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You've heard this before: "What two consenting adults do behind closed doors is their own business." In the United States, it's even almost true – arguments guarding sexual rights and privacy won out in the landmark Supreme Court ruling *Lawrence v. Texas*, in which state sodomy laws were declared unconstitutional. But that does not apply to people who wish to exchange sex for money. Sex workers' rights are largely unprotected, and remain a political battleground; meanwhile, people who buy and sell sexual services are arrested, shamed, compelled into "rehabilitation" programs, and branded with criminal records.

But there was a time in American history when it wasn't quite so. Laws against selling sex are fairly new – just about 100 years old – and came onto the books long after the sex trade took root in American cities. Does that mean there was a time when selling sex was more tolerated? Or did the law simply take some time to catch up to the new American people's prejudices?

### **First Ladies**

*"The miners came in forty-nine,  
The whores in fifty-one;  
And when they got together  
They produced the native son."*  
- 19th century San Francisco song

From New Amsterdam to the Louisiana colony to San Francisco's Gold Rush founding, historians have identified prostitutes, or women who make some or all of their earnings selling sex, as some of the first women in early American settlements. (I'm using the word "prostitute," because it's historically accurate to the time. The term "sex worker" only became popular in the 1970s, when it was invented by Scarlet Harlot, a prostitute and activist living in San Francisco.) But we shouldn't forget that the women who immigrated here to sell sex arrived on land already populated and governed by indigenous peoples. What would become the United States is intimately connected to colonial European ideas about the "value" – both sexual and economic – of the new migrants and of Native American women.

Take New Orleans, future home of America's largest licensed red light district. In 1721, there were fewer than 700 men settled in the whole colony of Louisiana, a number which excludes men held in slavery. The French government sent 80 women to the colony by ship, in the hopes that Louisiana's free men would marry these women and would refrain from having sex with Native American women. Many of the migrant women, however, had been serving time for prostitution charges in French prisons, and upon arriving in the colony found the sex trade provided them more independence than any arranged marriage to settlers.

These women were followed later in the same year by, as legal historian Judith Kelleher Schaffer described them, "other more respectable women." She continued:

"One historian has remarked on the incredible fecundity [of these new women] and the tragic infertility of the prostitutes, as almost all of Louisiana's most important families of French descent trace their origin to the former while none claim to have descended from the latter."

The French prostitutes-as-pioneers thing continued: 120 years later, in the early years of the California Gold Rush, another raft of fabled migrants arrived in San Francisco. At the time, only 300 women called San Francisco home, according to journalist Herbert Asbury in his 1933 "informal history" *The Barbary Coast*, "a third of which were harlots from Mexico, Peru, and Chili [sic]." The Pacific News printed a story in 1850 to announce the departure of 900 women "carefully chosen from the bagnios of Paris and Marseille," wrote Asbury, to be sent to San Francisco, yet somehow only 50 arrived. "It has been said," Asbury wrote, "that by the end of 1852, there was no country in the world that was not represented in San Francisco by at least one prostitute."

San Francisco's famed Barbary Coast days also saw the arrival of Asian women migrants working in the sex trade. Many lived in cheap single-room occupancies known as cribs, isolated in Chinatown alongside dives and gambling houses. "White" women (in quotes as, in Asbury's words, "San Franciscans were inclined to regard as white only natives of the United States and of a few European countries") were free to operate parlor houses – well-appointed Victorians with multiple sitting rooms and bedrooms – in the Uptown Tenderloin (today's Lower Nob Hill), near theaters, hotels and the business district and their more high-earning clients. However, as Asbury wrote, "the differences between the brothels of the Barbary Coast and those of the Uptown Tenderloin were more apparent than real; precisely the same profession was practiced in the latter as in the former, and in much the same fashion."

Lower Nob Hill still boasts studio apartments functioning as part-time brothels, though almost no one would use that word to describe the discreet Art Deco buildings where business travelers can go to meet women for an hour at a time, hired over the Internet.

## **The Invention of Red-Light Districts**

Though a red-light district wasn't formally established and governed in San Francisco, landlords and police were in a position to both enforce and profit from the segregation of prostitution into specific neighborhoods. Rents for "houses of prostitution" were jacked up artificially, and as few women owned their own property from which to operate a business, they were required to pay far above market rates. In New York, it was more common for madams to own their place of business, but they were still – as in many cities – pressured by cops to pay expensive bribes in order to operate without fear of raids.

