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THE EDWARD G. DONLEY MEMORIAL LECTURE: NON-VICTIM CRIME AND THE REGULATION OF PROSTITUTION*

JOHN KAPLAN**

In a sense, it is inaccurate to call gambling, drug offenses, homosexuality, pornography, and prostitution "victimless" crimes. The participants themselves in such crimes can be regarded as victims, as can their families, or, indeed, as can the whole society. It would be more accurate to call these crimes "consensual" ones in order to underline one of their most significant characteristics—the fact that, at the time of the prohibited criminal transaction, no one regards himself or herself as a victim. As a result, the police themselves must do all the work to invoke the criminal process.

The consensual or non-victim crimes listed above are by no means the only consensual crimes on our statute books. For instance, the crimes of selling an automobile without seat belts, of selling a nightgown made of inflammable fabric, and of selling a lathe without a safety guard are consensual ones. The "victimless" crimes which we have separated out are those where human weakness, economic incentives toward criminality, and often a basic ambivalence toward the activity all interact. As a result, attempts to suppress these activities have been notoriously ineffectual, have given the police special problems, have caused a sizeable drain on the criminal justice system, and, at least arguably, have increased the social cost of the prohibited activities.

The laws forbidding these activities have strong moral and emotional overtones. If they did not, they probably would have been repealed or modified as soon as it became apparent that, in a pragmatic sense, they were doing more harm than good. Taking a historical viewpoint, we can see that two hundred years ago the premier non-victim crime was fornication; and when, 150 years ago, we began to ignore the crime, the cries that this meant the decline of our society were not only unheeded but, in hindsight,

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premature as well. Fifty years ago, the most important non-victim crime was alcohol prohibition, and, while alcoholism and drunkenness are still with us, the corruption and strains on our criminal justice system, which this non-victim crime caused, have for the most part passed away unmourned. Ten years ago, one of the leading non-victim crimes was abortion. Now, although the matter still involves political friction and moral concern, the diversion of the criminal system effort involved in prosecuting "abortion rings" has ended, and the number of pregnant women killed in abortions has dropped sharply. It is helpful to remember that the relation between the criminal law and morality is complicated. There are many immoral actions which are made criminal, and there are many other actions which in themselves are not immoral but which, for various reasons, are made criminal.

Although there are many similarities in the problems presented by the various non-victim crimes, there are important differences among them, and a legal arrangement which will lessen the problems caused by one crime may not work with respect to another. For this reason, we will look briefly at each of the above-mentioned crimes in turn.

Gambling may be regarded as the prototype non-victim crime. There are, indeed, people who gamble more than they should, and when they lose more than they can afford, society sometimes suffers. But the effort to prevent this harm through law has imposed heavy costs upon our society. First, it has crowded our courts with gambling cases. The sentences are light—to avoid further overcrowding our jails. This may be rational from one point of view, but the results are that the penalties are easily absorbed by the gamblers as a cost of doing business and that the police are demoralized by the whole process. Second, the private nature of the gambling transactions requires intrusive methods of police detection and surveillance. Most of our leading search and seizure cases—which have imposed significant restraints upon the police—concern non-victim crimes; and many gambling cases, especially in the eavesdropping, bugging, and wiretapping area, involve the issue of an illegal search and seizure. The successful prosecution of such cases often requires police investigations to be pushed beyond the constitutional protections that safeguard the privacy of individuals. Third, and perhaps most importantly, the profits from gambling are so huge that they probably provide the major source of police corruption in the United States—a distinction gambling has held since the repeal of prohibition—since "police

protection" is necessary for illegal gambling to flourish. Gambling also provides the single largest source of income to organized crime. It is a matter of dispute whether this income is earned directly from gambling or indirectly through extorting money from gamblers (whose illegal operation prevents them from complaining to the police). In any event, the proceeds from gambling make organized crime a more dangerous force in the United States in a host of other areas. The final cost of trying to prohibit gambling is that it prevents hard-pressed state and local governments from earning revenue through taxation or operating gambling enterprises. It is probably this fact which is most likely to change our legal stance toward gambling. Numerous states are experimenting with lotteries, off-track betting, or other forms of formerly illegal gambling.

