

NOTE

Prostitution—A Choice Ignored

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INTRODUCTION

Imagine, for a moment, that when you awoke this morning you poured yourself a cup of coffee and grabbed the morning paper. When you turned to the Classified Section your eyes focused on an advertisement that stated the following:

Oldest profession seeks creative and intelligent women who enjoy making their own hours and desire economic freedom to work in a controlled and safe environment. Prostitutes enjoy great benefits and lots of perks. Serious applicants only need apply.

Needless to say, the above advertisement is fictitious. Many would snub their noses at the thought of women even contemplating prostitution as a career goal. But for many other women such an advertisement would be the opportunity needed to get them on the path to economic autonomy and independence.

When one is asked to think about prostitution, one usually envisions the stereotypical images that the media and contemporary society have bombarded us with. For example, the female drug-addict who walks the street turning tricks to make just enough money to get her next hit; or the young woman whose low self-esteem drove her into the forgiving arms of an

abusive pimp; and of course, the street-wise, seasoned professional who uses her body to get the love and attention she was denied as a child. These images have helped to dehumanize prostitution and minimize the value the profession may have for some women. Rarely are we made aware of the flip side of these debasing images. When are we told the stories of educated women who entered into prostitution as a personal choice? When do we see images of women who view prostitution as a career option? When do we hear the stories of women who chose prostitution as a viable economic option? These images have been carefully hidden behind the heavy curtains of morality, sin, and degradation. We should question the judgment of a society that has trained us to believe that when we think of prostitution, our only option is to envision images of women as the victims of prostitution and not as the victors.

This Note argues that prostitution can be a tool of empowerment that will allow those women who choose it as a career to exercise personal power, economic freedom, and sexual autonomy.¹ In order to attain this empowerment, prostitution must be totally decriminalized in American society. Only through a system of decriminalization can the social stigma associated with prostitution be erased, granting wo-

*J.D. Candidate, Capital University Law School May 2000; B.A. and Honors B.A., York University, 1996. I would like to thank my mother, Alva Bourne, for her love and strength that carried me through the good times and the bad. She taught me that nothing is impossible with God on my side. I would like to thank Dave Gibbs for always telling me what I needed to hear, and not what I wanted to hear; and Professor Shirley Mays at Capital University Law School, for lending a critical ear and encouraging me to strive for excellence. I

would also like to thank Keith Griggs for courageously supporting me through it all; and Juliette Agyei for making a dream come true.

1. I will not be discussing homosexual prostitution, lesbian prostitution, or male prostitution. Although these forms of prostitution do exist in North American society, I have chosen to concentrate on the issues of prostitution concerning heterosexual, adult women.

men the freedom to choose prostitution as a respectable occupation.

Part I of this Note examines the history of prostitution starting with the early civilizations of ancient Greece, Rome, and early Christianity to the era of the goddess when prostitutes were worshipped and admired. This Note will then focus on prostitution's existence in the United States, its function, regulation, and eventual downfall. Part II will discuss the various forms of prostitution as they exist in American society. From the well-known, traditional form of street prostitution, to the not-so-traditional form of the professional dominatrix, the author will briefly discuss how each form operates and any advantages and disadvantages associated with each type of prostitution. In Part III, the ideological and feminist approaches that have developed to analyze the issues of prostitution will be explored. Specifically, this Note will analyze the conservative moral approach, the radical feminist approach, the socialist feminist approach, and the liberal feminist approach in an attempt to resolve the question of whether prostitution can be a woman's choice.

Finally, Part IV will examine the three legal models used to control prostitution: 1) criminalization, which makes all laws and activities associated with prostitution a crime; 2) legalization or regulation, which enacts laws and regulations dealing specifically with prostitution; and 3) decriminalization, which will eliminate all laws and regulations associated with prostitution, thereby aligning its status with any other legal occupation or activity. Under the umbrella of decriminalization the author will discuss issues regarding prostitution as work, accessibility to health insurance and other social benefits, as well as challenges of equal protection violations. Close attention will be given to the state of New York, Nevada, and the Netherlands, as specific examples of the proposed models of prostitution control.

I. HISTORY OF PROSTITUTION

A. Origins of Prostitution

Prostitution has often been referred to as one of society's "oldest professions," however, researchers have yet to determine the exact time prostitution began.² What is unmistakably clear is that the origins of prostitution date back to early human history.³ Although prostitution is usually considered a practice or behavior unique only to humans, studies on animal behavior suggest that this may not be entirely true.⁴ Researchers "of primate behavior have observed chimpanzees offering sexual benefits to other chimps in exchange for food."⁵ These studies strongly suggest that some variation of prostitution existed even in the animal kingdom.

Researchers have been careful to point out that prostitution did not exist in all societies.⁶ Behavior that could be described as some form of prostitution existed in some societies while noticeably absent from others.⁷ For example, Professor Decker's study of prostitution has noted that,

among certain American Indian tribes, some of the women could be purchased for a certain time period by men of the tribe for sexual enjoyment. While the term might be a week, a month or a year, the relationship was not viewed as permanent, yet, it was not considered unusual and the women were not thought of in a condescending manner.⁸

Professor Decker has also noted that "[o]ther African tribes use prostitutes, in some instances, as part of a religious ceremony to initiate the young men of the village to sexual intercourse."⁹ Where no form of prostitution existed in a particular society, it was due to alterations of that society by invasions not early explorers. In the Pacific Islands, for example, prostitution was nonexistent until "lonely and eager voyagers discovered that by offering items of value to the women of the islands, or in

2. See V. BULLOUGH & B. BULLOUGH, *WOMEN AND PROSTITUTION: A SOCIAL HISTORY* 1 (1987).

3. See *id.* at 7.

4. JOHN F. DECKER, *PROSTITUTION: REGULATION AND CONTROL* 28 (1979).

5. See *id.*

6. See BULLOUGH & BULLOUGH, *supra* note 2, at 14.

7. See *id.* at 10.

8. DECKER, *supra* note 4, at 28.

9. *Id.* at 29.

some cases their fathers or husbands, they could satisfy their sexual appetites."¹⁰

One of the difficulties that researchers face when examining early forms of prostitution in non-Western cultures is that the customs or behavior may not necessarily fit into the Western form of what is understood as prostitution.¹¹ For example, "[i]n Ugra (Outer Mongolia) prostitutes were regarded as 'temporary wives.' Merchants and lamas took Prostitutes as companions on short journeys, and when these were paid and discharged, they sought others to take their place."¹² Bullough & Bullough have duly noted that "[a]mong the Navajo, girls who refused to marry had the right to establish a house of their own where they were able to welcome male visitors. Such women could move from settlement to settlement seeking out bedmates, responsible to no one but themselves."¹³ Through the eyes of Western society, such behavior would be considered under some form of prostitution, however, in these cultures this behavior was an acceptable part of their lives.

1. Ancient Greece

Prostitution held a very significant role in ancient Greek society. Its existence was so commonplace and widely accepted as part of Greek life that many states levied a tax against those who participated in such work.¹⁴ Prostitution flourished legally because for many men in Greece, the only women they came into contact with socially were prostitutes.¹⁵

In Athens, prostitutes ranged from the least desirable prostitute who was visited by the "common man," to the most prominent type who was frequented by only the rich and most powerful of Greek society.¹⁶ On the lowest end of the hierarchy of prostitutes was the *dicter-*

iades.¹⁷ The *dicteriades* were looked down upon by the community and often stripped of their citizenship.¹⁸ They were required to wear particular clothing that would make them easily identifiable to others in the community.¹⁹ These women worked from inside a brothel where customers would pay a nominal admission fee to enjoy their services.²⁰ Upon completion of a visit, these women would usually receive gifts as consideration for their services.²¹ Unlike their counterparts, these lower classed prostitutes faced extremely heavy restrictions.²² The ancient Greeks reasoned that such restrictions ensured the preservation of their society.²³

Next up the hierarchy were the streetwalkers.²⁴ These women were not restricted to any area of the community.²⁵ They were free to move around as they saw fit.²⁶ Unlike the streetwalker of modern American society, these women were not ostracized, rather their presence in Greek society was accepted "as a necessary and natural part of street life."²⁷ One step above the streetwalker was a higher class of prostitute known as the *auletrides*.²⁸ These women were often entertainers who used prostitution to supplement their incomes as dancers and flute players.²⁹ It was not uncommon for these women to be sold at slave auctions to the highest bidder after one of their many performances.³⁰ At the top of the hierarchy of prostitutes were the women known as the *hetarie*.³¹ These women commanded respect and enjoyed a level of prestige unknown to their counterparts.³² The *hetarie* were considered to be the most educated of Greek women.³³ Not only were these women known to arouse the sexual desires of the men who called upon their services, they were also known to captivate them

10. *Id.*

11. See BULLOUGH & BULLOUGH, *supra* note 2, at 10.

12. *Id.* (referencing HO-TIEN MA, CHINESE ASSENT IN MONGOLIA 128-29 (John De Frances from John Hopkins Press (1949))).

13. *Id.* (citing GLADYS REICHARD, NAVAHO RELIGION 384 (1950)).

14. See *id.* at 36.

15. See *id.* at 35.

16. See DECKER, *supra* note 4, at 32.

17. See *id.*

18. See *id.* at 33.

19. See *id.* (citing F. HENRIQUES, PROSTITUTION AND SOCIETY 49 (1962)).

20. See *id.* at 32.

21. See *id.*

22. See *id.* at 33.

23. See *id.* at 35-36.

24. See *id.* at 35.

25. See *id.*

26. See *id.*

27. *Id.* (quoting F. HENRIQUES, PROSTITUTION AND SOCIETY 48 (1962)).

