis and biannual

screenings for HIV (Camejo et al. 2003). In Ecuador, selling is legal as long as businesses that employ sellers are registered with the government and comply with health regulations (US Dep. State 2007). Sex workers are required to carry a stamped permit, which must be validated every 15 days at a health center where they receive mandatory STI screenings (Solomon et al. 2008). Other countries where selling sexual services is, for all intents and purposes, legal and regulated include one nation in Asia; two each in Africa, North America, and Oceania; six in Europe; and seven in South America (ProCon.org 2012b).

Under full decriminalization, regulation of the sale of sexual services often moves to the local or municipal level, frequently through a nexus of non-sex-work-specific laws and codes addressing liquor licensing, hygiene, public nuisance, labor law, entertainment venues, or taxation, as well as laws and policies that pertain specifically to sex work. In Germany, for example, selling is legal and widespread; however, prior to recent reforms, sellers did not receive full employment rights (e.g., health insurance or social security payments), and selling was often seen as an affront to “good morals” (Crofts 2002, Klivington et al. 2001). In 2002, Germany passed a reform that granted sex workers legal protection against discrimination and that gave them the right to the social benefits that accompany most legitimate jobs (Alexandre 2009). The law also legalized the selling of sexual services in brothels and most public places. As selling sex is regulated at the local level through bylaws (Kavemann & Rabe 2007), there is no single German model (Weitzer 2012). For example, municipalities have the authority to exclude sellers from particular public spaces, such as school zones and residential neighborhoods.

In 2003, New Zealand changed its laws with the goal of enhancing the working conditions and health and safety of sex workers (NZ Minist. Justice 2008). Although selling was not previously a criminal offense, it was virtually impossible to sell without breaking the law (Abel 2011, Abel et al. 2010, NZ Prostit. Law Rev. Comm. 2005). The reform requires that

standard labor laws apply to sex work. The new law allows people to sell from their own homes, in brothels, and from the street and other unregulated spaces; it also allows up to four workers to sell services from a shared space without requiring a brothel license. However, in some cities (e.g., Auckland), officials subsequently passed bylaws banning sex workers from marketing their services on the street and preventing brothels from opening in particular neighborhoods (Hindle et al. 2008).

Buyers

The number of national governments that do not prohibit buying sexual services far exceeds the number that do not punish selling. Various Web sites (ProCon.org 2012b, Wikipedia 2012) provide lists of 50 or more countries where buying is allowed, including nations from North and Central America (e.g., Mexico, Costa Rica, Dominican Republic), South America (e.g., Brazil, Argentina, Bolivia), Europe (e.g., Italy, Greece, Hungary), Africa (e.g., Côte d’Ivoire, Senegal, Ethiopia), the Middle East (e.g., Turkey, Israel), Asia (e.g., Bangladesh, Indonesia), and Oceania (e.g., New Zealand).

Some governments have gone further and have explicitly promoted the buying of sexual services under certain conditions. Starting in 1949, the government of Curaçao began operating one of the largest brothels in the Caribbean: Campo Alegre, or Happy Camp. The police and immigration services conduct overseas-recruitment and registration of workers to ensure that buyers purchase services from government-approved workers (Kempadoo 2004). A less direct approach involves agreements between governments, such as trading initiatives or other activities that indirectly promote sex work, often in the context of economic development or tourism. Studies of a number of Caribbean (Cabezas 2009, Kempadoo 2004) and South Asian governments (Jeffrey 2002) argue that these states have created legal climates that indirectly encourage the buying of sex, even when sex work is illegal. In an ethnography of karaoke hostesses in Northeast

China, Zheng (2009) describes the involvement of party officials in facilitating outside investment (e.g., from Japan) in karaoke bars, as well as in directly operating establishments where illegal sex work flourishes.

