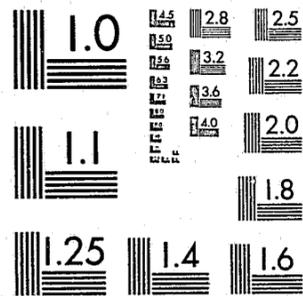


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WORKSHOP  
PAPERS

HISTORICAL APPROACHES  
TO  
STUDYING CRIME

OCTOBER 11-12, 1979

UNEDITED DRAFT

United States Department of Justice  
 Law Enforcement Assistance Administration  
 Henry S. Dogin, Administrator  
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 Special National Workshop

HISTORICAL APPROACHES TO STUDYING CRIME

Chantilly, Virginia

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For

THE NATIONAL CRIMINAL JUSTICE RESEARCH UTILIZATION PROGRAM

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Section I

The Politics of Criminal  
Justice Reform in  
Nineteenth-Century France\*

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Thomas J. Duesterberg  
August 25, 1979

\* I have received invaluable assistance on this paper from Elizabeth Muenger. This paper has been prepared for delivery to the symposium on History and Crime sponsored by the NILECJ.

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Section II

THE STATE AND PROSTITUTION:  
PROHIBITION, REGULATION, OR DECRIMINALIZATION?

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INTRODUCTION

Often called "the oldest profession," prostitution seems to have posed a problem for states throughout history. This common emphasis on the universal nature of prostitution has often prevented researchers from looking more closely at the condition of prostitution in a certain society at a specific point in time. As two sociologists, John Gagnon and William Simon (1973: 218), have written,

Female prostitution is as much if not more vulnerable to the process of social and scientific simplification than are other kinds of sexual relationships.

Such simplification arises at least partially from the tendency to view human sexuality, and male and female sex roles, as immutably rooted in biological imperatives. This reductionism not only makes the analysis of prostitution difficult, but also affords little promise to those who wish to formulate policies concerning this supposedly "universal" institution. Those who make public policy should be aware of the multiple definitions of prostitution as well as the variety of responses developed in the past. An evaluation of the effectiveness of these responses should present lawmakers, administrators, and judges with guidelines for examining present regulations.

When approached historically, the task of simply defining what constitutes the act of prostitution illuminates the diversity of the phenomenon. Historians of prostitution (Henriques, 1962-63; Bullough, 1964) have noted a variety

of types ranging from the temple prostitute of the ancient  
 mid-east, the hetairae of classical Greece, and the geisha  
 of Japan to the courtesan of renaissance Europe. The  
 sexologists Harry Benjamin and R.E.L. Masters (1964:22)  
 have suggested that the "average person" probably defines a  
 prostitute in the following manner:

She is a person who will enter into sexual relations  
 with anyone, or almost anyone, who is willing to pay  
 her for so doing.

Yet the opinions of sociologists and psychologists differ  
 widely, usually finding weaknesses in this sort of definition.  
 To begin with the first word, prostitution is no longer  
 the monopoly of women, although many laws do not recognize  
 the possibility of male prostitution. The term "sexual  
 relations" is vague: are prostitutes only those who perform  
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 also sexual? Thirdly, how much promiscuity is implied  
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 are modern call girls selective as to their customers, but  
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Yet the opinions of sociologists and psychologists differ widely, usually finding weaknesses in this sort of definition. To begin with the first word, prostitution is no longer the monopoly of women, although many laws do not recognize the possibility of male prostitution. The term "sexual relations" is vague: are prostitutes only those who perform sexual intercourse? Is the stimulation given by massage parlors, strip-tease, and even television commercials not also sexual? Thirdly, how much promiscuity is implied in the phrase "with anyone, or almost anyone"? Not only are modern call girls selective as to their customers, but in the past concubines, courtesans, and mistresses often had relationships with only one man over long periods of time. Finally, any woman who is economically dependent on a man could be viewed as exchanging sex for some kind of pay. Even if the category of prostitute included only those dependent women who lacked emotional ties to the men who

supported them, it would encompass,

girls who trade their sexual favors for food, entertainment, or other gifts; and wives who, having no love and no sex desire for their husbands, continue to have sex relations in order to maintain the socio-economic benefits of marriage. (Ellis, 1951).

