

# **Selling Sexual Services: A Socialist Feminist Perspective - "Is prostitution just like another service work?"**

"It is fundamental that feminists embrace the tremendous complexity of the issue before us"

Thursday 11 August 2016, by [BRENNER Johanna](#) (Date first published: August 2014).

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## INTRODUCTION

The current debate about sex work among feminists generates more heat than light. Accusations of bad faith fly back and forth across the two sides, research findings are mobilized to undercut the other side even when the research itself is limited by its methods and scope, different sex worker voices are authorized by each side as either genuine or manipulated, depending on whose position those voices seem to support. Feminists who want to defend sex workers' right to sell sexual services argue that it is not so different from much other highly gendered service work. I appreciate that this moves prostitution from the lurid and sensationalized to the daily grind of everyday labor. [1] However, in justifying this move, proponents tend to downplay the particularly risky and dangerous aspects of the work. And they ignore or reject the feminist argument that prostitution is an extreme expression of sexism. On the other hand, feminists who argue that selling sexual services is inherently harmful and should be eliminated downplay the resilience and survival skills of prostitutes who may not regard their jobs as uniquely difficult or dangerous or who take pride in their capacity to successfully negotiate these risks.

Over the past decade or so, the stakes in this debate have been substantially raised by efforts to legislate sex work in the name of feminist goals. On one side, are feminists who support the Nordic model in which the law criminalizes buyers but not sellers of sexual services and outlaws any "third parties" from profiting, and who approve the expansion of anti-sex trafficking laws. On the other side are feminists who call for decriminalization (and regulation) of sex work and who believe that anti-sex trafficking laws are overly broad, penalizing rather than protecting women who migrate to do sex work.

Once a political battle is joined, the pressures are enormous to over-simplify an issue in order to "win" the fight. I do not want to take a "removed" position as if I stand above the fray. Yet, I think it has not served feminism well that each side in this debate approaches a topic as multi-varied (especially as a global phenomenon), complex, and difficult to research (because of its clandestine nature) as prostitution with such unjustified certainty. I also think it is a mistake to pose the question of sex work in an either/or way, e.g., is sex work oppressive or empowering?

I find myself torn between very counter-posed descriptions of prostitution, all of which seem

accurate. There is a huge range within the work of selling sexual services and wide differences in the experience of sex workers depending on the locations, organizations, and conditions within which the work is done. This is a class and race-stratified business as well. In the (relatively small) “middle class” sector of the U.S. industry, white women, 90% with some college education, make \$500 an hour and more working independently as escorts. Women of color are over-represented in street work, doing clients in cars or motel rooms. Eastern European women migrate to work in massage parlors, brothels, and clubs in the west, Filipina women go to Japan, teenage girls from rural India are trafficked to Kolkata brothels. Migrant women who are not directly coerced rely on both legal and underground networks to travel and once at work experience varying degrees of exploitation and coercion, from overwork and wage theft to virtual enslavement. I try to take this variation into account, but in a limited fashion, given space constraints.

I have always been a “social constructionist” when it comes to understanding sexuality and so I am generally uncomfortable with universal statements about how women experience our bodies and sexual selves. Yet, I do wonder if, given the conditions under which most prostitutes work, including intense stigmatization, economic exploitation, as well as criminalization, selling sexual services does not pose serious risks to their physical and mental health—risks that are higher than much feminized service work (which is certainly not risk free).

As a socialist-feminist, I am opposed to the increasing intrusion of commodification into every area of human experience, including into sexual relations. Yet, I also understand the dangers for feminists of drawing on categorical dualisms—private vs. public, family vs. market, the natural vs. the manufactured—that have been fundamental to patriarchal constructions of femininity and to women’s oppression.

I am drawn to the feminist argument that there is something inherently sexist in men’s wish to and ability to purchase sexual gratification—whether the upscale date with an escort or the quick blow job in a parked car. However, I also struggle with how to take that critique into social policy or law without reproducing the stigmatization of people who sell sexual services.

In this essay, I try to sort through the various claims about the work of selling sexual services. Next, I examine the arguments and data with regard to different legal regimes, concluding that it is difficult, on the basis of existing evidence, to sort out their costs and benefits. Nonetheless, I conclude supporting decriminalization and regulation of the business, because I think that it offers greater possibilities for workers to self-organize. Even under conditions of criminalization, sex workers in countries as diverse as India and New Zealand have built impressive grass-roots based organizations. Decriminalization ought to make this easier.

However, decriminalization (or any legal regime) is extremely limited in what it can accomplish, since it does not touch the forces that create the demand for and the supply of labor in this industry. Contemporary prostitution is linked to global neo-liberal capitalism and the patriarchal social, cultural, and political arrangements imbricated within it. It is important, therefore, that feminists who care about prostitutes join the struggles of women across the globe fighting for land reform, for changes in family law, for labor rights, for an end to austerity, to raise their wages, to gain recognition for the value of their caring labor, to end their poverty.

## **IS PROSTITUTION JUST LIKE OTHER SERVICE WORK? [2]**

The claim that prostitution is uniquely difficult and dangerous revolves around three ideas. First, that although much service work requires workers to use their body or their emotions or both to meet the needs of customers (or patients, or children, or elders), prostitution involves a level of

bodily intrusion by the client that is unique and inherently harmful. Second, that workers experience high levels of violence, extensive damage to their health, and emotional trauma. Third, that precisely because it is such awful work, no one would voluntarily choose to do it. The corollary being that prostitutes are almost always coerced (or tricked or seduced) into the work and are held there by others. [3]

Gathering credible evidence to support or refute such claims is difficult as so much of the work is clandestine. Some, probably not insignificant numbers of prostitutes, work in slavery-like conditions and they are especially difficult to find or study. Prostitutes who are willing to be interviewed may be those who have the best conditions and are least afraid to talk with a researcher. “Knowledgeable” informants (e.g. police, social and health workers, NGO’s, sex workers) often have their own agendas and very partial information, leading to very different assessments on any issue about sex work [4] While I see no reason to deny that selling sexual services exposes workers to risks of physical violence, damage to their health and emotional distress well beyond the risks of most feminized service work, I think that the conditions under which it is done can either heighten or minimize these risks.

