

# Let's Talk About Sex: A Three-Way Comparison of Government-Sanctioned Prostitution

Kayla Arisman\*

## Abstract

Sweden, Canada, and the State of Nevada (USA) have significantly different policies surrounding prostitution. Sweden's attempt to criminalize prostitution influenced countries around the world, including Canada, while Nevada took the opposite approach by legalizing brothels. This paper explores and compares the policies of these three countries, with the hope of conceptualizing a more inclusive policy that incorporates the voices of those who work within the sex industry.

Keywords: Prostitution, Legislation, Nordic Model, Sex Industry

## Introduction

Recently, sex work has fallen under scrutiny, with society challenging its understanding of one of the world's oldest professions. Feminist frameworks have started to shift from the notion that sex work is something women are forced into, contributing to the moral breakdown of society, to a more modern understanding that focuses on how some women decide to go into the sex industry of their own volition. Different ideas and methodologies of handling prostitution are evident throughout the world. Sweden, Canada, and the State of Nevada (in the United States of America) have comparatively unique legislation when it comes to addressing sex work and prostitution, each with drawbacks and benefits. Sweden introduced the Regeringens Proposition, subsequently creating what is now known as the Nordic model that influenced current Canadian legislation Bill C-36 (Chu & Glass, 2013). Nevada

has more liberal legislation compared to either Sweden or Canada, allowing for the legalization of brothels. Feminist views of prostitution highlight the harms women in the sex industry experience and recently emphasize the importance of listening to the voices of those in the sex industry (Brooks & Wood, forthcoming). A model implementing aspects from all of these policies, in conjunction with consultations with sex workers, could lead to the creation of a well-rounded and just system.

## Theoretical Perspectives

The importance of including gender in the formation of legislation surrounding the sale of sex is not only to ensure that the laws are effective and safe but also to provide a perspective on prostitution. Instead of representing diversity and freedom, the idea of women participating in the practice of selling sex is often viewed as the pinnacle of

\*Department of Sociology, College of Arts and Science, University of Saskatchewan, Saskatoon, SK, Canada  
Correspondence: [kaa174@mail.usask.ca](mailto:kaa174@mail.usask.ca)



male dominative sexual practices (Scoular, 2004). Many theorists, societal members, policymakers, and lawyers see prostitution as symbolic of the value that society places on women (Scoular, 2004). However, others view prostitution not as oppressive but as a choice (Brooks & Wood, forthcoming).

Feminist insights into prostitution have done the most to highlight the harms that women have experienced. Radical feminism has also illustrated the inequalities in prostitution, through a gendered analysis of the state as well as an analysis of sexuality (Scoular, 2004). Radical feminists viewed all prostitution, regardless of the laws surrounding prostitution, as sexual violence (Outshoorn, 2012). Radical feminists argued that legalized prostitution provides the message that it is acceptable to use a woman as an instrument for sexual gratification, seen as "commercial sexual violence" (Jeffreys, 1997). This reflects the greater understanding of the pressures that women face which compel women to consent to prostitution acts (Whisnant, 2017). The most prominent voices in this area are Kathleen Barry (1995) and Catherine MacKinnon (1987, 1989). These authors theorized an understanding that violence is not in the practice of prostitution but more so linked to the idea of 'buying sex' (Kesler, 2002).

Many feminist theories also highlight the importance of listening to the voices and stories of those who work in the sex industry (Brooks & Wood, forthcoming). This is a way of understanding the multitude of social, economic, and political structures that serve to oppress these workers (Brooks & Wood, forthcoming). Incorporating their stories, which are left out of the conversation, provides a voice for these workers who are often forgotten during the formation of policies that will directly impact them (Brooks & Wood, forthcoming). Arguments surrounding prostitution are often reduced to a few basic ideas, which avoids the complex nature of prostitution (Brooks & Wood, forthcoming). One argument is that women who work in the sex industry face exploitation by those who run the sex industry; another is that prostitution is often freely chosen in contemporary society as a type of employment (Brooks & Wood, forthcoming). As a result, many argue that those working in the sex industry deserve the same rights as other workers in society, including protection from exploitation and violence as well as being able to work without fear (Brooks & Wood, forthcoming). These ideas help to shape the idea that sex work is not simply a vice that needs regulating, but a valid and chosen employment decision that should be granted the same respect given to other workplaces and workforces.