After reviewing such arguments, Benjamin and Masters (1964: 22) conclude that,

Once...we begin more closely to scrutinize the immensely complicated subject of prostitution, it soon becomes apparent that no simple concise definition will stand up under all of the many objections one might raise.

Unlike theft or homicide, prostitution does not constitute a rather clear-cut crime, but one that is especially susceptible to molding by the law. To a much higher degree than for other offenses, the law creates the crime of prostitution by the process of defining what constitutes that act. Since legal descriptions are often ambiguous, police continue the process of definition by their selection of women arrested for prostitution. Rather than generalizing about prostitution, the researcher must be sensitive to differences in this "labeling" process across cultures and over time.

Even if a general consensus exists within a society about the definition of prostitution, lawmakers must evaluate the significance of that act. They must decide if the

practice of prostitution constitutes a crime, and, if so, how the state should punish that crime. If not a crime, is prostitution a vice which might harm society if left without government intervention? To answer such questions, government officials must pinpoint the dangers which they believe prostitution poses to society and develop effective policies for dealing with that threat.

During the past 150 years, Western nations have employed three basic strategies to define and manage prostitution. Called "prohibition," "regulation," and "decriminalization," all three had supporters in nineteenth-century Italy, the country with which I am most familiar and from which most of the examples in this paper will be drawn. While the social, economic, and political conditions of nineteenth-century Italy certainly differ from those in contemporary America, the context of the debates about governmental policies to deal with prostitution have not. As Gagnon and Simon (1973:219) have pointed out,

Our attitudes toward prostitutes are based on the same origins as our current conventional vision of the natural order that should exist between women and men - i.e., the nineteenth-century English models. Though the contours of most of our society have changed in the intervening century, the available legal, moral, and social scripts that exist for the act of prostitution are remarkably stable.

In a broader perspective, Victorian Europe offers a good starting point for tracing the vicissitudes of prohibition, regulation, and decriminalization. In the following sections, these policies will be compared in three areas. Most fundamentally, according to each theory, how was the act of prostitution defined and was it considered a crime? Based on this judgement, what did proponents of each system believe should be the proper attitude of the state to prostitution? Finally, what have constituted the major practical problems in the enforcement of each policy?

#### PROHIBITION

Until the Enlightenment, with its revolution in legal theory and practice, most laws dealing with prostitution could be labelled as those of prohibition. The Catholic Church, later followed by the Protestant faiths after the Reformation, provided the religious basis for the moral crusades against prostitution. In the Middle Ages, when clerical courts had wide jurisdiction, they prosecuted prostitution as they did other sexual activities which the Church considered deviant. (Brundage, 1976). Since there was little separation of church and state in early modern Europe, religious prescriptions on morality permeated the law codes of both Catholic and Protestant countries. In a similar manner, the American colonists tried to suppress prostitution and their Puritan

values carried over into the legislation of the states of the early republic. With the secularization of the nineteenth century, most European states replaced prohibition with regulation or decriminalization. But America was one of the few nations to retain, and in fact strengthen, prohibition, which is still enshrined in the law codes of almost every state (Benjamin and Masters, 1964: 372).

At the basis of prohibitionist statutes is the assumption that extra-marital sex is sinful. As Vern Bullough (1976:196), a historian of sexuality, has written,

The Church Fathers regarded sex as at best something to be tolerated, an evil whose only good was in procreation. Western attitudes have been dominated by their concepts ever since.

Because their condemnation of sexual deviance has been based on moral imperative, prohibitionists have had a problem drawing the line between fornication and prostitution. Significantly, most of these laws have punished only the woman, and not her male customer, for immorality (Schur, 1974: 25; Millett, 1971: 137; Benjamin and Masters, 1964). As implied in the traditional phrase, "fallen woman," prohibitionists located the cause of prostitution in the moral failings of certain individual females. Because it was believed that some personal defect had caused their fall from grace, prostitutes, themselves, rather than their social environment, bore the guilt for their fate. While incontinence was officially deplored by church and state, moral lapses of

male customers were generally tolerated, and certainly not named as a cause of prostitution. Thus only for women, prohibitionists laws translated the sin of prostitution into a crime.