### **Coercion or Choice?**

All sides of this debate agree that direct coercion (by pimps, brothel owners, traffickers) is wrong and support outlawing it. [5] Differences revolve around the question of choice. Some prostitutes have no real alternatives due to drug addiction, their age, or extreme discrimination in the legitimate economy (e.g. transgender people). But for many, the benefits of prostitution outweigh the risks, given the very limited choices available to them in gendered capitalist labor markets. It is not primarily the dramatic coercion of seduction and imprisonment, but the dull compulsion of the market that drives women into this work—work that often pays more and has more flexible hours than other jobs available. (For more in depth analysis of the question of choice and work in capitalism, see Nancy Holmstrom’s essay in this issue.)

Those who argue that prostitution is work point out that we rarely question whether a woman really “chooses” to be a restaurant server or a nurses’ aide. Why so for prostitutes? I take this point. Yet, I would then ask, is giving a blow job really no different than serving a piece of pie? Or changing diapers in a nursing home? This is the question to which I now turn.

### **Risks to Emotional Health**

It is difficult, but necessary, to recognize our complicated and culturally shaped feelings about sexuality, intimacy, and bodies in this discussion. The meanings given to bodily boundaries and sexual exchanges vary within human cultures. In the social location of most of the protagonists in the feminist debate (and in many contemporary societies) our bodily boundaries are constructed as an inviolable locus of personhood. Further, body parts most closely associated with sexual arousal are central to the psychological sense of a private self. Many feminized service workers have intimate contact with other people’s bodies and with the “dirty” sides of life. Yet, their own bodily boundaries generally remain intact. Not so in prostitution. Here, “intimate” parts are used in the service of someone else’s pleasure, and not one’s own. This poses real psychological risks—of alienation from one’s own desire, of dissociation from one’s body, of dulling down of feeling, depression, and so forth.

Prostitutes use a range of strategies to protect themselves from these emotional risks. One is to redefine body parts and sexual activities as those which are “kept” for oneself and one’s intimate partners and those which are used for work—for example, not allowing kissing or a client to perform oral sex. In several studies, condoms were markers of the boundary between sex at work and sex for

pleasure, when prostitutes insisted on condoms with clients but not with their intimate partners. [6]

In much of prostitution, a worker is required to do more than make her body available for use. Melissa Gira Grant argues that sex work is a performance. [7] But what gendered fantasies are being performed and what do women risk when performing them?

The skill of the act centers on the pretense of desire. I would extend Susan Bordo's analysis of women in pornography to prostitution. "In pornography women are subjects, but subjects whose agency expresses itself only as a desire to please the projected male viewer...There is a mind inside the pornographic female body, but it communicates only a limited range of nonthreatening desires, and therefore it exists as a truncated self." [8]

The core fantasy enacted in prostitution expresses the insistent masculine narcissism of culturally authorized sexual scripts. Men who purchase sexual services are generally similar to men who do not—they are not necessarily more lonely, less attractive, less sexually confident, unmarried, although some are. [9] In purchasing sexual services they are expressing broader patriarchal constructions of sexuality that authorize masculine entitlement to sexual pleasure/release from women and to women's affirmation of their masculine potency. [10]

Outside of the most limited encounter, in prostitution the simulation of pleasure is central. Several studies of prostitution as work draw on Arlie Hochschild's analysis of service work in *The Managed Heart*. Hochschild argues that acting in accordance with "feeling rules," is a part of human relating. We may draw on a repertoire of past experiences of feeling in order to express emotions that we wish to feel. In this sense, we "manage" our emotions. [11]

But just as Marx argued that alienated labor is not about the doing in itself but the context of power relations within which one acts, Hochschild argues that once emotions become directed by an external power—by management—then the worker is in danger of becoming estranged from her self. This is not a matter of counter-posing some sort of "essential" or "authentic" self to the self that is produced in the course of work. It is rather to ask the question whether or not the demands of emotion management in certain jobs and certain work settings interfere with an individual's capacity to manage her feelings in her own interests and for her own ends when she is not at work. [12]

Hochschild studied non-unionized flight attendants working for a southern-based airline. This, she says, allowed her to focus on a sector of the occupation where the demands for emotion management would be greatest. With the spread of feminism, speed-up in the industry, and unionization, the flight attendant role has changed. We don't see "I'm Sara Fly me" ads for airlines any more. This sort of shift is simply not possible in prostitution.

Hochschild developed the concepts of "surface acting" and "deep acting" to distinguish between jobs that require lesser or greater degrees of emotional investment in the performance of emotional labor, with "deep acting" producing more destructive forms of estrangement. As Elizabeth Bernstein argues, in the post-industrial arena of prostitution in global cities, the demands for "deep acting" are expanded when prostitutes compete to offer "bounded authenticity"—the sale of authentic emotional and physical connection. [13] Maintaining a clinical attitude and an emotional distance in the course of producing the "girlfriend experience" may be more rather than less emotionally draining.

Finally, we have to consider the negative consequences of doing highly stigmatized work that is so psychologically demanding. Even beyond the anxieties produced by criminality, social stigma throws its shadow over prostitutes' working lives.

In any case, gauging the risks to prostitutes' emotional health is difficult. It does seem that women

engaged in street prostitution have worse mental health than women of their same age and background who are not prostitutes. It is difficult to sort out the multiple reasons for this difference. Some research indicates that factors in their lives, often associated with their entry into sex work (e.g., drug use, childhood trauma of various kinds, early age of entry into prostitution), rather than the work itself explains the difference. [14]

The evidence for indoor prostitution is mixed. ("Indoor" covers a range of locations, such as saunas and massage parlors, "call out" workers like escorts, women who work on their own or with others out of an apartment, and work in brothels which may be legal or illegal). A study in the Netherlands comparing workers in legalized indoor venues to women health care workers, mainly nurses, and to people undergoing treatment for occupational "burnout" found that on two out of three measures, the nurses and prostitutes scored similarly and much lower than the treatment group. Prostitutes measured higher than nurses on one measure, "depersonalization" with regard to clients, which has been associated with burnout among nurses. Higher scores on "depersonalization" might be a healthy adjustment rather than a sign of burnout. [15] From Hochschild's perspective, this distancing may be a form of surface acting that protects against the more pervasive loss of a sense of self. Yet, "there was no evidence of a relation between cynicism and positive health, such as high self-esteem and personal competence and low stress symptomatology." The researcher concluded that depersonalization of clients may be a coping mechanism with the negative consequence of emotional exhaustion. [16] A small study of women done in New Zealand prior to decriminalization found that sex workers were not more likely to experience lower self-esteem or impaired social relationships than women in general. [17]