## Sweden: Nordic Model

In 1999, Sweden introduced a piece of legislation known as the Regeringens Proposition. This legislation was the basis on which the Nordic Model was derived. Before this act, selling sex was not illegal in Sweden and off-street sex work was almost never debated (Chu & Glass, 2013). The legislation was introduced without consulting those who work in the sex industry and involved harsher penalties for sexual harassment, sexual violence, and domestic violence (Chu & Glass, 2013). The Regeringens Proposition brought forward a law, known as the Sex Purchase Act, that prohibited the purchase of sexual services; specifically, Regeringens Proposition criminalizes anyone who obtains or attempts to obtain a 'casual sexual relation' in exchange for payment (Chu & Glass, 2013). Men, under this legislation, are seen as aggressors and women as simply victimized by male violence and patriarchal oppression (Kulick, 2005). Essentially, Sweden redirected the traditional onus of criminal responsibility from sex workers on to those who are paying for sex. This legislation influenced many other countries around the globe (including Canada) who have, in turn, created legislation surrounding prostitution.

Sweden has a range of other laws that affect the sex industry. Under the Penal Code, anyone who 'promotes' or 'improperly financially exploits' sex work can face a prison sentence of up to four years; this sentence can be increased to eight years if the crime is considered 'gross' or involves large-scale exploitation (Chu & Glass, 2013). Because the law also criminalizes the promotion of sex work, it criminalizes indoor sex work by defining 'promotion' as allowing individuals to use any premises for sex work (Chu & Glass, 2013). Swedish law also prevents sex workers from living with other people, as the Regeringens Proposition makes it illegal to live off any income that comes from the sex industry. Sex workers are also unable to use any of the social security benefits that are available to all workers in other areas of society (Chu & Glass, 2013).

The Regeringens Proposition has reduced the amount of visible prostitution. However, sex workers have simply moved indoors or online (Chu & Glass, 2013). The result of this legislation has Swedish social workers reporting that some women who were selling sex on the streets have retreated indoors to work alone, or to illegal brothels; both activities can still subject these sex workers to criminalization under the Regeringens Proposition law (Kulick, 2005). Workers on the streets have reported higher rates of violence and, since the passing of the law, have seen an increase in drunk and violent clients (Kulick, 2005). The law has also resulted in a decrease in the number of clients and therefore more competition on the streets, which has led to the lowering of prices and limiting the sex workers' bargaining power, thereby adding pressure to take more clients to make up for the lower prices (Chu & Glass, 2013).

Client fears of being arrested for purchasing sex have led all transactions to be done quickly and in secluded areas (Östergren, 2004). By rushing through clients, the workers have less time to both make client selection and provide their services, leaving them without the ability to pursue safer sex (Chu & Glass, 2013). Since this law came into effect, many sex workers have been driven into more secluded locations, which has hindered their ability to warn each other about potentially dangerous clients as well as a breakdown in their support networks (Östergren, 2004).

The Regeringens Proposition also lessens the ability for workers to screen their clients; fear of arrest minimizes the control sex workers have over safer sex, placing them at higher risk for unprotected sex and, subsequently, human immunodeficiency virus (HIV) (Chu & Glass, 2013). Police tactics of searching for condoms as evidence of prostitution are also placing these workers in more danger than necessary (Chu & Glass, 2013). Many criticisms have been levelled with respect to the law reinforcing violence against sex workers as well as undermining the ability of sex workers to access HIV prevention and the care related to the disease (Chu & Glass, 2013). Criminalizing clients of HIV treatments causes fewer clients to come in for treatment (Chu & Glass, 2013). Searching sex workers for condoms increases the chance they will not use the necessary protection, thus exposing themselves to a higher risk of contracting HIV (Chu & Glass, 2013).

