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Commentary on Reynolds v. McNichols

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Commentary on *Reynolds v. McNichols*[1]
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Introduction

The 1973 case *Reynolds v McNichols* concerns a woman who was repeatedly arrested on suspicion of and for "prostitution."[2] During these arrests, Roxanne Reynolds, the defendant, was to subject to forced examination and treatment. The arrests and examinations were authorized by Section 735 of the Revised Municipal Code of the City and County of Denver which directed the Department of Health and Hospitals "to use every available means to ascertain the existence of and investigate all suspected cases of communicable venereal disease, and to determine the sources of such infections."[3] Reynolds argued that the ordinance was unconstitutional because it was irrational, arbitrary, and subjected Reynolds to involuntary treatment and that the ordinance violated the Equal Protection Clause of the Fourteenth Amendment because it was being applied against female sex workers and not their male clients. Despite her compelling claims, the original decision found for the state, holding that the acts of the state the involuntary detention and treatment were within the police power "designed to protect public health."[4] The court tossed out her equal protection claim, addressing it only to say that because there was no evidence that Reynolds had actually had sex with her clients there was no reason that the men should be arrested.

In her rewritten opinion, Wendy Parmet takes a feminist lens to find for Reynolds. First, by excavating the long history of public health law with an eye towards how this history impacts the experiences of women, Parmet finds that arresting, detaining and treating women, and not their male clients, is an equal protection violation. Second, through a detailed review of the probable cause requirement of the Fourth Amendment—Parmet's rewritten decision highlights that the City of Denver does not have probable cause to detain and arrest a person simply because she is a sex worker. And, finally, Parmet brings in a new line of constitutional doctrine on the right to privacy. *Reynolds*, decided in the same year as *Roe v. Wade*, provides an opportunity to reinforce how women have the right to do what they wish with their bodies, and, in turn, emphasizes that a person has the right to refuse treatment.

In supplementing the rewritten decision, this commentary first offers a historical perspective on the involuntary testing and treatment of sex workers for contagious diseases including sexually transmitted infections. It then turns to the sex worker movement, which picked up steam in 1973, the same year as *Reynolds*. The sex worker movement pushed to counter ordinances like the one used to arrest, detain, and treat *Reynolds* by advocating for a harm-reduction approach, that would address the harms of sex work without criminalizing the people

[1] This commentary draws on my prior work in Aziza Ahmed, *Trafficked?: AIDS, Criminal Law, and the Politics of Measurement,* 70 UNIVERSITY OF MIAMI LAW REVIEW 96 (2015) and Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health*, 34 HARVARD JOURNAL OF LAW AND GENDER 226-258 (2011)

[2] I utilize the language of sex work in this commentary. I use the word prostitute or prostitution when I am citing or referring to *Reynolds* or related legislation. This commentary also assumes that sex workers are women. While sex workers represent a diverse range of genders, the laws discussed here specifically targeted women. Today we have more information on the gendered and racialized profiling of sex workers that target a much wider range of individuals.

[3] Brief of the Appellees in *Reynolds v. McNichols*, 488 F.2d 1378 (1973)

[4] *Reynolds v. McNichols*, 488 F.2D 1378 (1973)

Forthcoming in FEMINIST JUDGEMENTS: HEALTH LAW (Seema Mahopatra and Lindsay Wiley eds.) Cambridge University Press.

selling and buying sex. After providing this background, this commentary provides an overview of the original decision and the feminist rewrite.

Since *Reynolds*, sex workers, and others advocating for less punitive approaches to addressing STIs, have only had partial success as public health rationales continue to justify the existence of many laws designed to detain, treat, and punish women arrested for prostitution-related crimes.[5] The struggle for sex workers to be treated with basic respect in the context of public health prevention programs continues today.

I. Background

Reynolds is part of a long history of the regulation of disease through the control and management of women's bodies. While at different points in history many types of women have been implicated in the management of disease, sex workers, frequently economically and socially disenfranchised, have borne the brunt of these efforts. Drawing on secondary literature, this section provides a brief history of the many efforts to control disease vis-à-vis the regulation of sex work. In turn, this history places *Reynolds* in context -- showing how it is just one instance in a much larger story of the control and management of women's bodies.