Second in prominence only to gambling among the non-victim crimes are violations of the drug laws. The two major types of drug laws—the marijuana laws and the heroin laws—have very different characteristics. The marijuana laws not only make trafficking, or otherwise supplying the drug, a serious crime but also make simple use or possession of the drug by a user a crime. So far as the laws against small scale marijuana possession and use are concerned, it looks very much as if penalties for the user do not influence consumption of the drug to any substantial degree. Those who do not use marijuana generally rate its illegality as a relatively minor factor in their abstention. Nor do we catch a high enough percentage of users to make the law a threat, although we do catch enough users to seriously overburden our legal system. (In the United States last year there were about 500,000 marijuana arrests—most of which were for possession of small amounts of the drug.) Moreover, criminal prosecution for the use of marijuana inflicts a sizeable injury on many noncriminal youths, engenders hostility toward the police, and is a serious obstacle to educational programs designed to lower drug abuse.

The laws prohibiting the selling of marijuana impose perhaps a different kind of cost. They prevent the control that could otherwise be exercised by a licensing system. A licensing scheme would guarantee potency (so that users would not find themselves taking an overdose should the marijuana be stronger than they are accustomed to), quality (so that no harmful adulterant would be mixed in with the marijuana), information (such as the message that appears on cigarette packages, stating the latest research on any dangers of marijuana), and revenue through taxation (probably

\$500,000,000 at present rates of consumption). Probably most importantly, legitimating and regulating the sale of marijuana would attenuate the link between marijuana and more dangerous drugs. Making the sale of marijuana illegal does not stop its sale, but only gives the monopoly of this popular product to drug pushers. Since drug pushers will be severely punished if they are caught selling marijuana, they have little to lose by selling more dangerous drugs. They can make more money selling more dangerous drugs and, hence, have an incentive to convert their clientele. Just as prohibition of alcohol did not suppress alcohol, but merely transferred its marketing to organized crime, prohibition of marijuana merely transfers the marketing of that drug to the harder drug culture.

The second of the major categories of drug crimes involves heroin. Here we are dealing with a drug that, unlike marijuana, is dangerous even under legal conditions (although far more so where it is illegal). It is unclear whether the law against use of heroin does much to lower its use because those who are not deterred by the dangers of addiction are unlikely to be deterred by the lower danger of being caught as a criminal. Making all aspects of the traffic in heroin seriously illegal probably does reduce heroin use (although this is not clear because the high profit involved may stimulate search for new users). It is clear, however, that by prohibiting importation and sale we have raised the price of heroin above what it would command in a legal market. The effect of this has probably been to induce a lower level of addiction at the cost of making it almost impossible for a heroin addict to earn the price of his supply through legitimate means. The consequences of this are becoming clear to all: heroin addicts commit a high percentage of crimes against property in our urban areas (in New York the estimate ranges between twenty-five and fifty percent).

The next group of "victimless" crimes are the consensual sex offenses, particularly homosexual activity and pornography. There are jurisprudential as well as practical arguments against criminalizing homosexual activity. It is argued that what goes on in the bedroom between consenting adults is none of the state's business. The fact that such conduct tends to be committed in private requires the police to use especially demeaning types of investigation—officers peeping into toilets and acting as provocatively dressed decoys. The illegality of this type of conduct tends to help maintain a deviant subculture, whose members must band together to avoid prosecution and to protect themselves against blackmail. It is hard to see how the criminal law can exert any but

the most minimal effect on reducing the number of either homosexuals or homosexual acts in our society. Pornography is unique in that it raises delicate issues of freedom of communication in a context where the problems of line-drawing are virtually insuperable. The Supreme Court has been grappling with this issue over the past decade and a half, with a notable lack of success. Prosecution of theaters exhibiting X-rated films is notoriously expensive, uncertain, and time-consuming. Meanwhile, it is becoming clear that pornography does no harm to the willing viewer and that the sensibilities of those affronted by pornography are better protected by regulations on public display and by zoning ordinances.

In all of the non-victim crimes, a sizeable percentage of the public believes that the activity in question is immoral and wishes it stopped. In many cases the next step—that therefore the activity should be made criminal—has been taken without thought as to the practical consequences of such laws if human beings, as they often do, prove intractable and do not desist. It is only comparatively recently that we have begun to think about the costs and benefits of such laws and to question whether the criminal law is more appropriate than either tolerating the activity or regulating it in some less coercive and expensive way.

It is customary for writers on the criminal law to stop after pointing out the inefficacy of the criminal law as a means of controlling these particular “victimless” crimes and demonstrating that the criminal law causes many side effects which make these problems worse than they would be without the criminal law. A major problem for criminal law scholars of the present is to determine the consequences of noncriminal methods of controlling particular non-victim crimes and to devise means of minimizing the social costs of these activities.