Even prohibitionists, who cited moral absolutes as the rationale for their policy, had difficulty defining who was to be arrested for the crime of prostitution. In America today, most states, like Illinois, limit prosecution to those who commit sexual acts "for money" (Benjamin and Masters, 1964:381). At least sixteen states, however, have at one time considered any promiscuous, extra-marital sex on the part of women to constitute prostitution. For example, in 1964, the Ohio law read that,

The term "prostitution" shall be construed to include the offering or receiving of the body for sexual intercourse for hire, and shall also be construed to include the offering or receiving of the body for indiscriminate sexual intercourse without hire (Benjamin and Masters, 1964: 25).

Prohibitionists have devised a variety of punishments to counter female moral weakness, thought to be the cause of prostitution. Before the Enlightenment, European punishment was often harsh - ranging from requirements to wear distinctive clothing to "tortures, floggings, brandings, and banishment" (Sanger, 1939:161). American variants in the colonies included the dunking stool, wearing a scarlet letter, and,

later in the nineteenth century, forced sterilization. Generalization about punishment is difficult, since methods and severity varied according to the whim of the ruler, rather than <sup>an</sup> abstract theory of justice (Foucault, 1979). Presently in the United States, sentencing is theoretically no longer harsh or arbitrary, being carried out in court according to laws which make the punishment equal to the crime, not the will of the executive. In most states, the maximum penalty for prostitution does not exceed one year and often is less than six months (Benjamin and Master, 1964:377).

Administration of laws of prohibition has encountered similar problems in both early modern Europe and the contemporary United States. At a very practical level, no government can easily afford the expense of effective enforcement. For example, one expert has estimated that it costs the state about 1,560 dollars to arrest one streetwalker (Millett, 1971: 12). Speaking of all victimless crimes, including prostitution, the sociologist of crime, Edwin Schur, argues that,

It is because of their transactional nature - and the evidentiary difficulties such situations present - that crime without victims are particularly costly to administer (1974: 12).

Since a large section of society engages in an act which the law defines as criminal, the state would require an enormous "vice squad" to locate all offenders. Furthermore, as there

is usually no complainant in such a case, police must use time-consuming and expensive techniques to obtain evidence (Schur, 1974: 12).

Not only is prohibition expensive, but it has historically proved to be ineffective. Before Italian unification, the popes, as the secular rulers of Rome, tried to repress prostitution according to the dictates of the Church. Yet throughout Italy, Rome was notorious as a center of sexual vice, with visitors claiming that prostitutes openly plied their trade in the shadows of the great cathedrals and government buildings. One of these visitors noted that, "prostitution had never ceased to exist in Rome in spite of the incarcerations, fines, torture, and harassments of every kind...(Bolis, 1871: 801). As for results in the United States, two researchers have concluded that, "it is apparent that under current conditions the attempt to suppress prostitution by present police methods is analogous to attempting to empty the ocean with a teacup" (Benjamin and Master, 1964:19).

The attempt to enforce unpopular prohibition laws has tended to further corruption and lower morale among police officials. Because definitions of prostitution are ambiguous, and vice squads understaffed, police exercise wide discretionary powers in their choice of whom to arrest. Open to bribes and influence from powerful customers, police often ignore the violations of call girls or brothels catering to the wealthy. By ignoring these groups, police tend to

redefine prostitution to encompass only the poor streetwalker. Furthermore, because of lack of complainants, police have to rely on methods which border on illegality: for example, the use of decoys to catch prostitutes in the act of solicitation often becomes entrapment, and thus a violation of the woman's civil rights. Rather than the police, some critics blame the law which makes an officer,

a persecutor of prostitutes, a task that cannot possibly be carried out successfully without resorting to degrading practices and without being exposed to various influences and temptations likely in time to disillusion and demoralize the best of men (Benjamin and Masters, 1964: 393).