But it wasn't an acceptance of prostitution that led to the establishment of red-light districts; rather, it was the perceived "failure" of such informal governance (or corruption or tolerance, depending how you looked at it) that led New Orleans to create America's largest legal red-light district in 1897.

The "red-light district," or the place in a city where commercial sex is isolated or encouraged (or both), might be a concept now most associated with Europe and Asia, but it's an American invention. The Oxford English Dictionary puts the first print appearance of the phrase

at 1894, in the Ohio newspaper the *Sandusky Register*, in reference to a group of Salvation Army volunteers who had set up shop in town to minister to presumed prostitutes. The term has its origins in the practice not of prostitutes, but their customers: in this case, rail workers who left red lanterns outside the doors and windows of the houses where they met prostitutes between their own work shifts. If their boss needed to find them, he could look for the light.

Storyville may have been the most fully realized red-light district in the United States, centralizing brothels and cribs into one neighborhood, conveniently near the rail station. In addition to creating a measure of safety for women by giving them a reasonably safe space to work, brothels created employment opportunities for house staff, including house piano players referred to slyly as “professors.” In bars and saloons at the outskirts of Storyville, both the curious and the committed could purchase brothel directories, or “blue books,” detailing the workers and specials available in each house. In a series of famous portraits of prostitutes from this period, the women appear relaxed, smiling and at ease.

## **Outside the Law**

It's important to remember that even prior to the establishment of American red-light districts, the act of selling sex or sexual entertainment wasn't universally illegal in the United States, and the law didn't recognize a behavior called “prostitution” or a person called a “prostitute.” This isn't to say that people who sold sex weren't targeted by cops: they were, and they were charged with a host of crimes put on the books largely in order to target them. The women who came to be known as prostitutes were still viewed, before that, as social outcasts: for living without men, having sex outside marriage and making their own money. There were also many women – and some men – who made a living trading sex, and did so discreetly, but who did not attract police attention since they, through advantage, could pass more easily in polite society.

Some of the laws used to target women who sold sex were holdovers from English common law, which outlawed “vagrancy” and “nightwalking” – in other words, appearing in public at the wrong time, in the wrong place, or while poor and female. One typical example is an 1817 law in New Orleans, which levied a \$25 fine against “any woman or girl 'notoriously abandoned to lewdness,’” writes historian Judith Kelleher Schaffer, “who committed scandal or disturbance of the peace.” If she could not pay the fine, she was to serve one month in prison. “Thus the ordinance did not prohibit prostitution,” observes Schaffer, “as long as no scandal or disturbance occurred.”

Other laws used against women in the sex trade in New Orleans in the pre-Storyville era included “insulting a white person,” a charge used against free women of color, “improprieties of conduct,” and cross-dressing, which some women did for work, for pleasure or simply to evade restrictive laws on women's public behavior. According to court reports and newspaper accounts, 21 New Orleans women were charged with cross-dressing in the 1850s. The papers mocked the women, but also provided some hints as to why they wore men's clothing. “More than simply masquerading as men,” Schaffer writes, “the prostitutes were making savage fun of their clients.”

When laws did target actual sexual conduct, they didn't just go after people in the sex trade. In the state of Louisiana, people in the sex trade along with men caught having sex with men could be charged with violating an 1805 law that declared engaging in oral or anal intercourse, for compensation or for free, to be a “crime against nature.” This law was ruled unconstitutional in 2012.

Though people in the sex trade experienced a disproportionate amount of profiling and arrest even in the 1800s, the ambiguous legal status of prostitution also gave them more room to demand fair treatment from police and city officials. Digging into New Orleans court cases dating before the Civil War, Judith Kelleher Schaffer found that most of the women who filed writs of habeas corpus during this period did so on their own behalf, “contesting their own imprisonment because they had been charged with vagrancy or some trumped-up charge designed to get them off the streets.”