28. See BULLOUGH & BULLOUGH, *supra* note 2, at 38.

29. See *id.*

30. See DECKER, *supra* note 4, at 34.

31. See *id.*

32. See *id.* at 35.

33. See *id.*

with their stimulating and intelligent conversation.³⁴

Ancient Greece acknowledged the value that prostitution served in their society. The caste system for prostitutes served a function of identifying prostitutes from the most to the least desirable.³⁵ It also provided them with a sense of order and structure for the trade.³⁶ Any prohibition of prostitution would have been counterproductive to the very structure they intended to create.³⁷

2. Ancient Rome

Prostitution was as equally tolerated in ancient Rome as it was in ancient Greece.³⁸ However, unlike ancient Greece, the prostitutes in ancient Rome were not honored for their work.³⁹ Prostitution was simply a trade that was in great demand.⁴⁰ The prostitutes of ancient Rome served as controllers of the sexual activities of young men.⁴¹ Prostitution was an accepted way "of keeping the sex drives [of young men] under control."⁴²

In 180 B.C., ancient Rome was the first society in the Western world to engage in prostitution.⁴³ Most women had to obtain a license, but there were limitations on who could qualify for a licensure.⁴⁴ For example, "any woman who was either married or a patrician or who had a husband, father or grandfather who had been a knight could not become a prostitute."⁴⁵ However, women who had alternative forms of income, such as actresses or dancers, were not required to obtain licenses to engage in prostitution.⁴⁶ Slaves were also required to receive a license to become prostitutes.⁴⁷ Upon receipt of their application the names of newly licensed prostitutes were permanently inscribed with the Roman officials, and there was no chance that their names would ever be removed.⁴⁸

Official inspectors, known as *aedile*, policed the brothels to ensure that prostitutes were complying with regulations.⁴⁹ This policing included making sure they wore particular clothing that identified them as prostitutes, and that they were not behaving in a disorderly fashion.⁵⁰ *Aediles* were also forced to protect the rights of the prostitute by ensuring that she was paid her fee by the customer and was not in any physical danger.⁵¹

3. Early Christianity

The fathers of early Christianity were determined to control sexual activity in its entirety.⁵² Most theologians viewed sexual intercourse outside of marriage as a disgrace.⁵³ Those who could escape the entanglement of sexual gratification were rewarded with a multitude of blessings and spiritual enrichment.⁵⁴ Following this concept, it is surprising that a number of church saints in the Christian religion were exprostitutes: St. Pelagia, St. Afra of Ausburg, and Mary Magdalene, were the most legendary of them all.⁵⁵ However, not all Christian theologians abhorred prostitution.⁵⁶ St. Augustine, one of the most influential figures in the early Christian church, "saw Fourth Century prostitution as an evil which was nonetheless necessary to an orderly community."⁵⁷ Prostitution functioned in Christian society to balance the lustful behavior of man that would be unleashed had prostitution been completely prohibited.⁵⁸

B. From Goddess To Whore

Nickie Roberts' research takes a female-centered observation of the origins of prostitu-

34. *See id.*

35. *See id.*

36. *See id.* at 35-36.

37. *See id.*

38. *See id.* at 36.

39. *See* BULLOUGH & BULLOUGH, *supra* note 2, at 48.

40. *See id.*

41. *See id.* at 55.

42. *Id.*

43. *See* DECKER, *supra* note 4, at 36-37 (*citing* J. MANCINI, PROSTITUTES AND THEIR PARASITES 19 (1963)).

44. *See id.* at 37.

45. *Id.*

46. *See id.*

47. *See id.*

48. *See id.*

49. *See id.*

50. *See id.*

51. *See id.*

52. *See id.* at 38-39.

53. *See id.* at 39 (*citing* F. HENRIQUES, PROSTITUTES IN EUROPE AND THE NEW WORLD 21 (1963)).

54. *See id.*

55. *See id.* at 39.

56. *See id.* at 40.

57. *Id.*

58. *See id.*

tion.⁵⁹ According to Roberts, the true story of prostitution can be found when one examines the history of the temple priestesses.⁶⁰ These women were not only sacred women of religion, they were also prostitutes.⁶¹ Roberts describes these women as the “first whores in history.”⁶² Sacred prostitution was a sexual ritual that became an essential part of religious worship in early civilization.⁶³ The interconnection between religious practice and prostitution was so prevalent in Babylon, that prostitutes often dedicated themselves to the services of the Goddess Ishtar.⁶⁴ The Goddess Ishtar was originally identified as Inanna the goddess of fertility, promiscuity, and prostitution.⁶⁵ The myth surrounding her existence centers on the premise that when she descended onto earth, accompanied by courtesans and prostitutes, she was able to arouse the most erotic instinctive reactions in men.⁶⁶ Belief in her power was so great that whenever people worshipped the Goddess of Ishtar, sacred prostitution was an integral part of the religious ritual.⁶⁷

During the era of the goddess-priestess, the status of a “whore” was so high that poems were often written about her power.⁶⁸ Around 2000 B.C., one of the world’s first recorded poems, called the *Epic of Gilgamesh*, told the tale of a wild man named Enkidu who left his former life among the animals to live in civilization after a goddess lavished him with “a combination of mother-love, tenderness, comfort, mystical enlightenment and sex.”⁶⁹ The tale recounted how the Goddess of Ishtar led the human race out of the animal kingdom to human civilization through compassion and sexual-spiritual communion.⁷⁰

Roberts’ research discovered that this female-centered society also had a class system of

hierarchy for the prostitutes.⁷¹ At the top of the chain in order of importance were the *entu* priestesses and the *naditu* priestesses.⁷² These women reaped multiple benefits and enjoyed renowned status for their services and temple activities.⁷³ A step down were the *qadishtu* and *ishtaritu* who also worked as singers and dancers.⁷⁴ Their work and lives were dedicated to servicing the Goddess of Ishtar.⁷⁵ At the bottom were the class of women known as the *harimtu*.⁷⁶ These women have been described as semi-secular prostitutes because they worked both inside and outside the temples.⁷⁷ According to Roberts, the women who worked outside the temple were history’s first independent streetwalkers.⁷⁸

The decline of goddess worshipping came about with the growth of male religion and power.⁷⁹ Often referred to as “whoredom” by Hebrew priests, goddess worshipping was considered to be immoral.⁸⁰ In order to help extinguish the popularity of goddess worshipping, feminist historian Merlin Stone wrote that, “Hebrew prophets and priests wrote with open and scornful contempt of any woman who was neither virgin nor married.”⁸¹ A women’s sexual autonomy became the root of all evil. Sacred prostitution, as part of the ritual of the goddess religion was a sin, and the priestesses who participated were the worst sinners.⁸²

The increase of the patriarchal system of power and church created a division between the women who were prostitutes and those who were wives. Women who were wives were categorized as pure and not desiring of sex, as opposed to the prostitute who was categorized as evil and lustful.⁸³ This “whore/madonna” dichotomy was successfully promoted by the church to the point where the madonna was

59. See NICKIE ROBERTS, WHORES IN HISTORY: PROSTITUTION IN WESTERN SOCIETY xi (1992).

60. See *id.*

61. See *id.*

62. *Id.* As a former sex worker, Roberts’ use of the word “whore” is an attempt to reclaim it for all women, in hopes of defusing its negative stigma. See *id.* at ix.

63. See *id.* at 4.

64. See BULLOUGH & BULLOUGH, *supra* note 2, at 20.

65. See *id.* at 15.

66. See *id.*

67. See ROBERTS, *supra* note 59, at 4.

68. See *id.* at 4-5.

69. *Id.* at 5 (quoting BARBARA G. WALKER, THE WOMEN’S ENCYCLOPEDIA OF MYTHS AND SECRETS 820 (1983)).

70. See *id.*

71. See *id.* at 5-6.

72. See *id.* at 6-7.

73. See *id.* at 7.

74. See *id.*

75. See *id.*

76. See *id.*

77. See *id.*

78. See *id.*

79. See *id.* at 8-9.

80. See *id.* at 10.

81. MERLIN STONE, THE PARADISE PAPERS 198 (1976).

82. See ROBERTS, *supra* note 59, at 11.

83. See *id.* at 8.

honored and the prostitute was vilified.⁸⁴ In this dichotomy, "[t]he 'whore' satisfie[d] [the] supposedly uncontrollable male lust; the 'madonna' preserve[d] the private realm of family and love."⁸⁵

The laws of prostitution became increasingly strict and oppressive. For example, a legal dress code was enforced that dictated what prostitutes could and could not wear.⁸⁶ The law mandated that prostitutes wear, "special leather jackets, to 'attract attention' . . . [the] law decreed that they should on no account wear the veil, which was reserved as a mark of the wife's subjection to her husband."⁸⁷ In spite of the creation of such oppressive laws, prostitutes willfully resisted patriarchal domestication and fought to maintain their sexual and economic autonomy.⁸⁸ However, this strong determination alone would prove not to be enough.

With no desire to conform to the confining patriarchal-created constrictions of marriage, prostitutes denounced the notion of living in constant submission by becoming wives and instead asserted their desire to live independently from men.⁸⁹ As a result, any woman who exercised uncontrolled sexuality and independence, as did the whores, was labeled as evil.⁹⁰ To the present day, this whore stigma still exists in American society. Any woman who does not conform to the ideologies of the patriarchal system could be labeled a whore. This label reminds women that at society's insistence, women can be reduced to mere labels. Although a "form of religious prostitution" continued to exist into the classical Greek era, it was simply a mere shell of its former existence.⁹¹

In the end, the notion of the goddess-prostitute with immense power and enlightenment was replaced by a man-made creation, the whore, which stripped women of their sexual autonomy and independence.⁹² As such, West-

ern women are left with nothing more than a memory of what they were. As Roberts poignantly wrote, "[f]rom the ashes of the compassionate whore-goddess, the priests had created a sinful temptress Eve, whose carnal curiosity, we are still taught today, led to disaster for all 'mankind.'"⁹³

C. Prostitution In The United States—19th Century

Prostitution was considered mostly an urban phenomenon in the 1800s. During the early colonial period, most of America was considered rural, and the disproportionate number of males to females made prostitution virtually nonexistent.⁹⁴ Indian women, slaves, or female indentured servants were often used to satisfy the demands of early frontier men.⁹⁵ If that option was not available, sexual gratification was likely to be exchanged by men.⁹⁶ However, the onset of the industrial revolution and the urbanization of America in the 19th century created a more favorable environment for prostitution. The migration of a large number of women from rural, agricultural areas to the urban industrialized cities in search of work created a thriving environment for prostitution to blossom.⁹⁷ Working-class women had a choice of either domestic work or factory work available to them as potential occupations.⁹⁸ When faced with a decision between the two, factory work was often preferred over domestic service.⁹⁹ However, factory work for women was not only difficult but the hours were long and the pay was extremely low.¹⁰⁰ When the income they received from the factory was no longer enough to provide them with the basic necessities of food and shelter, or the women were simply unable to find work, many women turned to prostitution as a way to survive.¹⁰¹

84. Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 WOMEN'S RTS. L. REP. 99, 102 (1989).