#### REGULATION

In 1860, with the unification of Italy, Prime Minister Camillo di Cavour replaced the laws of repression which had characterized the old regimes with a single system of regulation. Not the first to adopt regulation, Italy patterned its new law on those of Paris and Brussels. During the mid-nineteenth century, this new technique of managing prostitution spread to most other nations of Europe. For example, between 1864 and 1869, England passed a set of "Contagious Disease Acts" which established regulation in the major garrison and port towns. Although never as popular in the United States, regulation existed for a period in St. Louis, New

Orleans, and several other cities. Today regulation is relatively rare in Western nations, surviving only in a few Dutch and German municipalities as well as in some areas of Nevada. It survived until 1945 in France and 1958 in Italy, however, and in these countries there is still strong support for the former policy.

Although statutes resembling regulation had existed since medieval times, the wave of nineteenth-century legislation presupposed a secular and scientific point of view. Most often coming from the ranks of doctors and police, regulationists rejected moral crusades and pledged to treat prostitution rationally as an unpleasant, but eternal fact of life. What made prostitution "eternal," they suggested, was the nature of male sexuality which was strong and uncontrollable. For them, prostitution did not challenge the sanctity of marriage, as prohibitionists thought, but reinforced it by providing a safety valve for a male sex drive which might otherwise be directed toward "honest" women. Thus, while policies of prohibition theoretically rejected extra-marital intercourse for both sexes, regulation explicitly acknowledged the double standard. Normal women were considered naturally passionless while excessive male sexuality was excused, or even applauded as healthy, on the grounds that it was determined by the male physiological and psychological constitution.

Believing prostitution to be necessary, and even in some ways desirable, to the proper functioning of society,

regulationists rejected the prohibitionists' view of prostitution as a crime. As one Italian doctor (Sormani, 1882: 35) concluded in 1882,

Prostitution is not a crime and therefore cannot be prosecuted by the Penal Code; but it is a vice, morally and hygienically dangerous to Society. The practice of prostitution can therefore be considered from the same point of view as the practice of unhealthy industries, which Society submits with full fight to special regulations and to special surveillance.

If prostitution was not criminal, however, it often led to abuses of public health, order, and morality. Regulationists hoped to minimize these problems by legalizing prostitution and submitting it to police control. Legalization did not imply moral approval of the prostitute or acceptance of prostitution as a normal rather than deviant activity for a woman; it simply offered a more efficient strategy than prohibition for protecting society from these deviants.

Regulationists fared no better than prohibitionists in their effort to establish unambiguous criteria for defining prostitution. According to the Italian law of 1860, prostitutes were, "those women...who notoriously exercise the practice of prostitution" (Tommasoli, 1899:Appendix). Since the law did not provide for court review of arrest and registration, police were free to label any women who

were unemployed, homeless, or simply walking on the street at night as prostitutes. Subsequent laws in 1888 and 1891 tried to establish guidelines for police to observe when accusing a woman of prostitution. For example, previous arrest for prostitution or the transmission of venereal disease to a customer constituted grounds for arrest. But police and lawmakers agreed that the prostitute population encompassed a much larger group than could be disciplined under the provisions of these laws.

In a regulation system, the state controls prostitution in three ways: it requires that all prostitutes register with police, undergo periodic health examinations, and report to a hospital if found infected. To safeguard public order and morality, police control the movements of prostitutes. Since police know the location of brothels, they can exercise special surveillance to prevent rowdiness, soliciting, or indecent exposure. Examination and hospitalization are intended to control the spread of venereal disease for which regulationists generally held prostitutes responsible. In fact, the desire to insure a healthy population - especially that of the military - constituted the primary impetus for instituting regulation in many states including France and England. In Piedmont, the state which led Italian unification, Cavour established regulation specifically to prepare his troops for the war of liberation in 1859-60.

Like the attempt to repress prostitution, problems

arose in the administration of the system of regulation. Enforcement required the expertise of both police and health authorities, which in Italy constituted two distinct bureaucracies in the Ministry of the Interior. The problems of policing the regulation system resembled those of prohibiting prostitution: high expense, ineffectiveness, and corruption. Prostitutes seemed to resist registration with police almost as much as they had arrest. Thus Italian police chiefs constantly complained that they lack sufficient personnel to locate "clandestine" prostitutes and make them comply with the law. Furthermore, the mobility of prostitutes frustrated attempts at surveillance. As one Italian authority (Castiglione, 1872: 54) complained,

These unfortunates [prostitutes] exchange places, substitute for each other, recruit new members, and transfer from city to city, from province to province, and even from nation to nation. Surveillance for political and moral purposes is hardly possible unless the State has thousands of agents, all disciplined, all taking orders from the center, scattered throughout the entire territory of the Kingdom, corresponding among themselves and ready to act at a moment's notice.