On the other hand, one oft-cited cross-country study (Melissa Farley et. al.) uncovered extremely high levels of PTSD, as measured by a brief questionnaire. Although most of the study participants were street workers, in Mexico levels of PTSD were similarly high for both brothel and street workers. [18] In his defense of the Swedish law, Max Waltman references two studies, one based on interviews with mental health professionals treating former prostitutes and another of 46 former prostitutes in Korea (who were indoor workers) that also indicate high levels of PTSD among former prostitutes. [19]

## **Risks of Physical/Sexual Violence**

Street workers, at least in Europe and North America, are in a different position from "indoor" workers. Many studies show that street prostitutes are more likely than indoor workers to experience violence from clients. Church *et al* found that in their sample of prostitutes in three British cities 50% of street workers and 26% of indoor workers had experienced client violence during the last six months. In terms of their entire working lives, 47% of street prostitutes and 14% of indoor workers had been slapped, punched or kicked, 28% of street workers and 17% of indoor workers had experienced attempted vaginal rape, and 22% of street workers and 2% of indoor workers had been vaginally raped. [20] Since street workers are a minority (10-20 %), their experience cannot be used to characterize prostitution as a whole. Still, considering the levels of violence experienced by "indoor" workers, it is difficult to identify a feminized service occupation where 17% of workers experienced attempted rape as part of their job. (Whether or not a high level of violence is a necessary part of prostitution is heavily debated. I discuss this in the last section of the article.)

## **Health Risks-Physical Health**

After the AIDS epidemic, international bodies and national states have stepped up interventions to encourage condom use and it does seem that condom use in many, but by no means all, countries has substantially reduced the rate of infection among women selling sex. [21] Still, the ability to use



a condom depends on the woman's negotiating power. [22] Since men are willing to pay a substantial bonus for sex without a condom, as research reported in *The Economist* showed, if women need the money, they may very well feel that they have little choice but to comply. [23] Some prostitutes have access to regular healthcare and can treat STIs and other health problems that are common in their work so that they do not become serious threats to their health. Worldwide, however, women of the working classes lack access to healthcare, and, given prostitutes' greater exposure to infection and other ailments, this lack particularly decreases their physical well-being.

## **FEMINIST INTERVENTIONS**

Contemporary prostitution is intimately tied to the profound economic inequalities of neo-liberal global capitalism, the expansion of the hospitality and tourist industries, the drive toward gentrification in global cities, austerity regimes, state responses to indebtedness through encouraging both sex tourism and female migration for remittances, etc. It is also tied to patriarchal constructions of masculine sexuality and the large and petty patriarchal powers that shape women's experiences as daughters, mothers, wives and workers.

These structural/political contexts limit what any particular social programs or legal regime can accomplish with regard to prostitution. Perhaps the most effective intervention would be to revolutionize the global capitalist economy by, for example, raising wages in general and women's wages in particular and to provide affordable housing, affordable childcare, and other services that support solo parents, especially because so many prostitutes have children. While we fight to make these changes, we are nonetheless called upon to identify interventions that will maximize the benefits and minimize the harms of this business for the workers within it.

I focus here on two arenas for action: 1) providing social services and other programs in a non-judgmental way so that sex workers who want to leave have the opportunity to do so; 2) legal regulation.

### **Social Programs**

Farley *et. al*, surveying 854 prostitutes in 9 countries, found that 89% want to quit. It is difficult to know what this means, however. Prostitutes in many countries make multiples of what they would earn in the other jobs available to them (jobs which by the way often expose them to sexual predation by employers and managers). [24] It seems quite plausible that many want to leave but would not unless for a job that paid at least somewhat equivalently and where conditions were better than those in the other jobs now available to them. Anti-trafficking programs that teach former prostitutes to use sewing machines, for instance, often fail to keep women from returning to selling sexual services. Some sex workers in the global south, like some in the global north, have no wish to leave their jobs. [25]

All feminists might agree that regardless of the numbers of people who want to leave, there should be expansive, effective services which support prostitutes in a non-judgmental fashion, build their trust, and meet their needs. Worldwide, HIV/AIDS prevention has led to "harm reduction" approaches to prostitution such as increasing condom use. As Farley argues, harm reduction needs to be expanded to include services that help people leave the industry.

Critics of anti-trafficking and rescue programs argue that it is not only counterproductive but incompatible with feminist values for social programs to narrowly focus on exit. As feminists, we should be aware of the relations of power between "provider" and "client" that, historically and today, course through many governmental and non-governmental projects addressed to the women

of the working classes. [26] Services should be provided whether prostitutes wish to stay or to go.

Best practices for helping prostitutes to exit include: recognize that exiting is not a one-time decision or event, provide housing (emergency accommodation, half-way houses, and long-term stabilized housing), alcohol and drug services, childcare, career counseling and job training (although many prostitutes mention that the higher wages and flexible hours of their current work make it difficult to leave for the other jobs available). [27]

## **Legal Interventions**

Legal regulation is incredibly complex. [28] Although debate about the rationality and effectiveness of laws is not limited to prostitution, claims about different legal regimes with regard to their impact on people selling sexual services are especially difficult to evaluate. Studies of clandestine activity are limited by who can be accessed and what they are willing to talk about. I disagree with those who argue that only “survivors” are free from constraint and are uniquely qualified to comment on the effects of different laws. [29] On the other hand, given that enslavement and coercion are a part of this business, it has to be recognized that prostitutes who participate in research represent an unknown proportion all workers. [30]

With regard to selling sexual services, there are roughly three models of legal regimes (with a fair amount of variation among them): criminalization, legalization, decriminalization. [31] While I am going to talk a bit about the evidence on legalization, I focus on two counter-posed legal regimes, both of which are attempting to drive legal reform with feminist values: Sweden’s legal regime, often termed the Nordic model, which criminalizes all aspects of prostitution except the selling of sexual services by an individual and New Zealand’s laws which have decriminalized all aspects of the business but have also, unlike most legalization regimes (e.g. Germany), instituted a system of regulation and enforcement that aims toward improving prostitutes’ conditions of work.