Nordic models of prostitution are rooted in the most radical feminist theories (Chu & Glass, 2013). These models criminalize almost every aspect of sex work as well as monetary gain from the work. Such models were conceptualized without any input from those who work in the industry and thus reject ideas that many feminist theories have brought forward, including and emphasizing the voices of those who are inside the sex trade (Chu & Glass, 2013). This lack of understanding can be seen throughout policies stemming from the Regeringens Proposition as it is highly oppressive and criminalizing legislation. The significant lack of understanding and discussion during the formation of the Regeringens Proposition has been detrimental to sex workers throughout the world, especially as countries such as Canada that have adopted and adapted the Nordic model into their legal systems.

## Canada—Bill C-36

Building off of the Regeringens Proposition, Canada created legislation based on the Nordic model. Canada's Bill C-36 shifts the legal focus to pimps and johns, and away from criminalizing the sex worker. Under this Bill, prostitution is technically legal, however, it criminalizes the

act of paying for sex as well as advertising by sex workers (Government of Canada, 2014). By focusing on the johns, Bill C-36 works to emphasize that the johns increase the victimization that many sex workers already experience (Abrol, 2014). Much like the previous laws, C-36 includes the criminalization of communication when intended for the purchasing of sex (Abrol, 2014). This Bill attempts to focus more on the criminalization of purchasing versus the criminalization of the sex worker. Those who target sex workers do so because they see them as vulnerable (Abrol, 2014). However, by criminalizing the john, predators who prey on sex workers are less likely to provide accurate names and phone numbers, leaving sex workers with no way to screen out potential predators (Young, 2014).

Bill C-36 states that anyone who "receives a financial or other material benefit, knowing that it is obtained by or derived directly or indirectly" as a result of "a sexual service" can face a sentence of up to 10 years in prison (Abrol, 2014). As such, Bill C-36 has left sex workers open to more exploitation. By preventing people from living off the profits of sex work, workers are prevented from hiring bodyguards, drivers, and others who could help to keep them safe (Chu & Glass, 2013). This has led to a possible increase in exploitation, as these workers are forced to find people willing to risk being charged under this law. However, changes to the Bill since its passage, have made payment for a good or service no longer illegal (Abrol, 2014). This change now allows sex workers to hire bodyguards and drivers, providing them with some form of security.

Multiple community-based groups highlight the necessity of safety and healthcare for sex workers (Brooks & Wood, forthcoming), in contrast with how Bill C-36 views sex workers. Bill C-36 contributes to the stigmatization of sex workers in much the same way as the Regeringens Proposition. Both of these policies send a clear message that sex workers are not valued members of the workforce or society, but rather participate in a segment of society that needs to be controlled and regulated. As a result, these workers might encounter difficulties in other aspects of their lives, such as renting an apartment, accessing police services, and transitioning out of the sex industry to do different work (Young, 2014).

Similar to the situation in Sweden, there is a great deal of criticism in Canada regarding the access sex workers have to HIV prevention as well as care related to the disease (Bruckert & Hannem, 2013). While Bill C-36 does not criminalize the sex worker in the same way as the Regeringens Proposition, it does add to the stigma. Criminalizing clients of HIV treatment will result in fewer workers and clients seeking treatment (Bruckert & Hannem, 2013). As discussed above with respect to Sweden's Regeringens Proposition, Bill C-36 lessens the ability for workers to screen their clients, as their clients fear arrest

(Bruckert & Hannem, 2013). This lessens the ability of sex workers to advocate for protected sex and subsequently ensure their clients are HIV free (Bruckert & Hannem, 2013). Fortunately, however, sex workers are able to use the Canadian healthcare system. It is argued that the freedom to continue to use the healthcare system without risking punishment is a key component to ensuring the health and safety of sex workers (Bruckert & Hannem, 2013).

## Nevada Model

The United States of America (USA) has criminalized prostitution at the federal level; however, individual states can create laws surrounding prostitution. Nevada's Revised Statute Title 15-subsection 201.380 (NRS) is somewhat confusing with respect to some of the laws. Specifically, an awkward combination of local legislation, where some are formal and on record, some unofficial, some old, and some new, sets the standards for the state-wide brothel industry (Brents & Hausbeck, 2001).