The reality of Italian regulation did not match this vision of efficiency and total control. In 1897, the largest vice squads were those of Rome with twenty agents, Naples with eleven, and Bologna with seven (ACS-Sanita, 1897). Yet

the Minister of the Interior constantly bemoaned the expense of the system and ordered local police officials to prevent increases in their budgets.

Because of the resistance of prostitutes, only a portion were ever registered with police. Even supporters of regulation admitted that the majority of prostitutes escaped police supervision, while critics charged that only one-sixth to one-tenth of all prostitutes cooperated with the system. [ACS] While the total number of clandestine prostitutes was unknown, the fact that the figures for registered prostitutes dropped from about 10,500 in 1881 to 6,000 in 1908 tends to underline the ineffectiveness of regulation. [ACS] It is unlikely that the numbers of prostitutes decreased so drastically, especially during a period when population was increasing and cities expanding.

Finally, regulation, like repression, encouraged corruption among police. Since prostitution was so vaguely defined in Italian law, and police too understaffed to pursue all suspected prostitutes, agents exercised wide discretionary powers in regard to arrest of the unregistered or regulation of the registered. Brothels which catered to the upper classes were seldom submitted to police surveillance, although one critic charged that these fashionable houses were "notorious" and well known to police and citizens alike. [ACS] Even in the case of registered brothels, bribery and familiarity with madams and prostitutes often led to laxity in the enforcement of sections of the law which prohibited the prostitution of minors,

soliciting, and the sale of food and drink in brothels. One newspaper, Roma, stated flatly that the morals police were delinquents and had nothing in common with ordinary, honest police. (ACS)

While the regulationist campaign to publicize the problem of venereal disease and the necessity of cure was very progressive, its methods were not totally successful. Most fundamentally, nineteenth-century doctors had no reliable methods for diagnosing and curing venereal disease. Today, the development of the Wassermann test in 1907 and the discovery of penicillin and sulfa drugs in the 1930s and 1940s have largely resolved this problem. Yet debate continues on the effectiveness of the regulationist policy of examining and hospitalizing prostitutes by force. As noted earlier, the majority of prostitutes escape registration and, therefore, would not be submitted to periodic examinations. Furthermore, the focus on the prostitute as the carrier of venereal disease leaves the male customer free to infect his girlfriend, wife, and, in the case of hereditary syphilis, his children. As extra-marital contacts between men and non-prostitute women increases (Kinsey, 1948), the efficacy of applying health measures to only prostitutes diminishes.

#### DECRIMINALIZATION

Like regulation, decriminalization developed in the

nineteenth century as a progressive solution to the problem of the relationship of the state to prostitution. This movement opposed not only the traditional policy of prohibition, but more immediately the newly-installed regulation laws.

Calling themselves abolitionists, in a direct reference to American anti-slavery societies, early supporters of decriminalization campaigned to abolish regulation and what they viewed as its corollary, the white slave trade. The first abolitionist organization was founded in England in 1869 by a liberal and feminist, Josephine Butler. Butler and her followers successfully challenged the Contagious Disease Acts which were repealed in 1883. Abolitionists continued pressure in continental Europe, securing the endorsement of the League of Nations after World War I. Although the struggle often took decades, most European nations have now adopted abolition, most notably France in 1946 and Italy in 1958. Butler did establish a branch of her organization in the United States, but American opposition to regulation usually took the form of prohibition rather than abolition.

Like regulationists, abolitionists classified prostitution as a "private vice" not a crime and believed in attaching penalties only to its "objectionable manifestations" (Flexner, 1914: 292). They refused, however, to accept prostitution as natural and necessary to the functioning of society. As one abolitionist wrote, the two sides differed over the fundamental question of whether "the male instinct, to which the existence of prostitution is attributed, can

or cannot be overcome" (Gramola, 1880: 20). While regulationists accepted a strong male sex drive as a scientific fact, abolitionists abhorred excessive sexuality as typical of the more primitive stages in the evolution of man. For them, the perfectibility of civilization depended on man's ability to overcome his lower, animal urges and submit them to spiritual control, like they believed women had. In short, they preached a single standard: chastity for all until marriage and sex only with one's spouse after marriage.