## **Legalization**

The purpose of legalization is generally to protect social order (e.g. reduce the criminal element, get sex off the street) rather than sex workers. Legalization can have perverse consequences. Legalization for some sex work, e.g. only in licensed brothels, or for some sex workers, e.g., only those with documents to work, can produce even worse conditions for others, e.g. those in unlicensed brothels, on the street, or immigrants.

As one illustrative example, in Queensland, Australia, the size of licensed brothels is limited, they cannot offer escort services (outcalls) or serve alcohol. Advertising is restricted and controlled. As of 2010, only 25 brothels had been licensed in Queensland, a state with a population of four and a half million and a thriving tourist industry. Researchers estimated that only 10% of the business took place in licensed brothels and 75% in the outcall services sector. Individuals may legally do outcall, but they may not work with another sex worker or employ a receptionist. They may employ a licensed security guard and (since 2009) can maximize their safety by making phone contact with another person before and after a job. Landlords can be prosecuted as “third parties to prostitution” when two or more workers are operating from the same premises. This discourages collective arrangements among prostitutes through which they might share their earnings rather than being exploited by a boss.

Because there are so few legal brothels, many prostitutes work in illegal brothels where they are more vulnerable. Legalized brothel managers do not have to provide particularly good working conditions because the supply of workers is so large. [32] It is not clear whether prostitutes as a whole are better or worse off in this kind of legalized regime.

One of the arguments for legalization is that if prostitution becomes a job like any other, prostitutes will have access to the same range of benefits (e.g., health insurance and pensions at least in the EU!) as other employees. However, most brothel workers are treated not as employees but as “contractors” who “rent” rooms from the brothel and pay fees for various services the brothel provides. They are therefore excluded from the benefits of regular employment status. It should come as no surprise to those of us who have tracked the rise in “irregular” and “precarious” employment throughout the global north, that this is often a fiction and their work is highly controlled and regulated by owners/managers little differently from normal employees. [33] It may well be that legalization of brothels improves the possibilities for workers to organize. But it may also be the case that giving brothel owners a legal monopoly undercuts the potential for collective power. Many feminists think it is particularly abhorrent for brothel owners (or pimps) to earn a living from women who sell sexual services. Whether or not it is possible effectively to outlaw this form of exploitation is the question raised by the Nordic model.

### **Criminalizing the Client, the Pimp, and the Brothel Keeper**

The Nordic model has some attraction to feminists because it criminalizes the buyer but not the seller of sexual services. Passed in 1999, the Swedish law also criminalizes organized sex work of any kind (in brothels, saunas, escort services, etc.) by making it illegal for anyone except the prostitute herself to profit from her labor. The law is intended to shrink the demand for sexual services, to encourage prostitutes to exit the work, to empower prostitutes in relation to clients (for example, to report violence or theft by clients to the police), and to limit sex-trafficking.

There is no space here to enter into the hotly debated details of the effect of this law. [34] Overall, it is fair to say that the jury is out on whether or not the market for sexual services has shrunk substantially as a result. Street prostitution has decreased; however, the government’s own report could not say for certain that the law had reduced the total numbers of women in prostitution, because they did not know how much of the business had moved indoors, facilitated by the internet. There were no reliable studies of “indoor” workers previous to the law and thus it was not possible to judge. Various estimates were put forth. However, the report could only conclude that: “Altogether, this means that we can feel somewhat secure in the conclusion that prostitution as a whole has at least not increased in Sweden since 1999.” [35]

Another often cited proof of the effectiveness of the law are two surveys, one in 1996 and one in 2008 that showed that since the passage of the law the number of men who said they bought sex had decreased by “close to one-half” (from 13.6% to 8%). [36] Whether this reflects an actual decrease or reflects men not wanting to admit that they engaged in criminal activity or increasing shame produced by the law is unknown. Supporters of the law argue that societal support for gender equality is incompatible with the state authorizing men to purchase sexual services. It may be that the law has increased negative social attitudes toward men who pay for sex. [37]

But on the downside, opponents of the law argue that whatever its benefits in changing social attitudes or shrinking the market, it has heightened the risks faced by prostitutes. In general, police target street workers, because policing indoor sex work is time consuming and expensive. (Another main reason is that street prostitution is more visible.) This is still the case in Sweden. [38] Although street workers cannot be arrested themselves, the police presence makes their jobs more difficult. Opponents of the law argue that it has pushed clients to demand more secrecy, doing business in more secluded areas, giving prostitutes less time to size a client up, making them even more vulnerable than previously. There is some evidence but no systematic research in Sweden to support this claim. [39] However, a study in Vancouver, B.C. that interviewed street based workers both before and after the Vancouver police shifted enforcement toward arresting clients instead of prostitutes found that targeting clients did not improve levels of violence experienced. Further,



prostitutes reported that the new policy impeded their ability to negotiate with clients and elevated their risks for client condom refusal. [40]

Opponents of the law also argue that since clients are afraid to contract in public, this has opened the door to an increased role for “middlemen,” including pimps. On this point, I am aware of no reliable evidence showing either that the law has increased pimping or decreased it. [41]

Proponents of the law argue that it will increase reporting to the police about robbery, sexual and physical assault by clients, since the prostitute can no longer be arrested. There is no evidence that the law has increased reporting to the police in any government reports on the effect of the law available in English. [42] This would not be surprising. Prostitutes are reluctant to report instances of violence or theft, for a range of reasons, such as their own illegal drug use, fear of retaliation by clients, wish to preserve their anonymity because they are not “out” to their friends and family, skepticism about the legal process given that cases are difficult to prove and so the trouble of reporting is outweighed by the unlikelihood of redress.

Opponents of the law argue that criminalizing third parties does not diminish the exploitation of prostitutes and increases their vulnerability to harm. Recognizing that brothels are not necessarily the best work environments, they argue that forcing prostitutes to work underground makes them even more vulnerable. And, they argue, that if the law discourages pimping, it also prevents prostitutes from making arrangements with third parties for their own protection. For example, the law criminalizes a third party from earning income by being paid to provide security. Landlords who tolerate a woman working out of her apartment or several women working out of a house the landlord owns is liable to arrest as a “third party.” Prostitutes have been evicted by landlords for this reason. Any adult who lives in a dwelling with a prostitute and shares her income is liable for prosecution.