The State of Nevada Revised State law (NRS) legalizes brothels, making it the only system of legalized prostitution in the United States. This law has effectively turned prostitution from an illicit business into a lawful and highly profitable business (Outshoorn, 2012). As the only case of legalization, Nevada is at the forefront and a frequently cited case when looking at prostitution and the laws that surround it (Brents & Hausbeck, 2001). Many visitors arrive in Nevada with the intention to visit either Reno or Las Vegas, and often a brothel. However, there are stringent rules and zoning surrounding Nevada brothels. First, the brothel must be in a city/county that has under 400,000 people (State of Nevada, 1995). Second, each individual who works in the brothel must not only register and get approved by the brothel that they wish to work at, but must also obtain a state business license as well as a Sheriff's card (State of Nevada, 1995). These laws ensure that the workers in the brothels are working in a safe and controlled environment. Women have more autonomy over not only their bodies but also the prices they charge and the clients they see.

The legalization of prostitution was based on the medicalization of prostitution, with the desire to control diseases and social order (Brents & Hausbeck, 2005). Nevada has a largely regulatory system, which is often criticized by prostitute rights advocates (Brents & Hausbeck, 2001). Difficulties with the regulatory system are evident by simply looking through the lists of requirements for a brothel: brothels are required to be in isolated and scarcely inhabited areas, and sheriffs can impose restrictions on the prostitutes and the brothels in which they work (Brents & Hausbeck, 2001). In addition, workers are required to live on the premises and regulations limit

their mobility in the towns in which their brothels are located (State of Nevada, 1995).

Brothel workers are subject to stringent health codes and must undergo constant testing for sexually transmitted infections (STIs) as well as HIV (State of Nevada, 1995). When it became known that HIV/AIDS could be spread through heterosexual contact, the brothel business in Nevada declined significantly (Brents & Hausbeck, 2001). Mandatory HIV testing for anyone applying to work in a brothel, as well as those who already work in brothels, started in 1985 (Brents & Hausbeck, 2001).

Unlike the Nordic-style models, Nevada has taken an approach that not only focuses on the safety and health of the sex worker but also provides clients with a service that must meet a specific standard. Sex workers in brothels do not need to worry about legal ramifications for their clients or themselves, unlike in Canada and Sweden. This allows the sex worker to carefully select clients, and mandatory condom laws ensure that the sex worker does not have to advocate for safe sex (Brents & Hausbeck, 2001). Working in a safe and secure environment also eliminates the need for private security and drivers and limits the risk of human trafficking (Brents & Hausbeck, 2001).

Brothels also provide a way for women who want to work in the sex industry a legal channel to do so. While it is widely assumed that all women in the sex industry are not there by choice, some women enjoy the work they do and are there of their own accord (Brooks & Wood, forthcoming). Regulating brothels ensures that these women have a safe, secure, and clean environment to do their work.

## Other Geographical Considerations

While this paper focuses on Sweden, Canada, Nevada - around the globe countries have created different models which have been viewed by social scientists and seem to be successful. Two countries - New Zealand and the Netherlands have created niche legislation for their respective countries.

## New Zealand

Starkly contrasting the Swedish Nordic model, New Zealand designed legislation around emphasizing the voices of prostitutes—a largely marginalized female population (Harrington, 2012). Advocates in New Zealand take great pride in the progressive direction of their legislation, as in 2003 New Zealand was the first to decriminalize all aspects of consensual prostitution (Harrington, 2012).

Advocates for New Zealand's policy state that the liberalized principles that guide this policy, such as freedom of choice, human rights and diversity, also dominate the political environment in New Zealand (Abel, Fitzgerald, and Healy, 2010). Prior to the Prostitution Reform Act (PRA) in 2003, New Zealand law embodied the normalized double standard of sexuality, criminalizing the act of offering sex for money, and then subsequently criminalizing living off those earnings (Harrington, 2012). The PRA was designed to decriminalize prostitution, while at the same time not endorse its use (Olowo, 2006). The framework for the PRA was to safeguard human rights of the sex workers, promote the welfare and occupational health and safety of sex workers, protect public health, and prohibit prostitution involving those under the age of 18 (Olowo, 2006). With the reform, sex workers felt more comfortable standing up for their rights and health, bring complaints forward to police and taking a stand against sex trafficking (Harrington, 2012). This act not only provided more liberalization for legal recognition, but the PRA also aimed for more transparency in the industry by making changes to the documentation of sex workers and brothel operators (Olowo, 2006).