85. *Id.*

86. See ROBERTS, *supra* note 59, at 9.

87. *Id.*

88. See *id.*

89. See *id.* at 11.

90. See *id.*

91. *Id.* at 18.

92. See *id.* at 11.

93. *Id.*

94. See generally, DECKER, *supra* note 4, at 57; BULLOUGH & BULLOUGH, *supra* note 2, at 211.

95. See DECKER, *supra* note 4, at 57.

96. See *id.* at 58.

97. See Ann M. Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10 BERKELEY WOMEN'S L.J. 47, 52 (1995).

98. See ROBERTS, *supra* note 59, at 232.

99. See *id.* at 232-33.

100. See Priscilla Alexander, *Prostitution: A Difficult Issue For Feminists*, in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY 184, 187 (Frederique Delacoste & Priscilla Alexander eds., 1987).

101. See *id.*

Immigration also played an important role in the increase of prostitution in the urban areas of the United States.¹⁰² The first women to immigrate from the old country to the United States were often prostitutes.¹⁰³ In Boston, New York, and Philadelphia, immigrant-born prostitutes outnumbered the American-born prostitutes, even though immigrants only represented the minority of the total population.¹⁰⁴ In Boston, two-thirds of the foreign-born prostitutes were Irish who probably immigrated to the United States during the famine.¹⁰⁵ British and Canadian prostitutes accounted for the next largest group of foreign-born prostitutes, although their numbers did not compare to that of the Irish.¹⁰⁶ A survey conducted by W.W. Sanger in 1855, found a significant correlation between the immigration of women and the population of prostitutes in New York City.¹⁰⁷ Of the 2,000 prostitutes he interviewed, 1,238 had immigrated from foreign lands: 706 were from Ireland, which at the time was the most recent immigrant group to dawn the shores of America; and 257 were from Germany, the next largest group of immigrants to the United States.¹⁰⁸

The California Gold Rush of 1849 became a magnet for prostitution in the western part of the United States.¹⁰⁹ Men traveled west from all over focused only on a hopeful pot of gold that lay waiting at the end of the rainbow.¹¹⁰ Women were not excluded from the overnight fortunes that could be attained from the rush of gold fever.¹¹¹ Early documentation revealed that a French prostitute made \$50,000 in one year for the services she provided to the lonely men in the West.¹¹²

Both industrialization and the California Gold Rush created such a demand for prostitutes, that bordellos or brothels popped up in abundance in the western and eastern parts of

the United States.¹¹³ These houses of prostitution ranged from the best, where well-educated women catered to the aristocrats of society, to the worst of its kind, where poorer, less educated women serviced the undesirable members of the lower-class population.¹¹⁴ In hopes of understanding the popularity of prostitution an 1856 survey conducted by Sanger reported that there were a number of brothels located in certain eastern cities in the United States.¹¹⁵ With the aid of the mayor in each city, the survey reported that Buffalo had 87 brothels, Louisville had 79 brothels, New Haven had 10 brothels, Norfolk had 40 brothels, Philadelphia had 130 brothels, Pittsburgh had 19, and Savannah had 15 brothels.¹¹⁶

Similarly, in the west, brothels were also commonplace in many areas. Some were located in segregated areas of the community, and some were subject to police and medical supervision.¹¹⁷ In the urban centers of New Orleans, San Francisco, Seattle, Denver, and Chicago, brothels operated by madams were plentiful until World War I.¹¹⁸ At this time, prostitution in the United States was essentially controlled for and by women.¹¹⁹ The brothels and other houses of prostitution were managed by women and the prostitutes often worked independently from their own apartments or boarding rooms.¹²⁰ This female-centered environment gave prostitution its own distinct character that set it apart from any other trade or industry in the United States.¹²¹

In order to make the women of the brothels available to prospective clients, official guidebooks were issued in many cities across the United States.¹²² The guidebooks often described the prostitutes who worked in the brothels, the madams who ran the establishments and the level of clientele they serviced.¹²³ The most famous of these guidebooks was a

102. See BULLOUGH & BULLOUGH, *supra* note 2, at 217.

103. *See id.*

104. See BARBARA MEIL HOBSON, *UNEASY VIRTUE: THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION* 88 (1987).

105. *See id.* at 88-89.

106. *See id.* at 89.

107. See BULLOUGH & BULLOUGH, *supra* note 2, at 221.

108. *See id.*

109. See ROBERTS, *supra* note 59, at 215; *see also*, DECKER, *supra* note 4, at 60.

110. See ROBERTS, *supra* note 59, at 215.

111. *See id.*

112. *See id.*

113. See DECKER, *supra* note 4, at 59-61.

114. *See id.* at 59.

115. *See id.*

116. *See id.* at 59 n. 183.

117. *See id.* at 60.

118. *See id.* at 60-61.

119. See ROBERTS, *supra* note 59, at 237.

120. *See id.*

121. *See id.*

122. See BULLOUGH & BULLOUGH, *supra* note 2, at 226.

123. See ROBERTS, *supra* note 59, at 210.

New Orleans publication called the *Blue Book*.¹²⁴ The first issue in 1895 started with forty pages and was subtitled the, "Tenderloin 400, or a gentleman's guide to New Orleans."¹²⁵ The last publication in 1903 had ninety-six pages, and at the end of the title page two simple lines that read, "[G]ive them a call boys, You'll get treated right."¹²⁶

One of the most profitable and luxurious brothel houses in the United States was known as the Everleigh Club.¹²⁷ Run by two sisters, Ada and Minna Everleigh in Chicago, the house was a three-story mansion with a library, art gallery, fourteen parlors, thirty working girls, and a host of other employees ranging from barbers to masseurs to help clients relax during their visit.¹²⁸ Each room was lavishly decorated with marble-inlaid brass beds, expensive artwork, books, fresh flowers, and surrounded by glass ceilings and walls.¹²⁹ For that special added touch, a mechanical perfume sprayer that would release whatever exotic scent the client desired was mounted above each bed.¹³⁰ Admittance to the Everleigh Club required a formal letter of introduction and a basic entrance fee of \$50.00.¹³¹ Clients were required to pay for their own food and drinks.¹³² One night's visit could total anywhere between \$500 and \$1,000.¹³³ The Everleigh Club operated for approximately twelve years.¹³⁴ By the time the sisters retired, they had become indisputable millionaires.¹³⁵

The future of prostitution seemed bright and unwavering. The commodification of sex and the success of brothels appeared to translate to independence for many women. However, all good things must come to an end, and prostitution was not immune from this outcome.

1. Early Attempts To Regulate Prostitution In The United States

Although prostitution was authorized to exist in many American cities, its existence was subject to various regulations and controls.¹³⁶ After the Civil War, numerous American cities attempted to regulate prostitution by confining its activities to certain areas where prostitutes would have to register and receive compulsory physical examinations.¹³⁷ However, despite the efforts of various advocates for the regulation of prostitution in different cities, Saint Louis was the only U.S. city to adopt a system of regulation into the City Charter.¹³⁸ In July 1870, the Social Evil Ordinance was passed.¹³⁹ The provisions of the ordinance appointed six physicians to the board of health to provide health care to the women registered under the ordinance.¹⁴⁰ Women who were infected with a venereal disease were admitted to a special hospital known as the Social Evil Hospital until they were cured.¹⁴¹ The ordinance stayed in effect until 1874, when 100,000 clergymen and middle-class women demanded the state uphold its obligation of morality, signed a petition against prostitution and forced the ordinance to be repealed.¹⁴²

When further attempts to regulate prostitution failed, and total repression proved to be ineffective, the United States turned to a method of segregation that confined prostitutes to specific areas referred to as "red-light" districts.¹⁴³ The term derived "from the practice of trainmen leaving their signal lanterns in front of a house or shack while making a visit there."¹⁴⁴ Technically, these districts were a direct violation of the laws in many states, however, officials tolerated the practice in hopes of maintaining some method of control over the prostitutes in their community.¹⁴⁵ Inevitably, these toler-

124. See BULLOUGH & BULLOUGH, *supra* note 2, at 226; see also, ROBERTS, *supra* note 59, at 210.

125. BULLOUGH & BULLOUGH, *supra* note 2, at 226.

126. *Id.*

127. See ROBERTS, *supra* note 59, at 210.

128. See *id.*

129. See *id.* at 210-11.

130. See *id.*

131. See *id.* at 211.

132. See *id.*

133. See *id.*

134. See *id.*

135. See *id.*

136. See DECKER, *supra* note 4, at 61.

137. See BULLOUGH & BULLOUGH, *supra* note 2, at 222.

138. See *id.* at 223.

139. See *id.*

140. See *id.*

141. See *id.*

142. See *id.*

143. *Id.* at 224.

144. *Id.*

145. See DECKER, *supra* note 4, at 61; see also, BULLOUGH & BULLOUGH, *supra* note 2, at 224.

ated districts would become a hot bed for police corruption.¹⁴⁶

Another system of registration was imposed in order to maintain the operation of these red-light districts.¹⁴⁷ Registration provided the police with knowledge of prostitutes themselves, as well as the madams and houses they worked for.¹⁴⁸ The prostitute was required to give "her real name plus alias or aliases, age, birthplace, birth date, place of last residence, the number of years she had been in the sporting life, the name of the house to which she was going and other physical data for personal identification."¹⁴⁹

In order to attack the legitimacy of prostitution, by the 1920s the majority of U.S. cities and states had officially rejected the concept of the red-light districts.¹⁵⁰ All but one city had folded to the political pressures of the time and officially closed areas with segregated prostitution.¹⁵¹ Even though there was a great decrease in the number of brothels and parlors around the country, the existence of such dwellings still remained intact in some cities. For example, "New York City alone in 1912 had 142 such houses [brothels], only three of which reportedly remained in 1917."¹⁵²

Today, theoretically, prostitution remains illegal in all but one state in the United States.¹⁵³ Nevada presently has a system of legalized prostitution in place in some of its counties.¹⁵⁴ Despite the persistent moral outcries in protest and formal laws that stigmatize prostitution as a social evil that must be illegal, a "tolerated" form of prostitution has continued to exist in the majority of states.¹⁵⁵ No matter how repugnant or irrational many will view the exchange of money for sex, prostitution has clearly stood the test of time. By definition, prostitution is illicit in many states, but remains easily accessible for many who desire its services. Estimates of the number of women who

work as prostitutes either full-time or part-time, range from 250,000 to 1,300,000¹⁵⁶ and these women reportedly have approximately 1.5 million customers per week.¹⁵⁷ Estimates of the gross annual revenue derived from such activities vary anywhere between seven billion dollars and nine billion dollars.¹⁵⁸

II. FORMS OF PROSTITUTION

The second wave of the feminist movement during the 1960s brought with it a sexual liberation for both men and women.¹⁵⁹ This sexual revolution allowed individuals to explore uncharted domains of their sexuality freely and uncensored. With this heightened sexuality, the desire for straight sex decreased and the desire for more experimental forms of sexual gratification developed.¹⁶⁰ To meet the new demands of the clientele, more specialized forms of prostitution evolved in Western society.¹⁶¹

In its simplest form prostitution can generally be defined as the exchange of money for sexual services or acts.¹⁶² This broad definition attempts to encompass the numerous forms of prostitution services that exist in contemporary society. In order to provide a clearer, more in-depth understanding of the various forms of prostitution, the following section will describe the most commonly known forms practiced in North America.