I think this is a knotty issue. It seems absurd to allow women to provide sexual services but then penalize the landlord who rents them an apartment. [43] And it does seem to be the case that, as with pimping, it is not always easy to sort out the actual relationship of power between a prostitute and the “third parties” involved. [44] On the other hand, defenders of the law argue there is no evidence that actual boyfriends or husbands have been arrested—except when they are actively engaged in the prostitute’s work—that is, acting as a pimp. [45] Even were this to occur, I think it important to distinguish between the law and its enforcement. Enforcement problems are not a definitive argument against a particular law. For example, the policy of mandatory arrest when police are called out on a domestic violence incident has proven to be counterproductive. This implies doing something about enforcement policies, but ought not lead us to conclude that the law criminalizing domestic violence is in itself negative for women.

The question remains, though, whether the criminalization of most aspects of selling sexual services is positive or negative for women who do the work. This concern lay behind New Zealand’s legal reform.

## **Decriminalization**

New Zealand has gone furthest toward decriminalization, passing the Prostitution Reform Act in 2003. In the NZ system, brothels must be licensed, it is illegal for brothel keepers to force workers to take on clients they do not wish to, owners are required to encourage and support condom use (oral, anal or vaginal sex without a prophylactic is illegal), they must make their premises available for inspection, they may not hire anyone under 18. It is illegal to induce or compel any person to sell sexual services so pimping is a criminal act. However, it is legal to be a “third party” that is, to live off the “avails” of prostitution [46] The New Zealand Prostitutes’ Collective, which was very active in

the years long negotiations that led to passage of the law, argued against high barriers for licensing, because they feared creating a dual system such as that in Queensland.

More important, they argued, successfully, that the law should promote businesses owned and operated by prostitutes. Up to four people can work together from a residence or rented space without having to apply for an “operators license.” (If more than four people are working together, one of them has to apply for the license.) They can advertise under the same limitations as managed brothels. They can hire whomever they wish to help, without restrictions (e.g. they do not have to be “licensed” security professionals as in Queensland). The law also allows prostitutes to immediately collect social benefits, even if they quit work voluntarily. [47]

Opponents of decriminalization argue that it increases prostitution. One study of the reform’s effect on the size of the market for sexual services in Christchurch is fairly credible. A methodologically sound study was done prior to and then three years following the passage of the PRA. The study found, at least for this locality—the second largest urban area in New Zealand—a small increase of 17 people (from 375 to 392) selling sexual services. [48]

It has also been argued that legalization and decriminalization increase trafficking. The one often-cited study purporting to show that legalization increases trafficking, however, has many flaws. [49] The data measuring trafficking flows in different countries was drawn from a UN study, the authors of which cautioned that it was highly unreliable, since the definitions of trafficking across countries and the credibility of their sources of information in different countries varied wildly. Moreover, this was a study that measured all trafficking not just sex trafficking, so its application to sex trafficking is illegitimate. [50] In New Zealand, following the reform, there were no cases of trafficking prosecuted by the New Zealand immigration service (which monitors “indoor” workers). The reform law review committee concludes that the “prohibition on non-residents working in the sex industry, coupled with New Zealand’s geographical isolation and robust legal system provides protection against New Zealand being targeted as a destination for human traffickers.”. [51]

One of the goals of the PRA was to improve the working conditions of prostitutes. The reform does seem to have opened up opportunities for prostitutes to work for themselves. Again, referring to the Christchurch study, in 1999, 62% of prostitutes were in the managed sector while 10% were independent. In 2006, managed workers declined to 51%, while independent workers increased to 23%. [52]

In addition to shrinking the “managed” sector of the business, the PRA aimed to improve the working conditions of managed workers. According to one study, brothel operators who had treated workers well before legalization continued to do so, but those with prior unfair management practices had continued. As with many occupational health and safety laws, enforcement is difficult and depends less on regulations than on the capacity of the workers themselves to challenge bosses. [53] Still, just because we understand the limits of health and safety rules, does not seem to me a definitive argument against having them. If worker bargaining power is critical here, then it would stand to reason that criminalization is problematic because it even further decreases workers’ bargaining power and opportunities for redress.

## **Violence and Reporting**

Prostitutes surveyed felt that since the law, they were more able to refuse clients and had refused clients more often. On the other hand, as opponents of decriminalization have pointed out, while prostitutes said they felt they could report violence, mostly they did not report and when they did report were reluctant to follow through on complaints. The same factors discouraging following through on reports of violence in other countries appear to be operative here as well. [54] It may be

that over time, education of enforcement officers and changes in enforcement practices will open up more space for reporting and following through. On the other hand, the social stigma of prostitution is a major barrier to reporting. Prostitutes fear loss of anonymity and exposure to friends and family. Perhaps over time, decriminalization will decrease stigma; but there are good reasons to expect it will not.

The New Zealand regime expresses feminist values. It accepts the current reality that there is a large demand for commodified sexual services and focuses on minimizing the risks of a potentially risky business. But what most attracts me to the New Zealand model is that it encourages the self-organization of prostitutes both as workers and as political subjects. While collective action can perhaps improve working conditions in the managed sector, I would also hope to see increasing government and NGO support (perhaps a co-op incubator program?) for collectively operated workplaces.

## **Other interventions**

Prahba Kotiswaran concludes her review of sex work in India with the observation that the most effective interventions on behalf of workers have come from membership-based organizations run by the Durbar Mahila Samanwaya Committee (DMSC), a sixty-thousand member sex workers' organization based in Kolkata. The DMSC

*"provides access to credit and savings schemes, educational facilities for sex workers and their children, primary health, and an avenue for cultural expression, while fostering an active political culture of protest against abusive customers, landlords, and brothel keepers. ....despite a highly abusive anti-sex work criminal law, an organization of sex workers has taken root ...to achieve the very results of labor laws that the DMSC is so keen to have applied formally to the sex industry."* [55]

She goes on to say that self-regulation, although it has problems such as reproducing conservative stereotypes of "good" and "bad" women, ought to be considered as an alternative to the police and courts.