Gambling is the subject of a high powered national commission, of a number of studies, and of various ongoing state experiments. The movement for marijuana decriminalization has already been successful in some states, and the trend is in this direction. So far as heroin is concerned, there are several—about a dozen—studies presently being financed by the federal government plus the provision of tens of millions of dollars on noncriminal solutions—usually the treatment of addicts. With respect to homosexuality and pornography the trend is less clear, but at least academic observers have concluded with a high degree of consensus—whether rightly or wrongly—that neither of these matters is the state’s concern if carried on discreetly. What legi-

timate governmental interest there is in the area lies in confining the activity to consenting adults, regulating public display and behavior in public places, and, in the case of pornography, zoning. Prostitution, in contrast to the above-mentioned non-victim crimes, has received very little in the way of scholarly thought.

The high price we pay for attempts to enforce the non-victim crime of prostitution has been documented often and amply. Prostitution is a "revolving door" crime, somewhat like gambling, where those arrested are given minimal sentences and are back on the streets shortly thereafter. The law seems to be particularly ineffective in coping with the selling of sexual favors. In most localities, there is hardly any attempt to interdict high-class call girls, "massage parlors" that have in recent years become fixtures in most urban areas, or even, in some areas, the "houses" that can afford protection. What little energy law enforcement can afford to devote to the matter is concentrated on the streetwalkers. The sordid cycle does little to reduce the actual amount of prostitution.

There is a strong element of hypocrisy in the enforcement of the prostitution laws. The customers, who it would seem are as guilty as the prostitute, are virtually never prosecuted and, under the laws of some jurisdictions, are not even guilty of any offense. This, it should be noted, is based on the theory common in many other consensual transactions that, since there are so many more buyers than sellers, it is an economy of criminal enforcement resources to prosecute only the sellers. Prostitution is unique among the consensual crimes in that the buyers are more easily deterred than the sellers. The argument for not prosecuting the buyers is that the imposition of the social sanctions for such behavior on those who may be married and respectable are out of proportion to the gravity of their offenses. Prosecution of the buyers is almost always strongly opposed by the commercial, hotel, and convention interests on the ground that it would be bad for business.

Another hypocrisy of our prostitution laws lies in the methods by which they are enforced. Our laws on conviction beyond a reasonable doubt and on entrapment make it extremely difficult to catch even obvious prostitutes. As a result, the police officers often perjure themselves to meet what they regard as the technicalities of the law. Sometimes the police do not have to manufacture evidence of guilt; rather they must suppress the best evidence of guilt and deny having had sex with the prostitute before the arrest. But the prostitutes know, and the police know that such evidence is being suppressed, and it is demeaning to our system of justice.

There is a strong element of financial corruption in the enforcement of the prostitution laws. Police have a continuing relationship with prostitutes. They know that the courts and jails have claims on their resources which those institutions consider more important than enforcement of the prostitution laws and, hence, that the prostitute will soon be back on the streets. It becomes easier to accept money, information, and "favors" when one knows that doing one's duty will not do much good.

The major prostitution offenses are soliciting for the purpose of prostitution and living off the earnings of a prostitute. The problem is that solicitation is overwhelmingly the most common prostitution offense prosecuted today, even in those jurisdictions where prostitution itself is illegal. There is a public interest in stopping street corner solicitation. First, this transcends private activity and offends many people who have a right to use the streets; second, it tends to block traffic because when prostitutes congregate in an area they tend to do so in sizeable numbers and the customers they attract multiply the problem. Unless the law can concentrate more resources on the streetwalking solicitor—a most unlikely eventuality—pressure will not lessen the evils and difficulties of enforcement. Nor will making private acts of prostitution legal and diverting the resources saved there to solicitation. We must remember that, regardless of the law, very little in the way of resources goes to suppress more private prostitution, whether it is in the form of the individual entrepreneur call girl, the more recent and less discreet "massage parlor," or the illegal house of prostitution.