In some cases, governments simply set rules to control particular buyer behaviors: In Curaçao, for example, legislation that allowed the buying of sexual services within a government-run brothel forbade customers to drink alcohol with a seller (Kempadoo 2004). Legislation has also been used to address public-health concerns arising from the purchase of sexual services. In New Zealand, customers are legally obligated to practice safe sex, including the use of condoms; violators can be charged by the health department and fined up to \$2,000 (Kagan 2007). In Nevada brothels, buyers are required to be free of infections and if male, to use a condom; thus brothel workers can reject customers who appear to have an infection or who refuse to use a prophylactic (McGinley 2006).

Third Parties

Operating or owning a business that employs sex workers—an activity considered pimping in many statutes—is fully decriminalized in at least 12 countries (ProCon.org 2012b). In New Zealand, for example, it is legal to own a sex work business in any area of the country as long as the owner is an adult citizen and is without any serious criminal conviction. Additionally, New Zealand does not have a law that prohibits living on the avails of prostitution (Abel et al. 2010). In New South Wales in Australia, brothels do not require a license, but they must be approved by the local government (Sullivan 2010). In Fiji and Germany, third-party involvement in sex work is also permitted, but exploitative behavior (e.g., holding someone against their will) is banned. Like buying and selling, third-party activities are regulated at the local level in Germany through bylaws (Kavemann & Rabe 2007). This means that municipalities have the authority to exclude third parties from

operating in particular geographical spaces, such as near public institutions or in neighborhoods where citizens have organized to keep them out (Weitzer 2012).

CRITICAL ASSESSMENT

Arguments for full decriminalization include libertarianism or related philosophies that maintain that the state should interfere as little as possible in the bedrooms of consenting adults (Phoenix 2009). A related position argues that the selling and buying of sexual services should be treated akin to a contract between consenting adults who are engaged in noncoercive commercial transactions (Collins & Judge 2008). Advocates for decriminalization also argue that it provides the most effective way to protect participants in the sex industry from exploitation and victimization, to provide sellers with benefits accorded other workers, and to reduce the stigma associated with the sex industry. This conclusion is based on the assumption that the consensual adult paid-sex market is, or can be, separated from the criminal exploitation-led market that involves minors, drug dependency, coercion, enslavement, and other related practices (Collins & Judge 2008).

Critics argue however, that full decriminalization by itself may be insufficient for changing attitudes toward sex work. Regulatory regimes do not, for instance, necessarily translate into greater protection for workers. In Australia, many brothel or escort workers are paid as subcontractors rather than employees, and thus do not have access to benefits provided for workers (Sullivan 2010). Data from Australia indicate that brothel owners or managers sanction workers by shortening their hours or not calling them for work if they refuse clients (Sullivan 2010). Postdecriminalization interviews with New Zealand sex workers indicate that legalization of sex work has not fully eliminated discrimination; street sex workers, in particular, continue to feel looked down upon because of their occupation (Abel 2011, Abel et al. 2010). The persistence of stigma increases the likelihood that members of disadvantaged groups will be overrepresented among sellers.

CONCLUSION

The categories full criminalization, partial decriminalization, and full decriminalization provide a useful heuristic for examining the various ways that governments use the law to respond to consenting adults' involvement as sellers, buyers, or third-party participants in the sex industry. Although these categories ignore important cultural and structural differences that influence the content of an individual government's approach, they highlight the similar assumptions that influence sex work legislation as well as the practices commonly used either to sanction participants or to regulate their behavior. We have summarized some of the criticisms of each legislative approach but note that many of these are theoretical or based on limited data.

There is, to the best of our knowledge, little research that examines the experiences of sellers, buyers, and/or third parties within

a legislative area (e.g., municipality, state, or nation) under different legal approaches. Several factors contribute to this lacuna, including the general lack of systematic data on the various parties involved in sex work, the failure to collect data from before and after a legislative change, and the relatively small number of governments that have made major changes in sex work law. Future research should gather the data necessary to examine in greater detail the consequences of various legal strategies for sellers, buyers, and third parties. In turn, such work can inform the building of evidence-based policy frameworks that attempt to address the shortcomings of current legislative approaches to the complex and diverse issues present in the sex industry. This is especially the case with respect to such legislation's treatment of third parties, and we are now involved in research to help fill this knowledge gap.

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