*"Sex workers in Kolkata interviewed preferred to have disputes resolved locally or by the DMSC-run self-regulatory boards rather than by state courts. THE DMSC organizes protest marches against physically abusive brothel- keepers and community sex workers are known to chase away violent customers or accost those who may have stolen from a sex worker or cheated her. The police often arrive too late to be of any use."* [56]

Laws are important. But as the above makes clear, perhaps even more important would be for feminists to pour the equivalent of time, money, and passion into the self-organization of prostitutes that now is devoted to pushing for and arguing about various legal regimes.

The New Zealand Prostitutes Collective is another model for self-organization. Like the DMSC, the NZPC originated as a response to the AIDS/HIV epidemic. The founding members of the organization came together out of anger and frustration at their social stigmatization, police harassment, unfair and arbitrary management practice in their workplaces which they had no legal right to redress, and the marginalization of sex workers in policy making. They also wanted to organize themselves to prevent the spread of HIV in the sex industry. In 1988, the group received funding from the New Zealand Minister of Health and opened a drop-in center in Wellington. The NZPC engages in advocacy as well as providing services, including advice and help on exiting (as well as entering) the industry. It was central to the movement toward legal reform and has remained very much involved in the implementation and evaluation of the reforms. The widespread and deep

connections of the NZPC in the industry have been instrumental in facilitating researchers' access and contributed to the quality of the information that has been gathered. (This is not to say that these studies are without some bias.)

Both DMSC and NZPC are inspiring projects worth careful study to see how they might be developed in other countries. Surely the huge differences between New Zealand and India indicate that in many places the self-organization of prostitutes is not impossible (although I do recognize many of the daunting difficulties). As with other women's issues, the self-organization of prostitutes (not the organization of advocates for prostitutes) is the key.

In New Zealand, the NZPC was, and is, a fairly dominant voice representing sex workers. In other countries, there are competing feminist organizations representing prostitutes with different approaches to what should be done. I recognize there are downsides of any legal regime. I also take Kotiswaran's point that sex markets differ and legal approaches that might work in one area may not be best in another. Still, I favor the New Zealand legal regime (which allows involvement of "third parties" but criminalizes coercion). I am especially interested to see what further interventions in policy might help to shift the balance even further away from "managed" to "self-managed" organization of the industry.

Whatever assessment any one of us makes on this topic, it is fundamental that feminists embrace the tremendous complexity of the issue before us, finding common ground where we can, and respecting the validity of the multiple perspectives that animate our dialogue. Most importantly, we need to bend our collective energies toward revolutionizing the global capitalist economy and challenging patriarchal powers, however and wherever we can.

## **Johanna Brenner**

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## **P.S.**

\* Logos. 2014: vol. 13, no. 3-4:  
<http://logosjournal.com/2014/brenner/>

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## **Footnotes**

[1] Even language is contested in this debate. I do not use the term "prostituted women/persons" because it extinguishes the agency of people doing prostitution. On the other hand, I do not want

to use the term sex workers instead of prostitutes, because that term elides the particularity of selling sexual services as a form of work. (On this point, see Nancy Holmstrom, this issue). At least some people who sell sexual services continue to use prostitute to describe themselves as workers, reclaiming the word in the same way that Melissa Gira Grant wants to reclaim the name whore.

[2] This essay focuses on women selling sexual services. It is impossible to do justice to the particular experiences of men and transgender people in this work within space limitations of this article.

[3] Melissa Farley, "Prostitution, Liberalism, and Slavery." *Logos: A Journal of Modern Society and Culture*, v. 12, no. 3, 2013.

[4] For an illustrative example, see Swedish Government National Board of Health and Welfare, Prostitution in Sweden 2007 (November, 2008) [www.socialstyrelsen.se](http://www.socialstyrelsen.se), november 2008.

[5] However, there is fierce debate about the anti-sex trafficking movement, whether laws specifically addressed to sex-trafficking rather than to trafficking in general are necessary, how laws should be written (e.g. what should constitute evidence of coercion), and practices of enforcement. Compare, for example, the Swedish Institute Report, Targeting the Sex Buyer: stopping prostitution and trafficking where it all begins (2010) <https://eng.si.se/areas-of-operation/events-and-projects/targeting-the-sex-buyer/> and Laura Maria Augustin, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry* (London: Zed Books, 2007). For reasons of space I don't address these questions.

[6] Women working out of their own homes distinguished between work and personal areas, for example not using their own bed for sex work. Gillian M. Abel, "Different stage, different performance: The protective strategy of role play on emotional health in sex work," *Social Science & Medicine* 72 (2011), 1177-1184; Teela Sanders,

'It's Just Acting': Sex Workers' Strategies for Capitalizing on Sexuality," *Gender, Work and Organization*, V.12 no. 4 (July 2005), pp. 319-342.

[7] *Playing the Whore* (London: Verso, 2014), p. 90.

[8] Laurie Shrage, "Feminist Perspectives on Sex Markets", *The Stanford Encyclopedia of Philosophy* (Winter 2012 Edition), Edward N. Zalta (ed.), URL = <http://plato.stanford.edu/archives/win2012/entries/feminist-sex-markets/>.

[9] Sven-Axel Månsson, *Men's Practices in Prostitution and Their Implications for Social Work*; Martin A. Monto, "Prostitutes' Customers: Motives and Misconceptions," in Ronald Weitzer, ed, *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, (Hoboken, N.J.: Taylor and Francis, 2009). For a review of the range of ideas on this question, see Nikolas Westerhoff, "Why Do Men Buy Sex," *Scientific American Mind*. June 2009 Special Issue, Vol. 20 Issue 3, p70-75. Surveys in India found that 45.5-64% of customers were married, the majority living with their spouses. Prahba Kotiswaran, *Dangerous Sex, Invisible Labor: Sex Work and the Law in India* (Princeton: Princeton University Press, 2011), p. 241

[10] There is much more to be said on this than can be dealt with here. Research based on internet exchanges and interviews with prostitutes' about the services they provide, indicates that in great part the demand is for oral and vaginal sex. However, there are "niche" markets for



other sexual practices. Culturally authorized racial fantasies also come into play. Additionally, the nature of fantasies enacted when men purchase services from other men may be different. See, for example, Juline Koken, David S. Bimbi, and Jeffrey T. Parsons, "Male and Female Escorts: A Comparative Analysis," in Weitzer, ed., pp. 205-232.

[11] Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (Berkeley: University of California Press, 1983) Chapter 3.