The structure of prostitution is such that the solicitor on the street is a member of the lowest paid and hardest working segment of the profession. Prostitutes do not ply their trade on the street corners because they like the fresh air of Times Square but rather because the economics of their business prevent them from making a living as call girls. As a result, it can be argued that the law should encourage the street corner solicitor to give up her method of work and, if she cannot be persuaded not to be a prostitute, to become a higher-class prostitute. To do this, legal discouragements from the other classes of prostitution would have to be removed. Not only would the call girl be permitted to engage in her activity unmolested by the law, but the houses of prostitution would have to be permitted as well. It is likely that such an arrangement can in time diminish the number of street solicitors as much as the establishment of stores at fixed locations has diminished the busi-

ness of the pushcart peddler. The arrangement for a greater legalization of prostitution would require a step beyond merely making acts of prostitution legal. It would require adopting the English law permitting small, discreet cards in front of flats or on bulletin boards advertising the services of the prostitute. This would be a considerable change from the laws of almost all American jurisdictions—but not one that seems to be strongly opposed by the majority of the population. The more drastic change would be to go further than the English and repeal the more stringent laws against living off the earnings of a prostitute. The result of such a change would be to allow the practice of prostitution the economies of scale and other cost advantages of division of labor. It would essentially treat sexual services like shoeshines, haircuts, massages (of the old-fashioned, non-sexual kind), and other personal services. This is precisely what is permitted in parts of West Germany, the Netherlands, and most of the counties of Nevada.

Let us take a somewhat closer look at the arguments against greater legalization of prostitution. We will begin with a list of the objections to such a course taken from Robert Ferguson's *The Nature of Vice Control in the Administration of Justice*, which is used in police training courses:

(1) The act of prostitution exploits the morals of both the prostitute and the client. The act is consummated as strictly a business venture by the prostitute with no love attached. Most prostitutes are perverts and take satisfaction in exploiting their customers. The lower a prostitute sinks, the more she develops aggression toward her partner. And the more sex becomes a short commercial transaction, the more the customer projects his old frustrations and his old disappointments upon her. Thus prostitution turns in an eternal cycle of hatred. Therein lies the tragedy. It was meant for love;

(2) If society tolerates the legalization of prostitution it is just another step in the downfall of America. If prostitution were legalized it would provide another step towards regression to a primitive level;

(3) Whereas certain crimes would be on the decrease if prostitution were legalized, society should follow the example of what has happened in Sweden after prostitution was legalized. The social institutions, i.e., family, school, church, which provide the basic foundations for any healthy society, collapsed and venereal disease and alcoholism rose to epidemic levels;

(4) The average prostitute has no conscience and the human mind cannot restrain sexual impulses. The prostitute is a sadist-masochist and leaves the customer wanting. The sexual

act of prostitution itself takes only between five and twenty minutes and therefore can be appropriately termed "intervaginal masturbation". Money increases the mutual contempt of the partners of the act. So it can be readily concluded that the relation between the prostitute and her lover—whether pimp or customer—are the unbreakable, solid ties between a man-hater and a woman-hater;

(5) After approximately ten years, the average prostitute is over the hill in terms of attractiveness and youth, and she no longer has the attributes to demand her clientele. She ultimately turns to alcoholism or narcotics for an escape and her children, if any, will certainly suffer from the contact from this type of environment;

(6) The prostitute develops very few skills during her ten year profession and thereafter finds it very difficult in securing an adequate job. If she goes on welfare, society will be further victimized;

(7) Where you have a grouping of prostitutes in one location, crimes such as pickpocketing, robbery, burglary, and drugs increase to a high level; and

(8) In larger cities, prostitutes are controlled by pimps who treat them as slaves. Prostitutes are sold from one pimp to another and if they do not perform properly, they are beaten, tortured, or murdered.

The above list is in many ways a remarkable one. One suspects that it must be possible to make a better case for the continued criminalization of prostitution, and as we will see, this is possible, but first let us examine the objections to greater legalization of prostitution.

First, it would hardly seem a subject for the criminal law that people do not love each other enough. The basic premise may well be true, but the conclusion does not follow. The second and third reasons are basically predictions of what will occur on a macro-social scale should a change in the law be made. There is no discernable reason to make such a prediction. Between the time that the references to the decline of Sweden were made and the present, their *per capita* gross national product has caught up with and surpassed our own. It is hard to argue that nations which permit prostitution have in any way done worse than nations which do not—let alone to argue that a nation's attitude toward prostitution is very important as a determinant of anything. The fourth reason seems to repeat the first in somewhat stronger terms, but it does nothing more to provide a reason for intervention by the criminal law. The fifth and sixth reasons focus on the relatively brief career

