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DECRIMINALIZING PROSTITUTION: LIBERALIZATION OR DEHUMANIZATION?

INTRODUCTION

JEANNE SCHROEDER*

I would like to welcome you all to tonight's program. This is one in a continuing series of symposia sponsored by the *Cardozo Women's Law Journal* on a variety of legal issues having particular interests for women. I am Jeanne Schroeder, Professor of Law here at Cardozo. Let me introduce the panelists. At my far right we have Dorchen Leidholdt, who is the Associate Director for the Coalition against Trafficking in Women. She is a criminal defense attorney, a former board member of the public interest law foundation and is active in efforts to end violence against women through work against pornography and prostitution.

Next, at my near right is Meg Baldwin, who is an Assistant Professor of Law at Florida State University College of Law and is an author of scholarly works in this area of law and its relations to pornography trafficking in women. She is engaged in community service to fight gender, racial and ethnic bias, and a participant in efforts to legislate in the area of prostitution. In the past five years in particular she has been actively working with women in prostitution in a variety of advocacy positions.

To my left is Carlin Meyer, who is an Associate Professor of Law at the New York Law School. She is past president of the New York City chapter of the National Lawyers Guild, she is a former Assistant New York Attorney General in Chief of the Labor Bureau and an author, social activist and educator. Carlin is also on the Mayor's task force on sexual harassment and she writes on Congressional standing and pornography (two separate issues).

Finally at my far left is Drucilla Cornell, who is a professor of law here at Cardozo who writes primarily in the area of feminist jurisprudence. Drucilla is sitting in for Arlene Carmen, who unfortunately is ill and could not come tonight. Arlene Carmen is the program associate of the Judson Memorial Church in Greenwich Village, which has been a provider of health care, medical assistance and other services to sex workers since 1970; she has

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written extensively in this area. We are very sorry Arlene could not be here because of her work in the area. Notably, she was arrested a few years ago in a street sweep of prostitutes and successfully litigated (with the help of the New York Civil Liberties Union) the constitutionality of the anti-loitering law on which she was brought in. Drucilla has kindly offered to express Arlene's thoughts in this area.

Tonight's discussion is on one of the most contentious, yet least discussed, or perhaps I should say, least discussed because so contentious, areas of law having special interests to women. And that of course is the legal status of prostitution. Even though prostitution statutes today tend to be written in theoretically sex neutral language, as an empirical matter the vast majority of prostitutes are women, and the vast majority of users of prostitutes are men.

The degree of heat, if not light, this topic tends to generate is well illustrated by the events that occurred at the University of Michigan about two weeks ago. If I can take the leap of faith that the newspaper accounts bear a resemblance to the events that occurred, apparently the *Michigan Journal of Gender & Law* held a three day conference on the legal status of prostitution, and in connection with it set up an art exhibit that had been gathered by a decriminalization feminist. Because of the complaints by several participants in the program, initially some of the art works were taken down, and eventually, the entire exhibit was taken down. This has led to great public disputes at Michigan. The quotes in the newspapers have each side accusing the other of trying to oppress or suppress. Even though the newspapers say that the first amendment issues have drowned out the prostitution issues involved, I tend to think that the fact that the underlying issue here is prostitution has probably raised the temperature of the issue quite a bit.

One of the interesting things the *New York Times* article had was a quote of one of the student organizers of the event, saying it was impossible for them to put on a balanced program. This was because at least half of the participants were taking an anti-prostitution stand, and only accepted the invitation on the condition that no decriminalization proponent would be allowed to speak.

Here we do not have that problem, we are trying to present both sides of the issue. I would also like to point out, especially to the law students in the audience, how hard it is to put on a balanced program on this. Even the title of the program indi-

cates a lack of balance: it is not the *legal status* of prostitution, it is the *decriminalization* of prostitution. The very word assumes that criminalization is the norm and one has to decriminalize it, rather than discussing what should be a proper role against prostitution.

Today in the United States, in virtually all jurisdictions, prostitution is a crime and sex workers are criminals. This might be a uniquely American approach to social problems: if you don't like something, pass a law against it. We tend to think that if you don't criminalize something you are saying that it is good or that you approve. This is a uniquely American approach. Even in the western, Christian, European, moral tradition, in which so much of American law is located, the criminalization of prostitution has not been the historic norm. Historically, prostitution has been legal, sometimes reluctantly as a necessary evil. For instance, St. Augustine thought that an occasional sexual event with a prostitute might have religious advantages over the constant sexual temptation of marriage. Other times in the late Middle Ages and Renaissance, prostitution in many areas of Europe was a licensed public utility which raised money for the local municipalities and occasionally local churches. More recently, in France, prostitution was considered a health hazard, and prostitutes and brothels were regulated through stringent medical examinations and health checks. So there are many ways of dealing with the issue.

Be that as it may, I would like to introduce the panel, who have thought about this topic longer and harder than I have. We would like to start with Carlin Meyer.