[12] Hochschild, 181-184.

[13] Elizabeth Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (Chicago: University of Chicago Press, 2007), pp. 103-104; Janet Lever and Deanne Dolick, "Call Girls and Street Prostitutes: Selling Sex and Intimacy," in Weitzer, ed., pp. 187-203.

[14] Ine Vanwesenbeeck, "Burnout Among Female Indoor Sex Workers," *Archives of Sexual Behavior*, Vol. 34, No. 6, December 2005, pp. 627-639, esp. p. 627-628. See also, Teela Sanders, "A continuum of risk? The management of health, physical and emotional risks by female sex workers," *Sociology of Health & Illness* Vol. 26 No. 5 2004, pp. 557-574. There is some evidence that street prostitutes are more likely than indoor prostitutes to use drugs to psych themselves up for their work. Lever and Dolick, p. 196.

[15] Vanwesenbeeck, pp. 635-636.

[16] Vanwesenbeeck, pp. 638.

[17] Gillian Abel and Lisa Fitzgerald, "Risk and Risk Management in Sex Work post-Prostitution Reform Act: a public health perspective," in Gillian Abel, Lisa Fitzgerald, Catherine Healy with Aline Taylor, eds., *Taking the Crime Out of Sex Work: New Zealand Sex Workers' Fight for Decriminalization* (Bristol: The Policy Press, 2010), pp. 217-238, p. 231.

[18] Melissa Farley et.al. "Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder," *Journal of trauma practice* 2 (3/4), 2003 pp. 33-74. The validity of these results has been challenged on both the inadequacy of measuring PTSD on the basis of a 10 question survey and the over-representation of street prostitutes in the respondents. John Lowman, "Crown Expert-Witness Testimony in *Bedford v. Canada*: Evidence-Based Argument of Victim-Paradigm Hyperbole?", in Emilv van der Meulen, Elya M. Durisin, and Victoria Love, eds. *Selling Sex: Experience, Advocacy, and Research on Sex Work in Canada* (Vancouver-Toronto: UBC Press, 2013), pp. 230-250, esp. pp. 234-235.

[19] Max Waltman, "Sweden's prohibition of purchase of sex: The law's reasons, impact, and potential," *Women's Studies International Forum* 34 (2011) 449-474. A study of 201 sex workers (including exotic dancers as well as prostitutes) in Victoria, B.C. found 50% reported past or current depression as compared to 6% of females and 3% of males in the general population. Cecilia Benoit and Alison Millar, *Dispelling Myths and Understanding Realities: Working Conditions, Health Status, and Exiting Experiences of Sex Workers*, Report funded by BC Health Research Foundation, Capital Health District, BC Centre of Excellence on Women's Health (October 2001), p. 68.

[20] Stephanie Church, Marion Henderson, Marina Barnard, Graham Hart, "Violence by clients towards female prostitutes in different work settings: questionnaire survey," *The BMJ* Volume v. 322 no. 3 March 2001, pp. 524-525. A survey of over 700 prostitutes in New Zealand five years

following the decriminalization of prostitution found that in the last 12 months, 13% of street workers and 7-10% of indoor workers had been physically assaulted; 39% of street workers and 9-16% of indoor workers had been threatened with physical violence. New Zealand Ministry of Justice, Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003, Wellington, New Zealand, May 2008, p. 56.

[21] AVERT, Sex Workers and HIV/AIDS, <http://www.avert.org/sex-workers-and-hiv-aids.htm>

[22] In a few countries where prostitution is semi-legalized or decriminalized, failure to use a condom is a punishable offence. Abel and Fitzgerald, found that prostitutes did use the law to negotiate safe sex with clients., pp. 219-221 , esp. pp. 219-221.

[23] "More Bang for Your Buck; Prostitution and the Internet," The Economist August 9, 2014. In New Zealand, where it is illegal to have sex without a condom, 12% of street workers and 4-5% of indoor workers had unprotected vaginal sex in the last 12 months while 20% of street workers and 16% of indoor prostitutes working independently said that they had done unprotected blow jobs. On economic incentives for unprotected sex, see also Kotiswaran, p. 202.

[24] Kotiswaran, p. 216. Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003 Ministry of Justice, Wellington, New Zealand, May 2008, pp. 66-69.

[25] For example, Christine B.N. Chin, *Cosmopolitan Sex Workers: Women and Migration in a Global City* (New York and Oxford: Oxford University Press, 2013), p. 98.

[26] Steven Bittle, "Still Punishing to 'Protect': Youth Prostitution Law and Policy Reform," Emily van der Meulen et. al., pp. 279-296.

[27] Pat Mayhew and Elaine Mossman, *Exiting Prostitution: Models of Best Practice*. Crime and Justice Research Centre, Victoria University of Wellington, October 2007.

[28] As Kotiswaran makes clear, sex markets differ not only between countries but within them. While general principles might be articulated, the strategies for putting these principles into legal regulations will vary depending on local conditions. See, Chapter Six.

[29] "...there can be validity problems when interviewing persons in prostitution, as opposed to interviewing survivors who left the industry. The latter are not under influence of third parties or otherwise dependent on continuing in prostitution, and are thus less likely to provide responses biased in favor of the sex industry. ", Max Waltman, "Assessing Evidence, Arguments, and Inequality in *Bedford v. Canada*,"

Harvard Journal of Law & Gender, Vol. 37, (2014), pp. 459-544 (2014).

[30] For one discussion of sampling problems, see, Elaine Mossman, "Brothel Operators' and support agencies' experiences of decriminalization," Abel et. al., pp. 121-122.

[31] Elaine Mossman, *International Approaches to Decriminalising or Legalising Prostitution*, New Zealand Ministry of Justice October 2007.

[32] Barbara Sullivan, "When (Some) Prostitution is Illegal," *Journal of Law and Society*, v. 37, no. 1 (March 2010), pp 85-104. See also Barbara G. Brents and

Kathryn Hausbeck, "Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy," *Journal of Interpersonal Violence*, Vol. 20 No. 3, March 2005, pp. 270-295

[33] Report by the Federal Government on the Impact of the Act Regulating the Legal Situation of Prostitutes (Prostitution Act) Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Berlin (2007), p. 17. Such arrangements are also typical in Nevada (Brents & Hausbeck, op. cit.), the Netherlands (Vanwesenbeeck op. cit.), and India (Kotiswaran op. cit.) . The report also pointed out that new restrictions placed on social welfare and unemployment programs had reduced the opportunity for prostitutes to leave the business. Pp. 37-38

[34] Compare Max Waltman, op. cit., 2011 to Ann Jordan, The Swedish Law to Criminalize Clients: A Failed Experiment in Social Engineering, Program on Human Trafficking and Forced Labor. Center for Human Rights & Humanitarian Law, Issue Paper # 4 (2012).