A. Street Prostitution

Street prostitution is considered the lowest level of prostitution on the prostitution hierarchy. This traditional form of prostitution is the most familiar, and often gets the most attention in the prostitution debate.¹⁶³ However, the stereotypical image of the street prostitute does not accurately represent the most common female prostitute. Recent estimates suggests that only 10% to 20% of prostitutes actually work

146. See BULLOUGH & BULLOUGH, *supra* note 2, at 224.

147. See *id.* at 225.

148. See *id.*

149. *Id.* at 225.

150. See *id.* at 227.

151. See *id.* The author is unable to identify the name of the city in question, since none of the research materials I have come across mentioned the city's identity.

152. *Id.* at 228.

153. See Alexander, *supra* note 100, at 195.

154. See *id.*

155. See *id.* at 191.

156. Lucas, *supra* note 97, at 48 n.3.

157. See DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 257 (1989).

158. See *id.*

159. See ROBERTS, *supra* note 59, at 320.

160. See *id.*

161. See *id.*

162. See Christine Overall, *What's Wrong with Prostitution? Evaluating Sex Work*, 17 *SIGNS* 705, 709 (1992).

163. See Alexander, *supra* note 100, at 189.

the streets.¹⁶⁴ The remaining 80% to 90% work in the other formal establishments such as the brothels, "massage parlors, or as independent call girls."¹⁶⁵ Another common myth suggests that most street prostitutes have a pimp to take care of them. Although the prostitute-pimp relationship is common, approximately 40% of the street prostitutes work independently without pimps.¹⁶⁶

The increase in car ownership has changed the face of street prostitution over the years.¹⁶⁷ While some streetwalkers may still take their clients to hotels or motels or their own apartments, the modern trend for the contemporary prostitute is to conduct business in the client's car.¹⁶⁸ Almost reflecting a form of convenient, one-stop shopping, in the car the streetwalker and the client negotiate price, discuss the details of the service, and perform the transaction.¹⁶⁹ The car allows the prostitute to perform her services and get back to work in the quickest amount of time possible.

One main disadvantage with street prostitution is the high visibility of the occupation. Because of this high visibility, the women who work the streets are often arrested and harassed by the police more often than other types of prostitutes.¹⁷⁰ This visibility also makes them more vulnerable to violence such as rape, robbery, and assault.¹⁷¹ On the other hand, a significant advantage of street prostitution is that the women experience greater freedom and mobility with their occupation.¹⁷² This mobility allows them to have a large potential clientele and the ability to relocate whenever necessary.¹⁷³

Interestingly enough, although women of color are represented in every form of prostitution, they are disproportionately over-represented in street prostitution.¹⁷⁴ This makes women of color more susceptible to ar-

rest and harassment by police officials. Eighty-five to ninety percent of prostitutes arrested work on the streets.¹⁷⁵ Estimates suggest that 40% of street prostitutes are women of color.¹⁷⁶ Fifty-five percent of those women will be arrested and eighty-five percent of those women will serve jail time.¹⁷⁷ The reasoning may rest in the fact that women of color are more likely to be socioeconomically disadvantaged than their white counterparts and therefore turn to street prostitution for immediate economic relief.

B. Massage Parlors

This form of prostitution takes place indoors but is generally easily identifiable from the streets.¹⁷⁸ Often disguised as a health studio, massage parlors offer a little "more than" a simple massage.¹⁷⁹ The standard service is often a massage coupled with acts of fellatio or fellatio and coitus.¹⁸⁰ Both men and women are likely to manage and own massage parlors.¹⁸¹ Many parlor owners are "straight" business people who usually use the monetary gains from the parlor business to finance an outside legitimate venture.¹⁸² In most U.S. cities, massage parlors and their employees are often required to obtain a license from the police department whether the work is legitimate or not.¹⁸³

The discretion of the parlor business allows this form of prostitution to be more tolerated by the public. According to a 1974 *New York Times* report, "[m]assage parlours that advertise sex blatantly but provide it discreetly seem to generate little of the community outrage that is often aroused by a few streetwalkers on a downtown corner."¹⁸⁴ This discretion is one of the many reasons that massage parlor prostitution often appeals to a more middle-class clientele and worker.¹⁸⁵

164. See Lucas, *supra* note 97, at 48 n.3.

165. *Id.* at 48-49.

166. See Alexander, *supra* note 100, at 189.

167. See ROBERTS, *supra* note 59, at 315.

168. See *id.*

169. See *id.*

170. See ROBERTA PERKINS & GARRY BENNETT, BEING A PROSTITUTE: PROSTITUTE WOMEN AND PROSTITUTE MEN 5 (1985).

171. See *id.*

172. See *id.*

173. See *id.*

174. See Alexander, *supra* note 100, at 197.

175. See *id.* at 196.

176. See *id.* at 197.

177. See *id.*

178. See *id.* at 189.

179. See PERKINS & BENNETT, *supra* note 170, at 6; ROBERTS, *supra* note 59, at 306-09.

180. See ROBERTS, *supra* note 59, at 307.

181. See Alexander, *supra* note 100, at 189.

182. See ROBERTS, *supra* note 59, at 309.

183. See Alexander, *supra* note 100, at 189.

184. ROBERTS, *supra* note 59, at 309.

185. See PERKINS & BENNETT, *supra* note 170, at 6.

One of the advantages to this form of prostitution is the level of protection that the workers are afforded.¹⁸⁶ The indoor setting, the presence of other women, management, and even security guards, provide some protection to potential violence from would-be aggressors.¹⁸⁷ Greater personal autonomy and the potential to make good money are further advantages to the trade.¹⁸⁸ However, the disadvantage to this situation, is that the money earned by the workers is often split with management.¹⁸⁹ Additionally, the workers experience less flexibility in the work since they must work a set number of shifts per week.¹⁹⁰

C. Brothel Prostitution

Brothel prostitution “is another traditional form of prostitution [that has] a long history in” urban centers.¹⁹¹ The most common brothel structure is an enclosed building, generally not open to the public, which is managed by a woman, commonly known as a madam.¹⁹² However, in some places such as Sydney, Australia, visible brothels are recognized by the “red lights and open doors inviting customers to enter.”¹⁹³ In countries where there are legalized brothels, they are completely separate from the rest of the city, sometimes surrounded by a wall or a fence.¹⁹⁴

One of the major disadvantages to brothel prostitution, is that the women are restricted to where and when they move outside of the brothel district.¹⁹⁵ Often the women are not allowed to socialize outside the brothel or live in the immediate community with their families.¹⁹⁶ Safety and mandatory health checks offers an advantage to working in brothels.¹⁹⁷ On a weekly basis the women are tested for venereal diseases.¹⁹⁸ Additionally, every month they are also tested for the antibodies to the AIDS virus.¹⁹⁹ This mandatory check ensures that the

physical health and well-being of each woman is taken care of:

D. Escorts

Similar to the massage parlor, this form of prostitution is disguised as something it may not actually represent. The escort agency offers men the opportunity to enjoy the company of women for a specific period while they attend various social gatherings and events. For one night, the escort business provides men with female companionship without the awkwardness of a first date. In addition to the benefit of companionship, some escorts services offer their clients some type of sexual gratification that is exchanged sometime during the course of the “date.”²⁰⁰ Since the price for the sex is hidden in the escorting fee, the managers of the escort services can deny knowledge of any sexual transaction between the workers and the clients if their business is faced with a police investigation.²⁰¹ This leaves the onus of proof on the woman herself, who will most likely deny the existence of any sexual conduct when questioned.²⁰²

In an organized escort business, a central agent sets the appointment with the client over the phone.²⁰³ The agent then contacts a female who will best meet the requirements of the client from a list, and informs the woman of the particularities of the meeting.²⁰⁴ She is usually told when and where to meet the client, how long the job will last, and the expectations of the client.²⁰⁵ A disadvantage to escort prostitution is that some women are left alone with the client, leaving them susceptible to potential violence that may occur on the “date.” An advantage however, is the amount of money that can be made by the prostitute. Depending on the social level of the clientele of the escort business services, the women have the potential to earn a significant amount of money. In a more

186. *See id.*

187. *See* ROBERTS, *supra* note 59, at 309.

188. *See id.*

189. *See* PERKINS & BENNETT, *supra* note 170, at 6.

190. *See id.*

191. *Id.* at 5.

192. *See* Alexander, *supra* note 100, at 190.

193. PERKINS & BENNETT, *supra* note 170, at 5.

194. *See* Alexander, *supra* note 100, at 190.

195. *See id.*

196. *See id.*

197. *See id.*

198. *See id.*

199. *See id.*

200. *See* PERKINS & BENNETT, *supra* note 170, at 7; Alexander, *supra* note 100, at 190.

201. *See* PERKINS & BENNETT, *supra* note 170, at 7.