In New York, prostitutes demanded equal treatment under the law, as well. One well-documented example comes from the 1830s, the era of the “brothel riots,” in which civilians forcibly entered and vandalized prostitutes' homes and workplaces. The targets for the riots, writes historian Timothy J. Gilfoye in *City of Eros*, were not necessarily prostitutes themselves, but their property: “the accoutrements of a prostitute's trade – her bed, furniture, glassware, and crockery – were destroyed.” Some of these assaults were “random and isolated”; some were spurred on by angry residents taken with the notion of kicking these women and their businesses out of the neighborhood. However, writes Gilfoye, “prostitutes used the law to protect themselves”:

“Before the creation of a municipal police force in 1845, criminal prosecution in New York was a private matter. Individual citizens, not public officials, initiated most criminal charges. Shrewdly bringing legal proceedings against their aggressors, prostitutes utilized the machinery of the state to defend their interests and their property rights, firmly entrenching their profession in the fabric of metropolitan life... [they] rejected a defensive, reticent posture when subjected to violent terror. By asserting their rights, they foreswore surrender.”

### **From "Sin" to "Social Evil"**

So what happened?

As the 19th century gave way to the 20th, social reformers took up the cause of ending prostitution outright, reframing prostitution as a “social disease” that could, through their efforts, be cured – that is, prohibited and abolished. They encouraged police to crack down on brothels and red-light districts. At the same time anti-prostitution policing and social campaigns were stepped up, cops who had enjoyed bribes and graft for protecting brothels came under increased scrutiny from religious reformers and early “women's rights” campaigners. The turn of the 20th century saw the opening of New York's first women's jail.

Reformers also pushed for policies that took aim at organized red-light districts, seeking to criminalize the third-party businesses that prostitutes relied on, like rooming houses and saloons. Those campaigns were successful in getting “Red Light Abatement” laws on the books in most states, making property owners liable and culpable for prostitution on

their premises. By 1916, 47 cities had closed red-light districts. Washington DC-area prostitutes fought back, writing a group letter to the *New York Evening Journal*:

“Knowing that public opinion is against us, and that the passing of the Kenyon 'red Light' Bill is certain, we, the inmates of the underworld, want to know how the public expects to provide for us in the future? We don't want 'homes.' All we ask is that positions be provided for us. The majority will accept them. We must live somehow. We are human...”

Finally, two key federal policies hastened the end of red-light districts: the passage of the Mann Act, or “white slave traffic act,” created the first federal law around prostitution in 1910; and at the start of the first world war, a Navy decree demanded the closure of all sex-related businesses in close range of military bases, under the premise of “protecting” enlisted men from sexually transmitted infections. Based on fear and opportunity, Storyville was closed.

The rapid changes in this 20-year period for a time gave the sex trade a boost into the mainstream of civic life, but ultimately exiled it even further to the margins. “Before 1917, most laws had been directed at commercialized vice, rather than at the prostitute herself,” writes historian Ruth Rosen in *The Lost Sisterhood*, her study of prostitution at the turn of the last century. “By the end of the war, however, the law had recognized a class of prostitutes who would constitute a social group of criminal outcasts.”

## **Profits and Policing**

For all of the “social ills” pinned on prostitution – crime, decaying property values, disease, violence, and a whole host of supposed moral failings – history shows us that none are inherent to the practice of selling sex. In fact, the only constant in prostitution, aside from the exchange itself, is the willingness of people who sell sex to maneuver around the law, discrimination, and social stigma in order to continue to work.

I say “willing” in a deliberate pushback against our contemporary ideas about sex, sex for sale and consent: the false premise that no one, and in particular, no woman would sell sex if she had any other options. It's an absurd notion, given the endurance of the sex trade and the explosion of considerable other options for women's employment. From personal experience, I can tell you that there are as many reasons people sell sex as there are people who do it. This is the truth that shapes the social, legal, and economic environments in which we produce and consume commercial sex.

Cops, governments and social reformers are part of those environments, too, and in their own ways, each profits from commercial sex. In these same American cities today, vice cops arrest suspected customers to fill seats in “johns' schools,” where the men are lectured by employees of social reform projects that aim to abolish prostitution with “scared straight” tactics. Vice cops draw a salary from making these arrests, and the anti-prostitution lecturers are paid, too – sometimes from the fees paid by those arrested and funneled into the programs as a way to avoid conviction. The programs themselves create an incentive for cops to police the sex trade, and they support a professional class of people – anti-prostitution campaigners – who make a living attempting to abolish the ways other people make a living.

When we ask ourselves what prostitution is really like, and imagine what it could be like, we have to consider the role that those opposed to prostitution have played in perpetuating “social ills” in the sex trade, so that it's nearly impossible to imagine the sex trade without them. Still, they fight to contain and isolate the sex trade in America, as have they have for centuries now. Yet, despite ensuring that their targets now have little recourse against them, they just keep losing.