

Stop Jailing Women for ‘Their Own Good’

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By Edward Tabash

The recent arrest and notoriety surrounding the alleged Hollywood Madam brings to light one of the travesties that still blemishes our criminal-justice system. Whatever one may think of prostitution, an argument can be made that the sale by consenting adults of sex for money, per se, should not be a punishable event in our legal system.

Religious-based arguments asserting the immorality of prostitution should be given no legal credence. In a society that separates church and state, no person should lose her or his freedom because of someone else's religious beliefs. Only those actions that can be demonstrated by empirical evidence, independently of religious dogma, to warrant criminal sanctions, should be punished.

The paternalistic argument that women need to be protected from sexual exploitation fails to justify the continued criminalization of prostitution. This argument claims that in order to protect women against such exploitation, society should imprison all women who engage in prostitution. This argument is reducible to a claim that languishing behind bars is a preferable fate for a woman as opposed to allowing her to freely sell her body, if this is what she chooses to do.

A related argument is that prostitution should remain illegal, which means women should still go to jail for engaging in it, because selling sex for money demeans women. Thus the advocates of this argument would prevent women from being degraded by demeaning them even more severely by locking them up in a prison cell. This has about as much logical force as imposing the death penalty on someone for attempting to commit suicide.

The worst form of exploitation suffered by women who exchange sex for money is from pimps. It is most often the pimp, and not the grateful, gratified and happy customer, who abuses the woman. If prostitution were an unpunished act in our legal system, women could generally conduct business on their own, without having to rely on parasitic and abusive pimps.

An appropriately zoned, taxed and health-regulated legal prostitution industry would free women from jail, free many of our precious few police officers to focus on real crime and bring in much needed revenue. It would also elevate society to a new and desirable plateau of live-and-let-live tolerance.

If anyone still harbors reservations about legalizing prostitution, perhaps the question should be phrased: “Should a person be imprisoned for no more than selling or buying sex?” Phrasing the question in such a way unveils the true stakes involved in this type of issue. What kind of conduct should land a person behind bars? What kind of conduct, regardless of what one may think of it, should still be left to the individuals involved, without the intervention of the police power of the state? When couched in terms of individual freedom, the notion that prostitution, per se, should no longer be a punishable crime.

becomes a palatable and even quite civilized alternative to the present system.

If we, as a society, really care about women, we will not only provide them with equal rights and opportunity, we will also stop turning some of them into criminals merely because they have chosen to exchange sex for money. Women, who, for whatever, reason, choose to engage in prostitution, do not need to be incarcerated for their own good.

The old argument of whether I would want my wife, daughter or sister to become a prostitute has nothing to do with the fact that women who do become prostitutes should not be thrown in jail.

Ideas that are commonplace today were once deemed radical. Today's conventional religions were yesterday's far-out cults. The time has come to legalize prostitution.