202. *See id.*

203. *See id.*

204. *See id.*

205. *See id.*

formal, organized business, the women provide management with a specific percentage, however, in a joint enterprise of two to six women, the women keep all the earnings after the basic expenses of operating the business are shared.²⁰⁶

E. Outcall Prostitutes Or Call Girls

The majority of prostitutes are believed to work in this area of prostitution.²⁰⁷ The outcall or call girl business operates very similarly to the escort business. The prostitute is usually contacted by telephone by a woman who coordinates the date, and connects the client with the specific prostitute who will then meet the client at a designated place.²⁰⁸ Some corporate firms often retain call girls on the payroll as part of their public relations staff.²⁰⁹ According to one New York businessman,

[t]his is the fastest way I know to have an intimate relationship established with a buyer It sort of gives me a slight edge; well, we will not call it blackmail, but it is a subconscious edge over the buyer. It is a weapon I hold, and I could discreetly drop it at any time when the [buyer's] wife is present.²¹⁰

One of the many advantages to being a call girl is the level of economic, personal independence, and control these women retain over their lives on and off the job. Call girls are considered to be the elite of the contemporary sex industry and are paid accordingly.²¹¹ Generally referred to as the "top of the prostitution hierarchy," call girls are the highest paid prostitutes in the industry and often cater to the wealthiest and most powerful clientele.²¹² Although the amount of compensation may vary from woman to woman, based on the class level of the clientele, it is not unheard of for a man to pay a call girl \$1,000 and up for one night of services.²¹³

The independence of the trade allows women to work either from their homes, advertise through industry magazines, or register with an agency who does the initial leg work of lining up the client for a fee.²¹⁴ However, the call girl is not immune to the potential violence that may be experienced while the woman is on a date.²¹⁵

F. Professional Dominance

The service of the professional dominant is the fastest growing and most lucrative prostitution business in the industry.²¹⁶ Generally, professional dominatrices receive money or other forms of compensation to engage in "erotic power exchange, commonly known as SM (sado-masochism), D&S (dominance and submission), or B&D (bondage and discipline)."²¹⁷ "Typical activities include bondage, spanking, whipping, [and] painful stimulation. . . of the nipples and genitals."²¹⁸ Fetish elements are also a part of the sessions.²¹⁹ These may include leather, rubber, whips and chains, high-heeled shoes or boots, leg-irons, and other Gothic torture devices.²²⁰ The work of the dominatrix centers on fantasy. Her work requires her to utilize her special techniques and experiences as well as act out various roles and personalities.²²¹ Some trade favorites include the schoolteacher, nurse, mommy, and nanny.²²² According to Mistress Lash, being cruel is a scientific technique.²²³

The spankings are like specific and advanced massage Beginning lightly and briskly to bring the blood to the surface of the skin, which helps prevent later bruising, using furs and feathers to tease when the pain seems to outweigh the pleasure, and eventually wailing away to a crescendo that often produces spontaneous orgasm²²⁴

206. *See id.*

207. *See* Alexander, *supra* note 100, at 190.

208. *See id.*

209. *See* ROBERTS, *supra* note 59, at 311.

210. *Id.*

211. *See id.* at 310.

212. *See id.*

213. *See* PERKINS & BENNETT, *supra* note 170, at 8.

214. *See* ROBERTS, *supra* note 59, at 310.

215. *See id.*

216. *See*, PERKINS & BENNETT, *supra* note 170, at 6.

217. Liz Highleyman, *Professional Dominance: Power, Money, and Identity*, in *WHORES AND OTHER FEMINISTS* 145 (Jill Nagle ed., 1997).

218. *Id.*

219. *See id.*

220. *See* PERKINS & BENNETT, *supra* note 170, at 6.

221. *See* ROBERTS, *supra* note 59, at 321.

222. *See id.*

223. *See id.* at 322.

224. *Id.*

A significant advantage of the professional dominatrix is the potential to make large amounts of money.²²⁵ The flexibility of the profession provides women the freedom to travel and move around at will.²²⁶ Flexible hours and generous time off allow women to maintain their independence and autonomy. On the flip side, this profession is extremely hard work and requires extensive time and dedication to learn the specialized techniques and skills needed. The women are entrusted by the clients with the special responsibility to use an amount of care that will ensure that no one gets hurt and the experience is unique and unforgettable.²²⁷

III. THEORETICAL APPROACHES TO PROSTITUTION

There is an ideological split among feminist scholars, lawmakers, and the general public as to how the issue of prostitution should be approached. At one end of the spectrum, conservatives analyze prostitution under the premise of traditional Christian teachings, which deem prostitution as a social evil. At the opposite end of that same spectrum, prostitution is examined under the fundamentals of individualism.²²⁸ Although clearly distinct from one another, each approach agrees that forced prostitution should be universally condemned.²²⁹ However, it is at this point that the uniformity ends. The issue of voluntary prostitution, as a freely chosen and legitimate profession, is one where consensus cannot be reached.²³⁰ Each approach, through its individual value systems, attempts to find a harmonious balance that will accurately reflect the reality of the women who participate in prostitution and the concerns of society as a whole.

A. Conservative Moral Approach

The conservative moral approach reflects society's present day public policies and legal

perspectives toward prostitution.²³¹ Grounded in Christian teachings that view prostitution as a danger to the social fabric, the laws that make prostitution illegal are in place to protect society's moral interests, regardless of the desires and choices made by the individual.²³² As noted earlier in this Note, the early Christian church rejected the notion of sex for pleasure and promoted the idea of chastity.²³³ Sex was restricted to the confines of marriage in order to procreate.²³⁴ This ideology made prostitution an easy mark for attack.

The notion of a shared public morality, provides the moral approach with the ammunition needed to advocate continual prohibition of prostitution.²³⁵ The conservative moral interests in prohibiting prostitution are motivated by very traditional concerns of morality, family, public health, and safety. According to the conservative moral approach, prostitution should be prohibited on the grounds that prohibition will prevent the spread of venereal diseases and HIV.²³⁶ In *People v. Mason*, the Supreme Court of Colorado ruled that the states had a rational interest in curbing prostitution because of the health hazards posed by its practice.²³⁷ However, this view is misleading and based on erroneous assumptions.

Despite American society's long history of using prostitutes as scapegoats to account for the spread of sexually transmitted diseases, there has been no research to support the assumption that prostitutes are to blame for the spread of these diseases.²³⁸ In fact, studies have indicated that only 5% of sexually transmitted diseases were related to prostitution.²³⁹ In the case of the deadly AIDS virus, studies have indicated that prostitutes who have been found to carry AIDS antibodies are those who are also intravenous drug users.²⁴⁰ Project AWARE at San Francisco General Hospital, conducted a long-term study of prostitution and HIV.²⁴¹

225. See Highleyman, *supra* note 217, at 145.

226. See *id.* at 151.

227. See *id.*

228. See Cooper, *supra* note 84, at 99.

229. See Carol H. Hauge, *Prostitution of Women and International Human Rights Law: Transforming Exploitation into Equality*, 8 N.Y. INT'L L. REV. 23-24 (1995).

230. See *id.* at 24.

231. See Tracy M. Clements, *Prostitution and the American Health Care System: Denying Access To A Group of Women in Need*, 11 BERKELEY WOMEN'S L.J. 49, 54 (1996).

232. See *id.*

233. See DECKER, *supra* note 4, at 39.

234. See *id.*

235. See Cooper, *supra* note 84, at 104.

236. See *id.* at 105.

237. See *People v. Mason*, 642 P.2d 8, 12 (Colo. 1982).

238. See Clements, *supra* note 231, at 59.

239. See *id.* at 60.

240. See A VINDICATION OF THE RIGHTS OF WHORES 123 (Gail Pheterson ed., 1989).

241. See Clements, *supra* note 231, at 62.

The results of the study indicated that the incidence of HIV infection among prostitutes who did not inject drugs were slightly lower than among other sexually active women who also did not inject drugs.²⁴² Another study found high rates of infection among street prostitutes who smoked crack cocaine and performed fellatio.²⁴³ The reasoning for this, is that "burns and cuts around the mouth from smoking leave an easy entry point for the virus, especially if they don't use condoms when they are high, drug sick, desperate for money, or threatened with violence."²⁴⁴

The message is clear, no U.S. study has found any significant rates of infection among men whose only chance of risk has been sexual contact with a female prostitute.²⁴⁵ Various factors have been attributed to these findings. First, prostitutes are more likely to use condoms during sexual intercourse than other groups of sexually active women.²⁴⁶ Prostitutes recognize that their bodies are the tools of their profession. Just as a salesperson depends on his or her vehicle to solicit door to door and thus ensures that his or her vehicle is in tip top condition, the prostitute who depends on her body for employment will take care of it accordingly. Therefore, assuming that condoms are effective 90% of the time, this significantly reduces the risk of transmission of diseases between customer and prostitute.²⁴⁷ Moreover, as indicated earlier, the majority of prostitutes work off the streets in more formal settings where condom use is standard practice, and the prevalence of HIV and other STD infections are "negligible to nonexistent in industrialized countries"²⁴⁸ In addition to protection from STDs, the use of condoms also function as a physical barrier between the client and prostitute. The use of a condom enables the prostitute to separate her public work life from her private life.²⁴⁹

Second, research has indicated that the transmission of diseases from female to male, is

lower in comparison to the transmission from male to female.²⁵⁰ For example, a study of seventy-two, HIV infected women in long-term relationships found only one incident where an infected woman transmitted the disease to her unaffected male partner.²⁵¹ This example is a contrast to the 20% of HIV infected men who transmitted the disease to their unaffected female partners.²⁵² Lastly, at street level, where the risk of HIV infection is the greatest, most prostitutes practice fellatio or hand-genital contact with their clients.²⁵³ Both of these services carry a lower risk for the transmission of diseases than vaginal and anal sex.²⁵⁴ Pro-prostitution organizations recognize the reality that many HIV-positive women are engaging in prostitution to support their drug addiction.²⁵⁵ However, the results of studies just mentioned cannot be ignored. Prostitution is not independently responsible for the spread of HIV and other venereal diseases to the public. The numbers demonstrate the existence of a symbiotic relationship between injecting drugs or sharing needles and prostitution.²⁵⁶ While advocates for the conservative moral approach continue to cite vigorously various studies and statistics that attempt to show a correlation between prostitution and a high incidence of HIV, the results are flawed because those studies fail to separate the status of the prostitute from the behavior of illegal drug use.²⁵⁷ Had their research followed this model of separating status from behavior, a much different picture of HIV incidence and prostitution would emerge.