[35] Selected extracts of the Swedish government report SOU 2010:49: The Ban against the Purchase of Sexual Services. An evaluation 1999-2008, (usually referred to as The Skarhed Report ) p. 28. The Swedish Board of Health and Welfare Report (op. cit) is much more circumspect than the Skarhed report in drawing conclusions about the law's effect, given the very different and sometimes conflicting assessments they received from different informants such as the police, social workers, academics, and sex workers. A study to measure the effects of Norway's law reform (following the Swedish model) in 2009 had similar difficulties since in Norway, also, there were not credible measures of the numbers in prostitution prior to the law or afterwards. The researchers' "best guess" based on their informants' observations was that street prostitution had declined substantially and that the indoor market was 10-20% lower. Acknowledging that the recession had decreased demand, the report nonetheless argued that the law had also contributed some unknown share toward driving down the prices charged. They commented that indoor workers had to work harder to make the same level of income as previously. Evaluation of Norwegian legislation criminalising the buying of sexual services (summary). For a critique of this research, Anette Brunovskis and May-Len Skilbrei, "The Evaluation of the Sex Purchase Act Brings Us no Closer to a Conclusion" (August, 2014), Fafo Institute. <http://fafo.no/prostitution/>

[36] Niklas Jakobsson and Andreas Kotsadam, What explains attitudes toward prostitution? Working Papers in Economics No. 349, Goteborg University, April 2009.

[37] Selected extracts of the Swedish government report SOU 2010:49: The Ban against the Purchase of Sexual Services. An evaluation 1999-2008, (usually referred to as The Skarhed Report ) p. 28. The Swedish Board of Health and Welfare Report (op. cit) is much more circumspect than the Skarhed report in drawing conclusions about the law's effect, given the very different and sometimes conflicting assessments they received from different informants such as the police, social workers, academics, and sex workers. A study to measure the effects of Norway's law reform (following the Swedish model) in 2009 had similar difficulties since in Norway, also, there were not credible measures of the numbers in prostitution prior to the law or afterwards. The researchers' "best guess" based on their informants' observations was that street prostitution had declined substantially and that the indoor market was 10-20% lower. Acknowledging that the recession had decreased demand, the report nonetheless argued that the law had also contributed some unknown share toward driving down the prices charged. They commented that indoor workers had to work harder to make the same level of income as previously. Evaluation of Norwegian legislation criminalising the buying of sexual services (summary). For a critique of this research, Anette Brunovskis and May-Len Skilbrei, "The

Evaluation of the Sex Purchase Act Brings Us no Closer to a Conclusion”(August, 2014), Fafo Institute. <http://fafo.no/prostitution/>

[38] Bernstein, pp. 151-153

[39] Board of Health and Welfare Report, pp. 47-48. The Skarhed report simply denies this claim without acknowledging evidence supporting it.

[40] A Krüsi, K Pacey, L Bird, C Taylor, J Chettiar, S Allan, D Bennett, J S Montaner, T Kerr, K Shannon, “Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study,” *BMJ Open*, 2014, no. 4.

[41] Some informants consulted for the National Board of Health and Welfare Report, made this claim. Pp. 47-48.

[42] Some informants thought that the law had actually made it even less likely for prostitutes to report theft or violence. Susanne Dodillet and Petra Östergren, “The Swedish Sex Purchase Act: Claimed Success and Documented Effects” Conference paper presented at the International Workshop: Decriminalizing Prostitution and Beyond: Practical Experiences and Challenges. The Hague, March 3 and 4, 2011 pp. 21-22.

[43] This is also true in the United Kingdom where both selling and buying are legal but soliciting, advertising, renting a room to a prostitute for the purposes is illegal.

[44] For one example, Bernstein, p. 90, also Kara Gillies, “A Wolf in Sheep’s Clothing: Canadian Anti-Pimping Law and How It Harms Sex Workers,” van der Meulen et. al., pp. 269-278.

[45] “Being and Being Bought: An interview with Kajsa Ekis Ekman,” Meghan Murphey, *Feminist Current* (January 2014).

<http://feministcurrent.com/8514/being-and-being-bought-an-interview-with-kajsa-ekis-ekman/>

[46] This provision has the opposite problem of the Nordic model. There, innocent people may be penalized; here, exploiters may escape punishment.

[47] New Zealand Prostitutes’ Collective website <http://www.nzpc.org.nz/index.php?page=Law>  
The NZPC is “uncomfortable” with the provision of the PRA that excludes immigrants from doing sex work, creating an illegal sector that is deeply hidden and undoubtedly very exploitative. Abel et. al, p. 262-3.

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[49] Seo-Young Cho, Axel Dreher and Eric Neumayer, “Does legalized prostitution increase human trafficking?” *World Development*, 41, 2012, pp. 67-82.

[50] Ronald Weitzer, “New Directions in Research on Human Trafficking *The Annals of the American Academy of Political and Social Science* v. 653 no. 6 (May, 2014), pp. 6-24.

[51] Report of the Prostitution Law Review Committee , p. 167. Fears about increased sex-

trafficking did shape the law reform, leading to the provision that criminalizes non-residents who sell sexual services.

[52] Gillian M. Abel, Lisa J. Fitzgerald, Cheryl Brunton, "The Impact of Decriminalization on the Number of Sex Workers in New Zealand," *Journal of Social Policy*, v. 38 iss. 3 (July 2009), pp. 515-531, p. 523.

[53] Several studies of the legalized managed sector find that security is enhanced by formal and informal controls such as the proximity of other workers, alarms, and security cameras. See, e.g., Sullivan, Brents & Hausbeck, Abel et. al.)

[54] Abel and Fitzgerald, pp. 227-229.

[55] Kotiswaran, p. 248.

[56] Kotiswaran, p. 203.