From at least the mid 19th century, sex workers have long been the subject of coercive laws to control the spread of disease. The focus on sex workers has always been contested, both by sex workers and by advocates who felt that the targeting of sex workers discriminated against women. An early example of the laws and the dissent that followed are the Contagious Diseases Acts (CDAs) passed in the 1860s. The CDAs were a series of acts passed in 1864, 1866, and 1869 that sought regulate prostitution in an effort to control disease.[6] The CDAs applied to England and the British Colonies.[7] The Acts mandated check-ups for women found to be involved in prostitution.[8]

> Where an information on oath is laid before a justice by a superintendent of police, charging to the effect that the informant has good cause to believe that a woman therein named is a common prostitute . . . The justice present, on oath being made before him substantiating the matter of the information to his satisfaction, may, if he thinks fit, order that the woman be subject to periodical medical examinations . . . for the purpose of ascertaining at the time of each such examination whether she is affected with a contagious disease.

Those who were found to have a venereal disease were detained at the hospital and treated.[9] Feminists contested the CDAs who saw the acts as oppressive.[10] In 1869, Josephine Butler founded

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[5] Sienna Baskin, Aziza Ahmed, and Anna Forbes, *Criminal Laws on Sex Work and HIV: A Mapping,* 93 DENVER UNIVERSITY LAW REVIEW 355 (2016)

[6] The acts applied to "military stations, garrison and seaport towns." Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864-1888*, 10(1) Albion: A QUARTERLY JOURNAL CONCERNED WITH BRITISH STUDIES 14-27, 14 (1978)

[7] The driving rationales behind the acts shifted over time and are difficult to isolate. As argued by Judith Walkowitz, the acts may have been driven by concerns over sexuality in the Victorian period as well as venereal disease. JUDITH WALKOWITZ, PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE 70 (1980). This history offered here draws on Aziza Ahmed, *Trafficked?: AIDS, Criminal Law, and the Politics of Measurement,* 70 UNIVERSITY OF MIAMI LAW REVIEW 96 (2015)

[8] The Contagious Diseases Prevention Act 1864, 27 & 28 Vict. c. 84 & 85, §§ 12–14 (U.K.).

[9] The Contagious Diseases Prevention Act 1864, 27 & 28 Vict. c. 84 & 85, §§ 12–14 (U.K.).

[10] This history offered here draws on Aziza Ahmed, *Trafficked?: AIDS, Criminal Law, and the Politics of Measurement,* 70 UNIVERSITY OF MIAMI LAW REVIEW 96 (2015)

the Ladies National Association (LNA) in Britain. The organization opposed the CDAs and challenged the idea that women's bodies should be regulated for public health goals.[11] Butler argued that like the brothel system, the CDAs exploited women's sexuality "for the gain of men and the state."[12] She and her allies felt that that medical exams were disrespectful, leaving poor women at the mersy of the police.[13] They had another solution: that men should remain chaste and learn to control their sexual desires.[14] The movement against the CDAs found important supporters. John Stuart Mill, for example, argued that "the wives and daughters of the poor are exposed to insufferable indignities on the suspicion of a police officer."[15] In her book, *Codes of Misconduct: Regulating Prostitution in Late Colonial Bombay*, Ashwini Tambe describes that the CDAs went further than all prior attempts to regulate prostitution. She writes that the CDAs in Bombay

> . . . expressed a will to control the entire population of women in prostitution, and not just those who were responsible for public disturbances. It specified where prostitution could be practiced, which prostitutes were acceptable, and how prostitutes could be monitored to ensure that they were disease-free. The law made it compulsory for women to be registered if they were going to practice prostitution anywhere.[16]

The broad scale regulation of prostitution in England and the colonies came to an end due to the intense activism of the LNA, who used media, letter-writing campaigns, and protest to argue that women bore an unfair burden in the context of disease eradication. The CDAs were repealed in 1888.[17]

As Parmet highlights in her rewritten opinion, during this period linking prostitution and disease also served as a way to control immigration in the United States. This was especially evident in the discriminatory treatment of Chinese immigrants in the 19th century. The Page Act in 1875, for example, banned Chinese "prostitutes" from entering the United States. Women identified as prostitutes, as argued by Professor Kerry Abrams, were seen to be "harbingers of disease" and "moral death."[18] Legal challenges to the Page Act resulted in the courts legitimating this idea. In the 1874 decision *Ex Parte Ah Fook*,[19] for example, the Supreme Court of California found that the Page Act effectuated through the quarantine and health laws of the state. With their finding, the Court reflected broader anti-Chinese attitudes of the time. Yet, the anti-immigrant

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[11] Margaret Hamilton, *Opposition to the Contagious Diseases Acts, 1864-1886*, 10 ALBION: A Q. J. CONCERNED WITH BRIT. STUD. 14, 16 (1978).