Another moral conservative justification for the prohibition of prostitution lies in the belief that eliminating prostitution will reduce criminal activities.²⁵⁸ The assumption is a snowballing, cause and effect analysis of prostitution and crime. The gist of the argument is that one form of criminal activity will automatically breed other forms of criminal activities. Under this assumption, prostitution causes in-

242. *See id.*

243. *See* Alexander, *supra* note 100, at 89.

244. Priscilla Alexander, *Feminism, Sex Workers, and Human Rights*, in *WHORES AND OTHER FEMINISTS*, *supra* note 217, at 89.

245. *See id.*

246. *See* Clements, *supra* note 231, at 60.

247. *See id.* at 61.

248. Alexander, *supra* note 100, at 89.

249. *See* ROBERTS, *supra* note 59, at 336.

250. *See* Clements, *supra* note 231, at 60.

251. *See id.*

252. *See id.*

253. *See id.*

254. *See* Alexander, *supra* note 100, at 89.

255. *See* Clements, *supra* note 231, at 62.

256. *See id.* at 61.

257. *See id.*

258. *See* Cooper, *supra* note 84, at 105.

creased illegal activities such as organized crime, drug activity, and corruption.²⁵⁹ This assumption has also provided the courts with justification to prohibit prostitution. In *Cherry v. Koch*, Justice Gerald Alder ruled that the police powers of the states allowed them to make prostitution a crime.²⁶⁰ The court further noted that “prostitution is a source of profit and power for criminal groups who commonly combine it with illicit trade in drugs and liquor, illegal gambling and even robbery and extortion. Prostitution is also a corrupt influence on government and the law enforcement machinery.”²⁶¹

Despite these assumptions, the reality is that crime associated with prostitution often exists because of its illegality.²⁶² In European countries that have legalized prostitution, the rate of prostitution-related crimes is reportedly lower, compared to countries with criminalized systems of prostitution, such as the United States.²⁶³ This fact tends to suggest that prostitution is not an inherently violent profession that breeds criminal activity. In relation to prostitution’s connection with increased drug activity, evidence demonstrates that only 4% of prostitutes are drug addicts.²⁶⁴ Moreover, their drug problems can usually be traced to their depending on pimps for protection and bail money for release when incarcerated for soliciting.²⁶⁵ The assumption of a connection between organized crime and prostitution is overstated. While there exists some scattered evidence verifying an organized crime involvement in prostitution, the degree of participation suggested by the conservative moral approach is misrepresented.²⁶⁶ According to the President’s Commission on Law Enforcement and Administration of Justice in 1967, “[p]rostitution . . . play[s] a small and declining role in organized crime’s operation.”²⁶⁷

The moral approach to prostitution fails to acknowledge the fact that because of their criminal status, prostitutes are often victims of criminal behavior by corrupt police officers.²⁶⁸ It is not uncommon for prostitutes to suffer assault, bribery, threats, and even rape at the hands of officers sworn to protect the people, including prostitutes, from violence.²⁶⁹ Individual prostitutes have recounted incidents where the police have “demand[ed] sex before or during the arrest; and inflict[ed] beatings and kicking. They issue specific insults about the individual prostitute’s body, and taunt about how the police officer could get a free blow job with no one the wiser.”²⁷⁰ These incidents often go unreported since prostitutes feel powerless against a legal system that stigmatizes their chosen profession. Many prostitutes accept this abusive behavior by the police as “part of the job,” and as a result, any reports that surface regarding a connection between prostitution and crime, often express prostitution as the cause of the crime rather than a victim of such behavior.²⁷¹

A final justification for the prohibition of prostitution under a conservative moral approach is supported by an interest to prevent the commercialization of sex.²⁷² According to this argument, sex is one of the many things that should not be sold for money.²⁷³ Included in this list are human organs, limbs, wombs, people as slaves, and oneself.²⁷⁴ However, the major flaw in this argument is that unlike the sale of a limb or vital organ, the voluntary sale of sex does not permanently deprive an individual of anything. Additionally, this argument assumes that sex occupies a special status limited to the confines of marriage.²⁷⁵ To prohibit prostitution on this religiously based reasoning creates a system in which the laws are used to enforce and regulate an assumed shared public morality.²⁷⁶ This assumes that all individuals

259. See DECKER, *supra* note 4, at 330-337.

260. See *Cherry v. Koch*, 491 N.Y.S.2d 934, 944 (Sup. Ct. 1985).

261. *Id.*

262. See Cooper, *supra* note 84, at 105.

263. See *id.* at 105 n.34.

264. See Jessica N. Drexler, *Government’s Role In Turning Tricks: The World’s Oldest Profession in The Netherlands and United States*, 15 DICK. J. INT’L L. 201, 230 (1996).

265. See *id.*

266. See DECKER, *supra* note 4, at 336-37.

267. *Id.* at 337.

268. See Alexander, *supra* note 100, at 201.

269. See *id.*

270. Alexander, *supra* note 100, at 201.

271. *Id.*

272. See Cooper, *supra* note 84, at 106.

273. See *id.*

274. See *id.* at 106 and n.43.

275. See *id.*

276. See *id.* at 107.

are alike, and the needs and concerns of the individual are ignored.

B. Feminist Approaches

Feminist principles center on the premise of giving the woman a voice of her own that is distinctively and uniquely based on her own reality.²⁷⁷ a reality that allows her to define herself outside of the strict constructs of the patriarchal definition of woman, and enable her to tell her story with her own voice.²⁷⁸ But feminist discourse cannot agree on how the tale of her story should be told and by whom. As a result, feminist theories on issues of prostitution have diverged into three theoretical approaches that mirror their individual standards and beliefs. The radical, socialist, and liberal feminist approaches to prostitution create three modern categories that reflect the differing views on prostitution.²⁷⁹ Not absent from this discourse are the prostitute organizations that may not readily identify themselves as feminists, but nevertheless, reflect the same ideologies and concerns of the feminist theorists.²⁸⁰ Such organizations include Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER), The English Collective of Prostitutes (ECP), and De Rode Draad (The Red Thread).²⁸¹

1. Radical Feminist Approach

For the radical feminist, prostitution is nothing more than another way for society to justify the subordination of women.²⁸² Under this approach, prostitution is aligned with the other forms of subordination in place to devalue women, such as rape, domestic violence, and sexual assault.²⁸³ These forms of oppression continually perpetuate the institutionalization of male sexual dominance over women.²⁸⁴ Central to the radical approach is the presumption that this dominance over women exists because of the sex inequalities between men and

women.²⁸⁵ The argument works as follows: biological differences divide people into gender distinctions of "men" and "women," which is commonly defined as the "sexes."²⁸⁶ This division based on sex is maintained by a socially constructed system of heterosexual control, which institutionalizes the sexual dominance of men and the sexual submission of women.²⁸⁷ Therefore, prostitution exists because it perpetuates the very inequalities based on sex that our male dominated society encourages, thereby, enforcing the notion that women can only be defined by sex.

The prostitute group WHISPER argues from a radical feminist perspective that prostitution represents a system of violence and exploitation against women.²⁸⁸ Organized by former prostitutes and women advocates, the organization serves as an educational tool to inform society about the dangers of prostitution and encourage women to escape the perils of commercialized sex work.²⁸⁹ Spokesperson for the group, Sarah Wynter, explains that the acronym WHISPER was chosen for a very significant reason.²⁹⁰ According to Wynter, the group received its name because, "women in systems of prostitution do whisper among [themselves] about the coercion, degradation, sexual abuse and battery in [their] lives"²⁹¹ Both WHISPER and proponents of the radical feminist perspective strongly reject the notion that prostitution can ever be a choice to which women may freely consent to participate.²⁹² Various social and economic inequalities between men and women make the idea of choice and consent difficult to achieve.²⁹³

Opponents of the radical approach argue that women choose prostitution as an economic alternative to low-paying, monotonous labor.²⁹⁴ The radical feminist would respond that when women enter into prostitution to support themselves financially, they have not exercised any

277. See Holly B. Fechner, *Three Stories of Prostitution in the West: Prostitutes' Groups, Law and Feminist "Truth,"* 4 COLUM. J. GENDER & L. 26, 27 (1994).

278. See *id.* at 28.

279. See *id.* at 29.

280. See *id.*

281. See *id.*

282. See Clements, *supra* note 231, at 56.

283. See *id.*

284. See Cooper, *supra* note 84, at 112.

285. See Fechner, *supra* note 277, at 30.

286. *Id.* at 31.

287. See *id.* at 31 n.17.

288. See *id.* at 47-48.

289. See *id.* at 33.

290. See Sarah Wynter, *Whisper: Women Hurt in Systems of Prostitution Engaged in Revolt*, in *SEX WORK*, *supra* note 100, at 266, 270.

291. *Id.* at 70.

292. See Fechner, *supra* note 277, at 50.

293. See *id.*; Cooper, *supra* note 84, at 114.

294. See Fechner, *supra* note 277, at 39.

type of free choice.²⁹⁵ In a society where many women do not have access to decent paying jobs or financial stability, the radical approach argues that the choice to enter prostitution is really an implicit coercion that leaves women with no real options.²⁹⁶ However, this question of choice is not limited to prostitution work alone. The same argument can be made in relation to women who work in factories, as waitresses, as domestic servants, or in any other non-sex occupation. Arguably, an unstable job market or minimal education are two of several factors that may limit their choice to work in a particular occupation.