Although abolitionists, like prohibitionists, hoped eventually to get rid of prostitution, they rejected repression and moral crusades. Personally deploring prostitution, they insisted that prostitutes, as citizens, should be free to practice their profession as long as they observed existing laws concerning public order and decency. They denounced regulation systems for infringing on the civil rights of prostitutes and treating them like second-class citizens. For example, prostitutes had to carry special identification cards, get permission to change their residence, and were forced to undergo health checks and hospitalization, all of which were contrary to the principles of a liberal society. Furthermore, abolitionists charged both laws of prohibition and regulation with sexism, since they punished or controlled only the woman for an act performed by two people. While male customers retained their good standing in the community and were free from harassment and restrictions by police,

women became outcasts who were submitted to constant surveillance, restraints, and insults. As Giuseppe Mazzini, the great liberal leader of Italian unification, pointed out, legislation aimed only at the woman, and not her client, was not only unjust, but created disrespect for the law:

If you punish the accomplice, leaving the sinner untouched, you destroy, by arousing the sense of injustice, every beneficial result of punishment (Butler, 1896: 25).

Abraham Flexner (1914: 26), an early historian of prostitution, has written, however, that abolitionists did not preach a completely laissez-faire attitude toward prostitution:

Abolition means only the abolition of regulation, not the abolition of prostitution; abolition does not require that prostitution be ignored, overlooked, tabooed, or treated in a spirit of prudery as nonexistent; it is entirely consistent with thorough inquiry into the whole phenomenon, and constructive social action aiming to deal with it.

To curb the "objectionable manifestations" of prostitution, abolitionists supported laws against soliciting in public places which they felt infringed on the rights of others not to be harassed or exposed to immorality. They were also eager to prosecute any third parties who made a profit from prostitution - that is, pimps, madams, and white slave traders. They blamed these figures for luring, tricking,

and forcing women into a life which abolitionists believed to be naturally degrading. With the streets cleared of procurers, they hoped that fewer women would "choose" to practice prostitution.

Abolitionists relied more on moral uplift than legal regulations to decrease prostitution. For example, the Italian Committee Against the White Slave Trade founded reformatories for those women who wanted to leave the profession (ACS). Blaming prostitution on environmental conditions rather than individual immorality, the Committee emphasized preventive measures. Its rehabilitation centers took in not only former prostitutes but also the "endangered" - those girls who through poverty, loss of parents, or attempted seduction might subsequently turn to prostitution. A variety of organizations established dormitories, job-placement centers, and information offices in railway stations for female migrants. In Parliament, abolitionists supported legislation to ameliorate what they believed to be the causes of prostitution: corruption of minors, abuse by parents, loss of family by children, and poverty among youth.

Abolitionists shocked Victorian society by their advocacy of sex education to fight prostitution. For them, sex education was to emphasize the teaching of moral precepts rather than physiological information. Believing the fundamental cause of prostitution to be male demand, they preached a transformation of social values toward women. If men were taught to respect women as equal and intelligent beings, they would be ashamed

to exploit them in the form of prostitution. Abolitionists expected the state to foster the dignity of women by legislating equal civil and political rights for both sexes.

Several problems have accompanied the establishment of abolition in European nations. Decriminalization has only been partial, legalizing the act of prostitution but not that of soliciting or the existence of brothels. Since most prostitutes, especially the poor, must solicit to get business, streetwalkers tend to congregate in certain sections of town, often annoying those passing by. Like the enforcement of prohibition and regulation, arrest for solicitation under an abolitionist system engenders the problems of high cost, ineffectiveness, and corruption. When public protest increases, police sweep the streets clean, only to have soliciting begin promptly after the release of the arrested prostitutes.