The state of New Zealand is mainly concerned with clients when they become violent, refuse to wear condoms, or solicit sex from someone under-aged (Harrington, 2012). New Zealand's model treats "social inequality and sexual exploitation as an unfortunate part of sex work" and thus, focus on a 'harm reduction' approach for individuals (Harrington, 2012). This means that New Zealand does away with the normalized double standard of previous laws, resulting in a more liberalized policy with minimalist sexual conduct interventions within the free market (Harrington, 2012). PRA has implications for the way sex workers are viewed, which in turn has implications for occupational health and safety. Because of the changes in the PRA, businesses which operate within the sex trade must 'adopt and promote' policies that assure safer sex for both the worker and the client (Government of New Zealand, 2003). These changes place prostitution on the same level as many other industries within New Zealand. The PRA moves the health and safety concerns from the main social control agency, the police, to local government departments, alongside community health groups (Pérez-y-Pérez, 2009). In many ways, the PRA responded to many critical rights issues that sex workers have had to deal with in New Zealand. As well, the PRA responds to the global crisis of female sex trafficking by making provisions to try to fight this issue (Olowo, 2006). In Section 16 of the PRA, it is an offence to compel an individual to provide commercial sexual acts (Government of New Zealand, 2003). As well, Section 19 prohibits the issuing of immigration permits to anyone looking to come to New Zealand to provide

commercial sex services or operate a business within the sex industry (Olowo, 2006).

While the decriminalization of prostitution within New Zealand has worked well for the country, they are a relatively small, island country with easily protected borders. Because of this, other countries may have different experiences and challenges with implementing decriminalization if they do not have the same geographical advantages as New Zealand. However, other countries may find the arguments and logical reasoning used within the PRA useful in the formation of legislation.

## Netherlands

During the 1960s, reform demands became stronger as the feminist movement emerged in the Netherlands (Outshoorn, 2012). Unlike other countries, Dutch feminists framed their position regarding prostitution as pro-sex work, rather than the radical, anti-sex work discourse which was common at the time (Outshoorn, 2012). Feminists distinguished the difference between 'voluntary' and 'forced' prostitution, leading to voluntary prostitution becoming legalized and recognized as a form of work (Outshoorn, 2012). Working closely with the government, three demands were set and met: residence permits for women who were the victims of trafficking—allowing them to be able to testify against traffickers, harsher penalties for trafficking, and removing a ban on brothels—in an effort to improve conditions for sex workers (Outshoorn, 2004).

Implementation of the ACT resulted in four different classifications of prostitutes. First, there are the ethnically undefined Dutch sex worker, one who willingly works in prostitution and has civil and social rights as an individual (Outshoorn, 2012). Next, there are prostitutes who come from other countries within the EU and are free to leave and enter the Netherlands to work in the sex industry (Outshoorn, 2012). This category was then split into two after the Baltic States, Poland, Hungary, Czech Republic and Slovakia became members of the European Union (EU) in 2004—which lead to the third classification (Outshoorn, 2012). Individuals could only work as sex workers if they were independent workers, this was not applicable to the Western European sex workers until 2007, which lead Romania and Bulgaria to fill the third category as they joined that same year (Outshoorn, 2012). Lastly, there is a category dealing specifically with sex workers who are not citizens of an EU country—these individuals work illegally and have no rights. However, those in the fourth category can be in the Netherlands as a result of human trafficking or be tourists who have stayed past their visas' expiry date (Outshoorn, 2012). Due to the lack of rights provided to non-EU sex workers, these individuals are more

vulnerable to pimping, trafficking as well as blackmail by employers (Outshoorn, 2012).

## Model Conceptualization

An understanding of the issues sex workers face is imperative to conceptualize a model regarding prostitution. A new model based on the Nevada state laws, but incorporating aspects of the Canadian system, could be beneficial. Two major aspects of the Canadian system would be implemented in this model. First, Bill C-36 ensures that all forms of child exploitation and child-related offences are punishable. Second, Bill C-36 tried to move prostitution off the streets. However, the new model proposes moving prostitution off the streets and into brothels, to keep the safety and security of the workers in mind.