of the prostitute. Apart from the predictions that prostitutes ultimately turn to alcohol or narcotics and go on welfare, which empirical evidence indicates are not generally correct, the police science text makes an argument against allowing any brief but profitable career. Presumably, this would include professional sports, modeling, and rock music. Although the state has an interest in protecting children from unhealthy environments, and granting that prostitution is such an environment, it would seem that this is no argument for an across the board criminalization of prostitution rather than restrictions on access of children to their mothers' place of work. The seventh and eighth reasons focus on the connections between prostitution and criminality. The former seems to deal with crimes against the public and the latter with crimes against the prostitutes themselves. So far as the seventh reason is concerned, these crimes are mostly a consequence of the prevalence of solicitation. The eighth reason, the predatory pimp, is, so far as every modern study of prostitution indicates, a myth. Many prostitutes do without pimps entirely although they often have lovers on whom they bestow gifts and affection. Most of those who do have pimps are satisfied with them. The pimps perform needed services, and, in those cases, where the pimp maintains several prostitutes, those interviewed said that the advantages in terms of convenience and companionship outweighed the disadvantages. Insofar as mistreatment by pimps is seen as the issue, it is better reached by statutes directed against such conduct rather than statutes which make the prostitute herself fear the protection of the criminal law. It is ironic to meet the evil of the pimps imprisoning prostitutes by imprisoning them ourselves.

In addition to the objections against legalization of prostitution enumerated in the police science text, three myths have led to a significant volume of other spurious reasons. First, there is the myth of the white slave kept unwillingly in bondage by the pimp. Although there are indications that this was more common fifty years ago, it is extremely uncommon today. The second myth is that the prostitute is a major source of venereal disease. Study after study has shown that, although prostitutes can spread venereal disease, they are not a major source of the problem. This has become so clear that the spread of venereal disease was not enumerated as a reason for the prohibition of prostitution. It is the last myth, that of the irrational prostitute, that disguises the major reason why we may object to legalized prostitution. Consider this description of the motives of the prostitute from Ferguson's police science text:

- (1) A great basic anxiety, due to the lack of parental love in childhood. This amounts to the negation of the right of the baby to exist. To abandon oneself to love means to face the danger of death. If this early pattern is automatically repeated, one will tend to love those who do not love;
- (2) Lack of appreciation by the father and the ensuing frustration;
- (3) Self-debasement and self-destruction due to the early loss of value in the eyes of the father;
- (4) Revolt and revenge;
- (5) Frigidity; and
- (6) Hatred of men.

As long as we believe these psychoanalytic explanations of why prostitutes ply their trade, we can regard the prostitute as being different in some psychic way from the rest of us, and we can ignore the real reason why she is a prostitute. The fact is that she is into it for the money. There are often considerable amounts of money in prostitution. For most prostitutes, with the notable exception of the street solicitor, it is not very difficult work, and some even enjoy it. When the opportunities in prostitution are compared with those available to women of similar education and skills, the attraction of the work is seen to be all the greater.

Once we see the economic reason for prostitution, we can ask what keeps it from being more wide-spread than it is. There are, it seems, a variety of reasons. The criminal law raises the costs and disadvantages to the prostitute of undertaking the activity. Some potential prostitutes, but not nearly enough, are deterred by the law. The criminal law also raises the cost to the customer in several particulars. First, it raises costs in terms of information. Since prostitutes must use discretion to avoid the police, they are somewhat harder and more inconvenient for potential customers to find. Second, the law raises the costs to the customer in terms of danger. Since the prostitute is already a criminal, she loses less if she also steals a customer's wallet. Third, although probably of least importance, restriction on entry of prostitutes into the field would, under neoclassical economics, raise prices.

If the first two costs to the customer require him to pay in inconvenience as well as money in excess of the prostitutes' fees, then the availability of legalized prostitution might be expected to increase the market. If the market now consists largely of the ugly, the lonely, and the conventioneer on ritualized occasions, might it not then expand to encompass the far larger number of those who are only partially satisfied and somewhat bored. Legalized prostitution would make the activity open to a greater number of women, both full and part time. Those who fear the attractiveness of such an opportunity might well oppose licensed prostitution.

There might be another somewhat related and more upsetting objection to greater legalization of prostitution. Assuming that the welfare rolls are with us for some time to come, we can also expect periodic drives to require welfare recipients to take gainful employment. It is one thing to regard legal prostitution with equanimity; it is something else to accept the pressuring of unwilling women into such an activity. Lest this be thought of as too far-fetched, the Welfare Mothers of Nevada have already complained that in that state, where prostitution is legal, welfare workers had tried to induce some women to remove themselves from the welfare rolls by taking up prostitution. Nonetheless, it is considerably easier to police social workers than prostitutes, although it would seem that any attempt to legalize prostitution should involve safeguards against compulsion by the state as well as by pimps.