The transition from regulation to decriminalization often increases the exploitation of prostitutes by pimps. (Benjamin and Master, 1964: 374). According to regulationist laws, madams are expected to provide decent wages and living conditions in registered brothels. Although many madams defied the law by underpaying their employees and keeping them in debt, nevertheless prostitutes did not need pimps for protection. Pushed out of the legalized houses and into the street with the repeal of regulation, most prostitutes seek safety from police and other male criminals by submitting to the dictates of a pimp.

Finally, some critics of decriminalization charge that rates of venereal disease increase when police do not repress or regulate prostitution. The charge is difficult to evaluate since both sides, for instance in nineteenth-century Italy, could produce statistics to prove their point. <sup>AKJ</sup> Certainly if a state decriminalizes prostitution, it can no longer subject women to medical examinations as in regulationist systems. In nineteenth-century Italy, registered prostitutes seemed to have been in better health than the "clandestine" ones who escaped surveillance by health authorities. <sup>(ACS)</sup> But the percent of prostitutes who registered with police was minimal.

#### CONCLUSION

How can the preceding historical overview of prohibition, regulation, and decriminalization aid those who must formulate present policy in the United States? The historian is probably most useful in pointing out the failures of previous experiments rather than forecasting the future. In very practical terms, the sections on prohibition and regulation have emphasized similarities in the problems of enforcement: costliness, ineffectiveness, and corruption. I would also criticize, on a more theoretical level, the present prohibitionist laws in the United States as well as reject regulation as the best alternative.

Basically, both prohibition and regulation deny the principle of equality for men and women. They accept the traditional assumptions, disproved by scientific research (Masters and Johnson, 1966), that male and female sexuality essentially differ. Both prohibitionist and regulationist laws punish only the woman for promiscuity; they accept the same behavior in men as natural. As one critic of prohibition in the United States has written:

Prostitution is really the only crime in the penal law where two people are doing a thing mutually agreed upon and yet only one, the female partner, is subject to arrest. And they never even take down the man's name.

It's not his crime, but the woman's (Millett, 1971:137).

Both prohibition and regulation deny equality to women by restricting the civil rights of prostitutes. Even when authorities do not really believe in the prohibition statutes which they are enforcing, prostitutes are subject to "a continuous intimidation and inconvenience... - and a continual fleecing." A legal aide has described this hypocrisy:

The actual situation in the city is that prostitution is accepted by everyone - police, judges, clerks, and lawyers. Arrest and prosecution are purely gestures that have to be made to keep up the facade of public morality. The method of dealing with it is simply a form of harassment, not a form of prevention, abolition, or punishment. There is no conviction at

any level that prostitution is a crime on anyone's part, only a total and satisfied acceptance of the double standard, excusing the male, accusing the female.

Regulationists claim to replace repression with scientific and rational control. Once registered, however, prostitutes do not retain the freedoms granted other citizens. According to a study (Bowker, 1978: 151) of the present regulation system in Elko, Nevada, "the prostitutes' behavior outside the brothel is severely circumscribed by law and custom." Law defines not only what hours the women can go downtown, but also how many times a week they can visit their children who are taken away from their mothers. Although seemingly sympathetic to the system, the author of the study admits that "some of the restrictions on the prostitutes are so severe that they are repressive."

Prohibitionist and regulationist laws compound the initial injustice of arrest or registration by creating permanent criminal or deviant identities for prostitutes. The ambiguities in the definition of prostitution point out the fact that the state of being a prostitute is more one of "labeling" by official authorities than a quality inherent in a certain act. For Schur, laws prohibiting victimless crimes simply compound the problems they are intended to solve:

one of the major consequences of criminalizing mutually desired exchanges is the creation of much additional crime (that would not exist if consensual behavior

were legal) and the proliferation of criminal self-conceptions among the "offending" individuals.

By the process of what sociologists call "status degradation," the stigmatizing of prostitutes in prohibitionist states encourages the development of a deviant self identity. For example, prostitutes become involved in the world of crime to seek protection from police. Furthermore, the criminalizing of prostitution, with the attendant guilt, shame, and isolation, make reform, the supposed goal of prohibition, almost impossible. One prostitute (Millett, 1971: 71) commented on this problem in the United States:

I don't feel that I'm a whore now, but the social stigma attached to prostitution is a very powerful thing. It makes a kind of total state out of prostitution so that the whore is always a whore. It's as if - you did it once, you become it. This makes it very easy for people to get locked into it. It's very hard to get married...."