[12] In her book, historian Jessica Pliley describes Butler and the LNA as arguing for "reclaimability of all prostitutes, whom she considered to be the victims of sexist circumstances and male abuse." JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 14 (2014).

[13] Jeremy Waldron, *Mill on Liberty and on the Contagious Diseases Acts*, J.S. MILL'S POLITICAL THOUGHT 14 (Nadia Urbinati & Alex Zakaras eds., 2007) (quoting Josephine Butler).

[14] *Id.* (explaining that although there was common ground between the Christian Purity movement and Butler's LNA, the religious actors were motivated by the desire to protect female innocence rather than enact a feminist politics.); *see also* JUDITH WALKOWITZ, PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE 34 (1980).

[15] *Id.* at 16 (stating that Mill's opposition to the Contagious Diseases Acts mandates a closer examination of Mill's harm principle).

[16] Ashwini Tambe. CODES OF MISCONDUCT: REGULATING PROSTITUTION IN LATE COLONIAL BOMBAY (Kindle Locations 615-617). Kindle Edition.

[17] *Id* at 31.

[18] Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration*, 105 COLUMBIA LAW REVIEW 642 (2005)

[19] *Ex Parte Ah Fook*, 49 Cal. 402 (1874)

sentiment manifesting through public health efforts would also be curtailed by the courts. As Parmet's rewritten opinion highlights that, one of the most important of these cases, *Jew Ho v. Williamson*,[20] found that attempts to protect the public from communicable diseases "does not justify the discriminatory application of highly coercive and intrusive public health measures."[21]

In his comprehensive history, *No Magic Bullet*, historian Allan Brandt shows that eugenicists tied venereal disease to the future of a superior race.[22] They fixated on prostitution as the primary way in which venereal disease was being spread. Estimates provided by experts at the time placed rates of venereal disease among prostitutes as over 70% in most cases. A key understanding emerged from this: that some women were good, pure, and innocent; while others were bad, impure, and sensual.[23] Most major cities had "red light districts," often closely monitored by the police and city officials, but "purity crusaders" were able to galvanize fears of venereal disease to begin to close down these areas. Focused on disease, in 1905, progressive reformers and physicians decided that to end the spread of sexually transmitted infections required the "complete repression of prostitution."[24] The movement to end prostitution merged with a larger narrative at the time: that of "white slavery" -- the idea that young white women were being lured into prostitution. By 1910, Congress passed the Mann Act aimed at curbing the purported prostitution of White women.[25] Though the Mann Act reflected the idea that women selling sex were victims of trickery, by channeling resources towards law enforcement, it continued to facilitate a punitive approach to sex work. At the state level, the Inferior Courts Act passed by the New York State Legislature also aimed to end the spread of disease by focusing on prostitutes. The law provided for medical examination and mandatory treatment of women found guilty of soliciting. The law did not require a man (or a male client) to be treated. Progressive-era reformers known as social hygencists were supportive of the eradication of prostitution on moral and health grounds and agreed all prostitutes should be tested and treated for disease. They were not willing to accept, however, that only women should the target of these laws. Women, unlike men, were being punished for spreading disease, while men largely escaped punishment.[26]

The goal of shutting down red light districts was also wrapped up in the idea that American troops would perform poorly during World War I if they contracted STIs. In turn, efforts to end the spread of venereal disease shifted towards protecting the health of the soldier. This largely meant that red-light districts near military bases were closed and that prostitutes were asked to leave town.[27] New laws were passed which criminalized prostitution when the woman was infected with an STI. Empowered by the Mann Act as well as state and city efforts, law enforcement cracked down on women selling sex. These crackdowns, however, did not result in a slowing of STI transmission. To the contrary, they had little effect on the incidence of STIs, and as some data suggests by the end of World War I, huge numbers of men in the Army carried an STI.