For the radical feminist, consent is also impossible because sex is not a neutral activity, but an exercise of male power.²⁹⁷ From this standpoint, rape and prostitution are indistinguishable from one another, since each situation involves an unequal balance of male dominance, which reinforces the objectification of women through their sexuality.²⁹⁸ This attitude permits men to view women's sexuality as something that belongs to them, and can be bought or forcibly taken if it is not freely given.²⁹⁹ Therefore, prostitutes are always regarded as helpless victims of male desires.³⁰⁰ Society's tolerance of this victimization reminds all women that they are accessible to men for a price, and commodification of their sexuality is normal.³⁰¹

Radical feminist, Catharine MacKinnon, argues that consent to prostitution is impossible because women have no "self."³⁰² According to MacKinnon, women who insist that prostitution is empowering and encourages women to develop an autonomous self are delusional.³⁰³ Since women are defined by a male perspective, they cannot own their own sexuality and therefore cannot own themselves.³⁰⁴ Without ownership of self, consent is not possible, and any expression of sexuality is inauthentic.³⁰⁵

Therefore, women who participate in prostitution are contributing to their own subordination.³⁰⁶ MacKinnon argues that, "[women] can not be aware of their own self-interest, since they perceive their needs only as a reflection of male desire."³⁰⁷

The major criticism of the radical feminist approach is its inability to acknowledge the difference between voluntary prostitution and involuntary prostitution.³⁰⁸ To accept the principles of this approach is to embrace the idea that women who engage in any form of heterosexual sex are aiding in their own oppression. When rape and consensual sex between adults are viewed as one and the same, it sends a message that women can never experience pleasure or excitement from consensual adult sex.³⁰⁹ To create a synonymous relationship between rape and voluntary prostitution is to portray women as sexual slaves incapable of distinguishing between "engaging in their own pleasure and collaborating in their oppression."³¹⁰ This makes women's sexuality virtually nonexistent. The position fosters the notion that sex is something that men do to women, and women are simply silent, unwilling participants.³¹¹ This argument is not only demeaning, but patronizing to women. It denies the reality and experience of women who may view prostitution in a positive light, by dismissing them as delusional and misguided. The radical approach assumes that all women speak with a unified voice. It buys into the social construct of women as the "weaker" sex, incapable of defining themselves.

MacKinnon's argument that choice and consent to prostitution is always impossible because women do not own their sexuality, is a hard pill to swallow.³¹² To accept this argument, is to accept the view that women's position in society has not evolved since the nineteenth and early twentieth centuries. This argument is unacceptable. While admittedly, *all*

295. *See id.* at 49-50.

296. *See Cooper, supra* note 84, at 114.

297. *See id.*

298. *See id.*

299. *See id.*

300. *See id.*

301. *See id.* at 119.

302. Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, 5 BERKELEY WOMEN'S L. J. 75, 94 (1989-90).

303. *See id.*

304. *See id.*

305. *See id.* at 95.

306. *See id.*

307. *Id.* at 95.

308. *See id.* at 96.

309. *See id.*

310. *Id.*

311. *See id.* at 97.

312. *See id.* at 94.

women are not socially or economically equal to *all* men, women today are in a much better position than they were in the early part of the twentieth century. The radical methodology distrusts women's judgment to make choices that accurately reflect their own desires. This theory is based on an idealistic ideology that refuses to confront the reality that for some women, prostitution is a deliberate choice. To accept the idea that women cannot own their sexuality is to deny women the opportunity to define themselves and completely embrace every aspect of their womanhood.

2. Socialist Feminist Approach

The socialist feminist perspective is generally based on a Marxist theory of materialism, which argues that "[c]apitalism exploits the labor of workers for the benefit of those who control the means of production."³¹³ However, unlike the traditional socialist, the socialist feminist considers the sexual division of labor in their analysis of capitalism and patriarchy.³¹⁴ The socialist feminist argues that the sole reason women enter into prostitution is for economic gain.³¹⁵ The very structure of capitalism places women at an economic disadvantage to men. The structure of patriarchy ensures that work designated as women's work, remains underpaid and unrecognized.³¹⁶ It is this interconnection between the forces of capitalism and the forces of patriarchy that creates the institution of prostitution. Taken together, capitalism and patriarchy force women to turn to prostitution as an economic alternative. After all, evidence suggests that "'hooking is the only job for which women as a group are paid more than men.'"³¹⁷

Theoretically, the socialist feminist would argue that prostitution is no different from other forms of work.³¹⁸ In fact, "'[w]omen who work in the sex trade are workers, just like women working at GM or in any of the service in-

dustries.'"³¹⁹ Whether women work as prostitutes, factory workers, or professionals, they sell their labor power for economic gain under a system of capitalism.³²⁰ Following this argument, one would assume that the work of the prostitute should be no more condemned or morally challenged than the work of the secretary or domestic worker. However, this is not the case.

Christine Overall's analysis of sex work suggests that prostitution distinctively differs from other forms of women's work by virtue of its symbiotic relationship with capitalism.³²¹ By its definition, prostitution involves the buying and selling of sexual services for compensation.³²² This exchange of services for compensation ranging from money or food to other luxuries, becomes inherent in prostitution in a way that it is not in non-sex work.³²³ For example, cooking, nursing and child care, are still considered work outside the context of a commoditized exchange. Therefore, the essential element to prostitution is not the sexual activity that takes place, but the buying and selling of that sexual activity.³²⁴ As such, "[w]ithout this asymmetrical economic exchange the sexual interaction is, by definition, not sex work, but a sexual event or relationship that does not involve service for the sake of material gain."³²⁵

Following the blueprint of the classic Marxist, the socialist feminist identifies the institution and practice of prostitution as classist, racist, ageist, and of course sexist.³²⁶ It is considered classist because it utilizes the sexual labor of the poor and disadvantaged to service the sexual desires of the privileged and advantaged.³²⁷ It is considered racist because it exploits the racial stereotype that women of color are accessible to service the needs of whites.³²⁸ It is ageist because it feasts on the young and replaces them when they are no longer considered sexually appealing.³²⁹ Most importantly, it is considered sexist because it

313. Fechner, *supra* note 277, at 30.

314. *See id.*

315. *See id.* at 36.

316. *See id.*

317. Overall, *supra* note 162, at 709.

318. *See id.*

319. *Id.* at 716 (quoting Debi Brock and Jennifer Stephen, *Which We Is Who?*, 9 BROADSIDE 4 (Dec.1987/Jan.1988)).

320. *See id.* at 709.

321. *See id.* at 716-17.

322. *See id.* at 717.

323. *See id.* at 716-17.

324. *See id.*

325. *Id.*

326. *See id.*

327. *See id.*

328. *See id.*

329. *See id.*

overwhelmingly exploits women for male sexual gratification.³³⁰

Overall acknowledges that other forms of labor, such as office work and child care, also exploit women because of their sex.³³¹ Western society is culturally socialized to believe that work that involves the care of home and family “is primarily allotted to women for the benefit of men.”³³² However, Overall goes a step further and suggests that although prostitution and other forms of women’s work are subject to sexual exploitation, prostitution is distinct because of its inability to be reversed.³³³ In other words, there is nothing inherent in non-sex work that prevents it from being performed by men for women, by men for men or by women for women.³³⁴ In that situation, both men and women can equally interchange the role of worker and boss in a way that prostitution is incapable of doing. The Canadian Organization for the Rights of Prostitutes (CORP), dismisses Overall’s claim, and counterargues that prostitution provides an equal opportunity for men and women to be both workers and clients.³³⁵

Overall’s reversible argument relies on the premise that unlike other forms of labor, prostitution’s value and purpose are dependent on the social relations that exist in a system of capitalism and patriarchy.³³⁶ Embedded within the systems of capitalism and patriarchy, are the social constructs of gender roles that assign women the role of submission and men the role of dominance.³³⁷ Under this ideology, women are expected to prostitute themselves in exchange for sexual services.³³⁸ Sex becomes just another commodity that is sold on the open market. This creates a double standard unique only to prostitution, in which “the sale of sex helps to define woman, it also condemns her; the purchase of sex also helps to define man, but it does not condemn him.”³³⁹

The socialist feminist tackles the issue of choice from an economic standpoint. The socialist based organization, The English Collective of Prostitutes (ECP), argues that women in general, but specifically women of color and lesbians, live in a cycle of poverty.³⁴⁰ Unemployment, discrimination, and low-paying jobs force women to turn to prostitution as a solution to escape poverty.³⁴¹ In the fight for economic justice, the ECP argues that under this context, prostitution can never be a deliberate choice when poverty leaves women with little or no alternatives to turn to for help.³⁴² Both the socialist feminist and the ECP claim that the practice of prostitution should not be condemned or criticized, but rather the institution of capitalism and patriarchy that force women to enter prostitution should be criticized.³⁴³ In this light, prostitution represents women’s protest against the perils of poverty.³⁴⁴ The prostitute rallies against accepting poverty in her life by “making money from what most women give to men for free.”³⁴⁵

The basis of the socialist argument is that together, capitalism and patriarchy create the necessary conditions for prostitution to flourish and exist.³⁴⁶ This unfinished argument leaves us to believe that when one of the two ingredients is missing, prostitution cannot exist.³⁴⁷ However, the existence of prostitution in other non-Western, non-industrial, patriarchal societies questions the validity of this argument and suggests that the socialist feminist perception is misguided and flawed.³⁴⁸

According to Overall, prostitution differs from other forms of labor because it ceases to be sex work outside the context of buying and selling, whereas non-sex work is still considered work outside of commoditization.³⁴⁹ This analysis is erroneous.³⁵⁰ Arguably, when prostitution is taken outside an exchange of buyer and seller, such as within a social relationship be-

330. *See id.*

331. *See id.*

332. *Id.*

333. *See id.* at 718-19.

334. *See id.* at 718.

335. *See id.*

336. *See id.* at 719.

337. *See id.*

338. *See id.*

339. *Id.* at 720.

340. *See* Fechner, *supra* note 277, at 43.

341. *See id.* at 44.

342. *See* Fechner, *supra* note 277, at 43-44.

343. *See id.* at 43.

344. *See id.* at 44.

345. *Id.* at 43.

346. *See* Overall, *supra* note 162, at 719.

347. *See* LAURIE SHRAGE, MORAL DILEMMAS OF FEMINISM: PROSTITUTION, ADULTERY, AND ABORTION 91 (1994).

348. *See id.* at 92.

349. *See* Overall, *supra* note 162, at 716-17.

350. *See* SHRAGE, *supra* note 347, at 93.

tween husband and wife, or boyfriend and girlfriend, it may be considered pleasure and not work.³⁵¹ However, this same analysis exists for non-sex work.³⁵² For the female chef who engages in cooking on a personal basis is no longer involved in work, but rather in an activity of interest or a hobby. From this view, prostitution is no different from non-sex work in any respect. Overall's attempt to present a bright line distinction between prostitution and other forms of labor only continues to marginalize prostitution's existence.