In addition to the law, there are other factors which would lower the amount of prostitution below that which we might think both the supply and demand would support. There are strong social sanctions against such behavior, both on the part of the prostitute and the customer, and the psychological factors of self-esteem and a need for genuine intimacy.

The question then becomes what is the strength of these non-legal restraints on prostitution. Assuming that elimination of the threat of the criminal law would increase the amount of prostitution, we do not know whether this increase would be enormous or only marginal. We do know, however, that those places which have legal prostitution today and those such as France which did have legal prostitution until relatively recently do not consider themselves to have been much affected by it one way or another.

Before we throw up our hands and dismiss the problem as unfathomable, it would be well to look at one further issue. If it is decided to legalize prostitution and its accompanying activities, we must face the question of whether to regulate or to ignore prostitution. Either might well be an improvement over today's situation, but it seems to me that, as between them, there is considerable reason to prefer regulation instead of decriminalization. First, what is regulated can be taxed more easily, and I, for one, do not share the West German government's view that to tax prostitution would put the government in the position of living off the earnings of a prostitute. To me it seems simpler to say that the government taxes all gainful activity with perhaps the exception of those it, for one reason or another, wishes to encourage. Merely taking the government's cut does not imply any approval or desire to have an

activity go on. Second, and perhaps more important, if one is engaged in the commercial selling of sex, one should be subject to the general rules that apply to purveyors of things or substances that can cause disease. For instance, restaurants are regulated and inspected by health authorities, and we do not consider this to raise an important moral or policy issue. Although prostitutes are not a major factor in the spread of venereal disease, it is equally arguable that restaurants were not a major source of spreading typhoid fever, salmonella, and other diseases. The prostitute is certainly a possible source, and, because of the large number of people served by individual prostitutes, it would seem that a health regulation would be appropriate. Another reason for regulation is that historically houses of prostitution have occasionally been involved in gross exploitation of prostitutes, who, for social reasons, are especially vulnerable. This is even more the case where the activity is illegal, but, even where legal, exploitation is a problem. Regulation is also appropriate to control the locations of houses or prostitution. Houses of prostitution are looked upon with disfavor by many of our citizens not only because of moral objections but because they attract business—and often noisy business—at night. For these reasons, such activity may be inappropriate in residential and some commercial areas. Houses of prostitution are a commercial activity but differ in many ways from other kinds of commerce, and, hence, we may prefer—as most jurisdictions permitting such houses have done—to place them within relatively small districts. Of course it is necessary, then, to balance the inaccessibility of such districts—which will, of course, only encourage street corner soliciting—against the increases in public abrasion from the presence of nearby houses of prostitution.

One argument which the proponents of what they call decriminalization make against regulation is a weighty one. It is true that legalization generally implies a registration of prostitutes. It seems to me, however, that such a stigmatic step should be avoided if at all possible. It may be that many women have left the life of the prostitute because they were able to assume a different identity, and we should be careful not to take any steps that would make this more difficult. There are methods of avoiding the disadvantages of registration and at the same time of fulfilling legitimate law enforcement needs. Prostitutes could register by number, for instance, and their names could be securely kept in one master file. The matter could be handled entirely without names, or, indeed, pictures, on the basis of a code number and the fingerprints of the prostitute. The balance would seem to tip in

favor of requiring registration with respect to those who run prostitution establishments. In addition to any desire to keep track of who was in the business, the noncriminal threat of withdrawal of licenses would be a powerful incentive to prevent even minor exploitation of either customers or prostitutes.

Even if the legalization of prostitution were accomplished, it would not rid us of the streetwalker. The commercial districts with their stores have not entirely done away with sidewalk sellers of arts and crafts, toys, and other items. Typically, these are handled by a license system with conviction for peddling without a license, a relatively trivial crime. Generally, however, these peddlers can be discouraged by a system of fines since they have a working inventory and some capital investment. With the prostitute the matter is different: her inventory and capital investment—looks, age, and health—are not translatable into money in any other way. It may be, then, that we would have to use more severe punishment should we wish to cut down further on the amount of street corner solicitation. It is very likely, however, that the burden on the courts will be minimal compared to the burden today.

In short, as with most non-victim crimes, no perfect solution will be found to prostitution. It has always been with us, and, unless our society is transformed into the far better one that would have no need of prostitution, or the far worse one that could suppress it, prostitution will always be with us. We can, however, think about and perhaps even take action toward making prostitution less of a social and moral problem. Even small improvements are to be welcomed in this imperfect world.