As time passed, advocates shifted the debate on STIs. By the 1930s, successful crusaders sought to fight the battle against sexually transmitted infections, not on grounds of sexual morality, but on the basis of science and medicine. Still, the idea that only some people were prone to STIs

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[20] *Jew Ho v. Williamson*, 103 F.10 (1900)
[21] Parmet rewritten opinion
[22] Allan Brandt, NO MAGIC BULLET (1985) at 19.
[23] *Id.* at 31
[24] *Id.* at 35
[25] For a critical history of the Mann Act see JESSICA R. PLILEY, POLICING SEXUALITY: THE MANN ACT AND THE MAKING OF THE FBI 13 (2014).
[26] *Id.* at 37
[27] *Id.* at 74-75

-- racial minorities, the poor, and the immoral – continued to shape the public health response to STIs.[28]

The World War II period saw a repeat of the patterns before it: the stigmatization of sex workers for the sake of protecting soldiers.[29] Again, crackdowns on red light districts near military bases served as a key way to regulate the spread of STIs. In New York, women arrested for prostitution were subject to mandatory testing, treatment, and detention.[30] The fact that these measures, including the imprisonment of many sex workers, did not lead to a reduction in STIs led public health officials to conclude that it was not only prostitutes but "loose" women that were harming soldiers.[31] The discovery of penicillin offered some relief to the many people diagnosed with STIs and aided in reducing the rates of STIs for a short period. By the 1960s and 1970s, however, STI transmission was once again on the rise.

Reynolds was decided in 1973 during the broader STI resurgence. The language of the Denver Municipal Ordinance, designed to control the spread of STIs, bears remarkable similarity to the language of the 18[69] CDA. The ordinance defines the persons who may be "reasonably suspected to have a venereal disease":

> Any person who is arrested and charged in the municipal court of the city and county or any other court in the city and county with an offense in the nature of or involving vagrancy, prostitution. A violation of that article or any offense related to sex and any person convicted of any such offense in the city and county . . .
>
> . . . every suspected person detained in jail . . . shall be examined by the department of health and hospitals for the purpose of determining whether or not such person is, in fact, infected with a communicable venereal disease.

In other words, as during every major period before it, regulating prostitution became central to controlling the spread of disease.

By 1973, however, sex workers in the United States had begun to organize.[32] In 1973, Margo St. James founded the organization Call Off Your Old Tired Ethics ("COYOTE") in San Francisco. Together with the Italian Committee for the Civil Rights of Prostitutes founded in 1982, and the English Collective of Prostitutes in England founded in 1975,[33] sex workers began to organize around the world. Sex workers held two World Whores Congresses, in 1985 and 1986,[34] resulting in the World Charter for Prostitutes' Rights—one of the first charters of its kind—calling for a decriminalization of "all aspects of adult prostitution resulting from individual decision."[35]

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[28] *Id.* at 158
[29] *Id.* at 34
[30] *Id.* at 167
[31] *Id.* at 168
[32] This history of sex worker organizing draws on my prior article Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health*, 34 Harvard Journal of Law and Gender 226-258 (2011)
[33] Kamala Kempadoo and Jo Doezma, *Introduction* in GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION 19 (Kamala Kempadoo & Jo Doezema eds., 1998)
[34] Gail Pheterson, Not Repeating History, in A VINDICATION OF THE RIGHTS OF WHORES 3 (Gail Pheterson ed., 1989).
[35] Jo Doezema, *Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy*, *in* GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION 34, 37 (Kamala Kempadoo & Jo Doezema, eds., 1998).

Unlike the punitive mandatory testing and treatment regimes, sex workers called for policies based on harm-reduction. In essence, harm-reduction is an effort not to eliminate an act (like selling sex) but instead to address the myriad harms that can be implicated in the unsafe sale of sex. Key to the harm-reduction model is the decriminalization of the purchase and sale of sex. In drawing on harm-reduction, sex workers drew from a growing public health framing, which originated in the Netherlands in the 1970s[36] challenging the punitive abolitionist perspective and arguing for decreasing the harms faced by sex workers in the course of selling sex. Focusing primarily on drug use, a broad-based alliance joined sex workers in advocating for harm-reduction, including physicians, activists, and public health officials. The AIDS epidemic in the 1980s provided further incentive to continue to think creatively—and from a harm-reduction perspective—about how to appropriately address epidemics. AIDS provided legitimacy to the harm-reduction approach and by the 1990s became widely accepted as the most effective means to address the harms associated with drug use and sex work including the spread of HIV.[37]

Despite wide-scale support from public health experts and affected communities, harm-reduction gained some political traction but could not unseat the reigning abolitionist approach that dominates the response to drug use, sex work, and addiction. The abolitionist focus mapped onto the broader push to utilize criminal law and criminal law-like methods (including detention and treatment) to address the spread of STIs including HIV and AIDS.