Although regulationists do not prosecute prostitution as a crime, they consider the individual prostitute to be sexually deviant. The state prevents contacts and identity with "normal" society by isolation in brothels and restrictions of her freedoms. A historian of prostitution, Judith Walkowitz (1977), has described how the line between prostitute and non-prostitute women hardened in nineteenth-century England after the implementation of the Contagious Disease Acts. Regulation changed prostitution from a stage in the

lives of many lower-class women before marriage to a career for the isolated and stigmatized few.

Only decriminalization offers equality, protection of civil rights, and freedom of choice to prostitutes. Yet, modern policy makers should modify nineteenth-century abolition to minimize previous problems. Decriminalization of soliciting should accompany that of prostitution, or else the arrest of solicitors simply falls into the same abuses as the arrest of prostitutes. Repeal of laws against renting to prostitutes would decrease the reliance of prostitutes on pimps. Finally, improved dissemination of information about the causes and cure of venereal disease to the entire population would improve health far better than relying on the repression or surveillance of only prostitutes.

Rather than being discriminated against by special statutes, prostitutes should be protected by, and subject to, the same laws which apply to non-sexual activities. Benjamin and Masters (1964: 366) have correctly identified two "fundamental precepts" for the reform of prostitution laws:

- (a) sexual acts or activities accomplished without violence, constraint, or fraud should find no place in our penal codes;
- (b) sexual acts or activities accomplished with violence, constraint or fraud should be punished according to the type of violence, constraint or fraud committed, and the sexual element should not be considered a relevant or aggravating circumstance.

Decriminalization of prostitution does not signify state approval of prostitution. Like many other relationships between men and women in our society, prostitution is characterized by inequality, lack of respect, and objectification of female sexuality which the government should not perpetuate. Decriminalization allows the state to treat prostitutes with justice while working to indirectly ameliorate the causes of prostitution. Since history has documented the failure of prohibition and regulation, policy makers should direct their expertise to developing decriminalization laws which improve on the experiments of postwar Europe.

## REFERENCES

- Benjamin, H. and R.E.L. Masters (1964) Prostitution and Morality. New York: Julian.
- Bolis, G. (1871) La polizia e le classi pericolose della società. Bologna: Zanichelli.
- Bowker, L. (1978) Women, Crime, and the Criminal Justice System. Lexington, Mass.: Lexington Books.
- Bullough, V. (1976) Sexual Variance in Society and History. New York: John Wiley.
- Butler, J. (1896) Personal Reminiscences of a Great Crusade. London: Horace Marshall.
- Castiglioni, P. (1872) Sorveglianza sulla prostituzione. Rome: G. Via.
- Ellis, A. (1951) Journal of Sexology (August)
- Flexner, A. (1914) Prostitution in Europe. New York: Century.
- Foucault, M. (1979) Discipline and Punish: The Birth of the Prison. New York: Vintage.
- Gagnon, J. and W. Simon (1973) Sexual Conduct: The Social Sources of Human Sexuality. Chicago: Aldine.
- Gramola, A. (1880) Le prostitute e la legge. n.p.
- Henriques, F. (1962-63) Prostitution and Society. 2 vols. New York: Citadel.
- Kinsey, A. (1948) Sexual Behavior in the Human Male.
- Masters, W. and V. Johnson (1966) Human Sexual Response. New York: Little Brown.

- Sanger, W. (1939) The History of Prostitution. New York: Eugenics.
- Schur, E. (1974) Victimless Crimes. Englewood Cliffs, N.J.: Prentice-Hall.
- Sormani, G. (1882) Profilassi delle malattie veneree. Milan: L. Bortolotti.
- Tommasoli (1899) Prostitution et maladies vénériennes en Italie. Brussels: H. Lamertin.
- Walkowitz, J. (1977) "The Making of an Outcast Group," pp. 72-93 in M. Vicinus, (ed.) A Widening Sphere: Changing Roles of Victorian Women. Bloomington, Ind.: Indiana University Press.

"ACS" refers to documents located in the Archivio Centrale dello Stato in Rome, Italy. More specific references will be provided in the published paper.

**END**