The operation of brothels provides a safe and secure way for sex workers to carry out their business, without fear of harm or legal repercussions. Much like Nevada, this new model would allow brothels to operate with a license, ensuring that the establishment is not only legitimate but also meets all health and safety codes. To operate a brothel without a license, as in Nevada, is considered a form of pimping (State of Nevada, 1995) and would be illegal under the new model. Brothels would be required to adhere to location guidelines. While brothels could be located in cities or towns with over 400,000 people, they would not be permitted next to a school or church. These guidelines are based on the assumption that a brothel would bring a large volume of people to the area; this higher volume of traffic is not conducive to a safe environment near schools and churches. Moreover, churches would likely take issue with a brothel located near a place of worship.

Licensing would not be limited to the brothel itself. Each worker would require a worker's license, obtained from the state/provincial government, to prevent individuals being forced into the sex trade. These licenses would need to be periodically updated, with health checks, and would have an expiration date. To obtain these licenses, the sex worker would need to provide valid proof of age, as well as pass a medical examination as a safeguard to prevent the spread of disease. This would also allow the government to track licensed workers, in much the same way a driver's license allows the government to track licensed drivers. This license could be revoked if, at any time, the sex worker is found in violation of any laws with respect to the brothel and sex trade.

Each sex worker would be viewed as an independent contractor; this provides them more control over their hours, prices, and how they work. Within a brothel, these workers would not need to fear legal

ramifications for either themselves or their clients. Working in a legal brothel would provide them with access to the healthcare system as well other social programs, such as unemployment and disability services, which they may be excluded from under the current Canadian or Swedish models. By being an independent contractor, sex workers have the option to pay into Employment Insurance special benefits— offering workers a type of security if they are required to discontinue work for any of the covered benefits (Government of Canada 2019).

While this new model would adhere to the majority of the laws set out federally, it would be left to the individual states/provinces to determine the taxation placed on the brothel and to collect the revenue from these businesses. Each state/province would also be able to set the hours of operation for these establishments, following the ideology of each state/province. Canada's Bill C-36 also prohibits any form of advertising. Advertising under this new model would be allowed by brothels as well as the individual, with the requirement that they possess a license and that the license number is provided somewhere on the advertisement or webpage.

## Conclusion

The Nordic models of prostitution are rooted among radical feminist theories, most prominently because this model is a product of gender inequality. These models aim to criminalize almost every aspect of sex work as well as monetary gain from this work. Such models were conceptualized without any input from those who work in the industry, rejected the ideas that many feminist theories have brought forward, and failed to include or emphasize the voices of those who are inside the sex trade (Chu & Glass, 2013). This lack of understanding can be seen throughout the highly oppressive legislation. The significant lack of understanding and discussion brought about during the formation of the Regeringens Proposition has been detrimental to sex workers throughout the world, as countries such as Canada have adapted the Nordic model. While no one-size-fits-all solution to these issues exists, one step that should be taken during the creation of legislation is the inclusion of sex workers in the discussion, ensuring that their voices are heard and their concerns are addressed. Failing to do so means any form of legislation will likely not address the true harms that these workers face, and will likely put these workers in a worse position than they were before.

The lack of consultation that led to more hardship for workers, as seen in the Nordic model, extended into the Canadian model. Because neither the Swedish nor Canadian legislation took into account the opinions of the sex workers themselves, both models put the workers in

even more harmful situations (e.g., by forcing their work to be done quickly and in secluded areas). The Nevada model, while not directly taking into account sex workers' opinions, managed to create a safer and more controlled environment for their work.

Most conceptualized models are framed around one individual source, but the most effective policies likely lie within multiple models. Failure to incorporate a multitude of models and acknowledge other global examples can reproduce the same or similar issues that are already being encountered. The newly conceptualized model borrows from both Nevada and Canadian legislation, ensuring that the most important aspects of health and safety are met. While this is by no means a fully conceptualized model, legislation that draws from multiple sources will more likely result in a comprehensive and effective policy. It is imperative that any government legislation relating to the sex trade incorporate the voices of sex workers and consider multiple sources of input to create a viable and effective legal policy.

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