II. The Original Decision

The *Reynolds* decision is illustrative of the punitive way in which we did and continue to treat sex workers in the context of addressing the spread of sexually transmitted infections. Roxanne Reynolds was arrested under a Municipal Ordinance which allowed police to "hold and treat" women arrested for prostitution. Reynolds was twenty-seven years old and, according to the decision, described herself as a "model and a prostitute."[38] Her first arrest occurred in 1970. She was found by police in a hotel room and admitted at trial that she had been paid to have sex with the man she was found with. Although no sexual activity had taken place, the plaintiff was arrested and placed in the city jail. She was charged with solicitation and prostitution. Reynolds was given a "deferred prosecution" which allowed her to be released without having to plead guilty or not, and the charges were dismissed. In May and July 1971, she was told that she had to report to the Department of Health and Hospitals (DHH) because she had been soliciting acts of prostitution. While at the DHH she was examined for STIs. On the first visit in May she was found to have gonorrhea and was then treated for it. The second visit did not show a positive result for STIs. On her third order to arrive at DHH, Reynolds arrived with a lawyer and refused to be examined.

In June 1972, Reynolds was arrested again in a hotel room. Although she was arrested for prostitution, she argued that a final agreement for sexual exchange had not yet been reached. When she was placed in jail she was given the option of being held for 48 hours and then examined and

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[36] Diane Riley and Pat O'Hare, *Harm Reduction: History, Definition, Practice in* HARM REDUCTION NATIONAL AND INTERNATIONAL PERSPECTIVES 1-3 (eds. James Inciardi and Lana Harrison 1999). (arguing that harm-reduction emerged from the Netherlands, the United Kingdom, and North America). See, also, Michael T. Wright, *Harm Reduction*, THE BODY (1998), http://www.thebody.com/content/art14023.html. For a general take on harm reduction see, Scott Burris, Response, *Harm Reduction's First Principle: "The Opposite of Hatred"*, 15 INT'L J. DRUG POL'Y 243, 243 (2004).

[37] Melissa Hope Ditmore, WHEN SEX WORK AND DRUG USE OVERLAP: CONSIDERATIONS FOR ADVOCACY AND PRACTICE (2013) at 9.

[38] *Reynolds v. McNichols*, 488 F.2D 1378 (1973)

treated or being treated without knowledge of whether or not she had an STI. She chose to be released with medication.[39]

Relying on the Fourth and Fourteenth Amendments, Reynolds argued that the ordinance was unconstitutional and, alternatively, argued that even if constitutional on its face, it was unconstitutional as it was applied to her. She argued first, that the ordinance allowed for involuntary detention, examination, and treatment, which were each a violation of her Fourteenth Amendment right to be secure in her person. Second, she argued that there was no clear class of persons to whom police were to apply the ordinance and thus the ordinance lacked adequate guidelines. Third, she argued that the option to leave after taking penicillin under threat of jail time otherwise resulted in an unconstitutional coercion of the person and an invasion of her right to privacy. Fourth, she argued that it was not accepted medical practice to treat someone for a condition without examining them first and, finally, that the ordinance was only applied to women which violated the Equal Protection Clause.[40]

The 10th Circuit, in keeping with the long history of detaining sex workers for the sake of controlling disease, found that it is within the city's purview to profile sex workers as sites of STIs stating that "[p]rostitution and venereal disease are no strangers".[41]

Having established that sex workers are an appropriate target of punitive efforts to control the spread of STIs, the court turns to the authority of the city to enact such an ordinance. The court finds that the ordinance's requirement of involuntary detention, of examination for an STI during the detention, and treatment of the person is constitutional. The court of appeals drives home this point by highlighting that the Supreme Court has found that the police power of the states to vaccinate and quarantine individuals constitutional. In turn, the 10th circuit finds that limited detention in jail without bond "for the purpose of examination and treatment for a venereal disease for the purpose of involuntary examination and treatment" are valid under the police power. Finding that that involuntary detention, examination and treatment were valid under the police power, the court then easily concluded that the law was not unconstitutionally applied to Reynolds.[42]

The court threw out the equal protection claim that the ordinance was only being applied to women. The court found that it was not significant that Reynolds's clients were not arrested. And, despite the fact that no sex was exchanged for money, the court ignored the obvious problem that only Reynolds was arrested and tested and the men were not. The court concluded that it is the prostitute that is the "primary source of venereal disease."[43]

II. Feminist Judgment

Unlike the original opinion, which dismisses the Equal Protection Claim, Parmet's feminist rewrite takes seriously the idea that Reynolds was experiencing a violation due to the selective targeting under Section 735 on the basis of sex. Parmet places the *Reynolds* case in line with a the-new line of cases including *Reed v. Reed* decided only two years before *Reynolds*.[44] Following *Reed*, the rewritten opinion holds that although Section 735 does not facially discriminate on the

[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Reed v. Reed*, 404 U.S. 71 (1971)

basis of sex, Reynolds convincingly shows that the ordinance was being applied unequally to women. This was particularly true because the men with whom she had sex could have had an STI which could have been transmitted to her but are ignored in this public health response to STIs. Turning to cases in the context of public health that specifically grapple with discrimination during in the late 19th and early 20th century, Parmet highlights that the protection of public health cannot result in the discriminatory application of "highly coercive and intrusive public health measures." Because there is no reason to believe that women are especially prone to spreading STIs, Parmet concludes that the focus on women to the exclusion of men can actually undermine the public health program. Most obviously this happens when female sex workers contract STIs from their male clients making the clients just ask likely to be the "source" of disease. The focus on women is discriminatory.

Parmet's opinion which has the effect of protecting the civil rights and civil liberties of women who sell sex, also finds Fourth Amendment violations in the failure to obtain a warrant before forcing a woman to submit to a medical examination or remain in detention. Citing to *Jacobson v. Massachusetts,*[45] Parmet acknowledges that the state has wide latitude to act in the context of protecting the public from communicable diseases, but notes that it is still necessary to get a warrant before performing routing health and safety searches. While Parmet acknowledges that individual rights may give way to state efforts to protect the public health, she emphasizes that public health exceptions to civil rights and civil liberties are limited in scope to situations in which there is an emergency. Finding warrants to be necessary calls for a discussion of probable cause. But probable cause requires individualized review, and as Parmet highlights, the broad assumptions of the ordinance including that anyone who is "reasonably suspected to have had contact with another individual reasonably believed to have had a communicable venereal disease" will transmit a disease to others. The broad approach taken by 735 is far from an individualized review. And, even if the court takes seriously that it must defer to the legislature for defining the targeted class of people, Parmet finds that the higher rates of gonorrhea in the sex work community do not justify the targeting of sex workers as though they all have an STI.

As the feminist rewrite highlights, Section 735 further authorizes a compulsory examination of those who have been arrested for prostitution and the class of people also includes those charged with vagrancy. This lacks any basis in law. As a 1921 decision relied on by Parmet, *Ex Parte Arata*[46] points out, the mere fact that a person is suspected of prostitution is "insufficient to establish probable cause that she is infected with a venereal disease."

Finally, drawing on a line of cases on the right to privacy including *Griswold v. Connecticut*[47] in 1964 and *Roe v Wade*[48] in 1973, Parmet holds that coercing a woman to accept treatment without consent or diagnosis, violates her right to privacy. Instead, Parmet holds that informed consent must govern the treatment of people for STIs. Guided by informed consent, patients would receive all information relevant to their treatment and would be able to exert control over their own bodies. As Parmet holds, there should not be an exception for sex workers.

Conclusion

[45] *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905)
[46] *Ex Parte Arata*, 198 P. 814 (1921)
[47] *Griswold v. Connecticut*, 381 U.S. 479 (1965)
[48] *Roe v. Wade*, 410 U.S. 113 (1973),

The regulation of women's bodies has long been a part of the management and control of disease. The *Reynolds* case represents a moment in which one woman impacted by the law attempted to push back on existing legislation to protect her civil rights and civil liberties. While she lost her case, Parmet's feminist rewrite takes seriously the discriminatory impact of Section 735 against women and protects the civil rights and civil liberties of those targeted by the ordinance. The failure to protect the civil liberties and civil rights of sex workers had broad effect in the coming decades as HIV began to spread among sex workers and others. As epidemiological evidence now demonstrates, a less punitive approach, one that respected basic civil rights and civil liberties, and enabled better access of public health programs, would have been a more effective method of stopping the spread of HIV and ensuring greater access to treatment and discrimination. *Reynolds* failed to set the stage for this approach to a public health response and contributed to the failure of the United States to appropriately address HIV. A feminist decision, like Parmet's, could have altered the legal landscape on addressing STIs and sex work away from a punitive approach to sex work and STIs and towards a more effective and less stigmatizing harm-reduction approach. In doing so, the rewritten decision would not only have benefitted the women targeted by the ordinance, but would likely have improved public health outcomes without coercion and discrimination.

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