Overall's final argument that prostitution within a system of patriarchy and capitalism, involves customers privileged by gender, race, age, and class and prostitutes disadvantaged by gender, race, age and class is an oversimplified analysis.³⁵³ Her argument overlooks the situation of the customer disadvantaged by race and class but advantaged by gender (Black, working class, male), seeking the services of the prostitute privileged by race and class, but disadvantaged by gender (White, bourgeois, female).³⁵⁴ For example, Luise White states that in colonial Nairobi, "prostitutes were not proletarians. Malaya prostitutes were petty-bourgeois women who actively controlled profit-generating enterprises—the sale of sexuality, the sale of domestic skills, the rental of rooms, or all three—for which they provided the labor."³⁵⁵ Her analysis further ignores situations where both the prostitute and the client, are from the same economic, racial, or class backgrounds.³⁵⁶ Therefore, if one identifies prostitution as entirely classist, sexist, or racist, the above situations would be non-existent.

Overall also acknowledges the reality that non-sex work can be equally sexist, however her analysis makes no indication whether it can also be equally racist, classist, and ageist.³⁵⁷ Her overgeneralized argument dismisses the fact that some forms of labor continually exist on very racist, classist, or ageist misconceptions. For example, the modeling industry routinely discards more mature models in order to re-

place them with individuals whose physical looks mimic that of the prepubescent child. The fashion industry also feeds on racial stereotypes by perpetuating the standard for beauty as a white face, with blue eyes and blond hair. Lastly, the modeling industry is classist because the labor of wishful females is exploited by power hungry executives who bottle their innocence to sell on the open market.

3. Liberal Feminist Approach

The liberal feminist theory is based on a traditional liberal ideology that assumes all individuals are autonomous and individualistic beings.³⁵⁸ Traditional liberal principles committed to individual autonomy and minimal state interference in the private arena provide liberal feminism with the very foundation upon which their theories and ideologies on prostitution are based.³⁵⁹ The right and freedom of choice among various options, including the right and freedom to prostitute oneself, becomes the quintessential ingredient for the liberal feminist approach to prostitution.³⁶⁰

Working from a model of formal equality, the liberal feminist argues that men and women are essentially the same and should not be treated differently.³⁶¹ The present laws and social policies prohibiting prostitution, discriminate against women by emphasizing an assumption of difference between men and women.³⁶² The liberal feminist argues that complete eradication of these legal constraints would rightfully level the playing field, so that men and women could compete equally and not fear criminal sanctions.³⁶³ Thus, in relation to prostitution, both men and women would be free to choose whether to use their bodies in a way that brings both money and sexual satisfaction.³⁶⁴

For the liberal feminist, prostitution does not symbolize the degradation of women, or male dominance over women, but rather represents a positive step towards empowering women personally and nurturing their path to eco-

351. *See id.* at 94.

352. *See id.* at 93.

353. *See Overall, supra* note 162, at 717.

354. *See SHRAGE, supra* note 347, at 92.

355. *Id.* (quoting LUISE WHITE, *THE COMFORTS OF HOME: PROSTITUTION IN COLONIAL NAIROBI* 175 (1990)).

356. *See id.* at 92.

357. *See Overall, supra* note 162, at 717.

358. *See Freeman, supra* note 302, at 86.

359. *See id.*

360. *See id.* at 87.

361. *See Fechner, supra* note 277, at 30.

362. *See Cooper, supra* note 84, at 109.

363. *See Freeman, supra* note 302, at 87.

364. *See id.* at 88.

conomic independence.³⁶⁵ Recognition of prostitution as a liberating and empowering force, allows women to break down the social barriers that have restricted expression of their sexuality and reconstruct a definition of self that reflects their reality.³⁶⁶

In contrast to the other feminist theories, the liberal feminists do not put forth an assumption as to why some women enter into prostitution. They do, however, argue that women should be free to choose prostitution as an option, and society should respect their choice.³⁶⁷ Proponents for this approach argue that prostitution could be individually liberating for women who decide to practice it as a career.³⁶⁸ One argument suggests that the option to engage in prostitution represents both a personal and sexually liberating experience for women.³⁶⁹ Many prostitutes are independent business women who enjoy the flexibility of their work.³⁷⁰ The personal satisfaction of being their own boss allows women to choose when they work, the type of clientele they service, and how much money they will make.³⁷¹

Recognizing prostitution as a choice allows women the opportunity to define for themselves what is in their best interest. It acknowledges the reality that women are independent beings capable of making well-informed, conscious decisions, which affect their own lives and personal interests.³⁷² No one should be forced to prostitute themselves any more than they should be forced to work as a lawyer or a doctor.³⁷³ But the choice to do either should not be dictated by the standards of the moral majority.³⁷⁴ For the liberal feminist, the decision to prostitute must be a private choice made by the individual.³⁷⁵ To grant the government arbitrary discretion to interfere whenever they

deem appropriate, suggests that women as a group need protection because they are unable to take care of themselves and distinguish harmful activities from harmless activities.³⁷⁶

Prostitution may also function as a sexually liberating experience for women.³⁷⁷ The liberal feminists recognize that throughout history, sex has been used to control women.³⁷⁸ The power of women's sexuality was feared and repressed.³⁷⁹ Prostitution gives women the opportunity to reclaim their sexuality by allowing them to dictate how they use their bodies and with whom they choose to share their bodies.³⁸⁰ Some liberals have even argued that this awakening of sexuality women experience in prostitution has also allowed them to discover the pleasures and sensuality of their own bodies.³⁸¹ Sex worker, Veronica Monét noted that "[s]ex work has been empowering and liberating for me I have been able to reclaim my sexuality by becoming aware of my bisexuality and becoming multiply orgasmic (I use [sic] to be nonorgasmic)."³⁸²

The liberal feminist asserts that prostitution allows women to maintain a distinguishable division between love and sex.³⁸³ This division between the public/private or fantasy/reality, helps to maintain important boundaries.³⁸⁴ This division permits women to "enjoy erotic pleasures without the emotional restrictions most women wrestle with."³⁸⁵ Western culture promotes a double standard that on the one hand, denies women avenues to express their sexuality freely, while on the other, encourages men to explore and enjoy all aspects of their sexuality.³⁸⁶ This double standard will continue until feminists, pro-prostitute organizations, and sex workers firmly unite and claim the privilege of their sexuality.³⁸⁷

365. See Clements, *supra* note 231, at 57.

366. See *id.*

367. See Cooper, *supra* note 84, at 109.

368. See *id.*

369. See Fechner, *supra* note 277, at 40.

370. See *id.*

371. See *id.*

372. See Freeman, *supra* note 302, at 90.

373. See *Realistic Feminists*, in *GOOD GIRLS/BAD GIRLS: SEX TRADE WORKERS AND FEMINISTS FACE TO FACE* 207 (Laurie Bell ed., 1987).

374. See *id.* at 204, 207.

375. See Cooper, *supra* note 84, at 109.

376. See *id.*

377. See Fechner, *supra* note 277, at 40.

378. See Jill Nagle, *First Ladies of Feminist Porn: A Conversation with Candida Royalle and Debi Sundahl*, in *WHORES AND OTHER FEMINISTS*, *supra* note 217, at 161.

379. See *id.* at 161.

380. See Fechner, *supra* note 277, at 40.

381. See Veronica Monet, *Sedition*, in *WHORES AND OTHER FEMINISTS*, *supra* note 217, at 221.

382. *Id.*

383. See Teri Goodson, *A Prostitute Joins NOW*, in *WHORES AND OTHER FEMINISTS*, *supra* note 217, at 251.

384. See *id.*

385. *Id.*

386. See *id.* at 250-51.

387. See *id.* at 251.

Another liberal feminist argument, suggests that prostitution provides women with a particular level of economic independence.³⁸⁸ This financial independence has given women the option not to live a life of poverty. They are able to provide themselves and their family with benefits that may not have been available to them had they been employed in a low-paying job. This may include health insurance, retirement savings plan, investments, and a financially plush nest egg to fall back on in case of an emergency. In opposition to the socialist feminist perspective, the liberal feminist would argue that economic need is not the sole driving force that sustains prostitution's existence.³⁸⁹ Liberal feminists clearly acknowledge, however, that women's labor is devalued as a whole, and the choice of prostitution allows women to enjoy a financial independence comparable to men.³⁹⁰ According to Simone de Beauvoir, "in a world where misery and unemployment prevail, there will be people to enter any profession that is open It is often asked: why does she choose it [prostitution]? The question is, rather: why has she not chosen it?"³⁹¹

The pro-prostitution, liberal feminist organization The Red Thread advocates for the recognition of prostitution as work.³⁹² Similar to any other profession, the organization argues that prostitution deserves the same rights and protections afforded other workers.³⁹³ These rights would include the ability to organize unions, provide health and disability insurance to all prostitutes, and have more control over their work environment.³⁹⁴ The only true difference between prostitution and other forms of labor is that prostitution "happens to involve the sale of sexual services to men."³⁹⁵

Although the liberal feminist argues that the laws prohibiting prostitution discriminate against women and complete eradication of the laws should be encouraged, they recognize that some legal restrictions are necessary.³⁹⁶ In other words, while the choice to engage in prostitution should not be legally mandated, the

laws should be limited to control or regulate only where the act of prostitution causes harm.³⁹⁷ For example, laws that prohibit the use of violence or threat of harm to force an individual into the trade would be acceptable.³⁹⁸ As such, the liberal feminist advocates consensual sex between individuals as long as no one gets hurt in the process.³⁹⁹

On the whole, the liberal feminist approach to prostitution is the most acceptable form. This author believes that when society begins to recognize prostitution as work, much of the stigma associated with its existence will be dismantled. Any approach that rejects the belief that women are reduced to the status of victim whenever they choose to rally against societal norms is okay. This author applauds any ideology that attempts to empower women independently, economically, and sexually. However, this author does hesitate to assert blindly that *all* women engaged in prostitution will encounter the liberalized effect prostitution has to offer.

The author agrees that the freedom of choice is an essential element to individual autonomy.⁴⁰⁰ But the author also acknowledges that "choice," may not be as clear cut as it may seem. Outside factors such as economic status, education, or personal history, may have a hidden influence on the choices one makes. However, to erase the issue of choice or freedom of choice completely from feminist discourse on prostitution, assumes that women should only be dealt with as a social class, rather than as intelligent and unique individuals. If we demand acknowledgment of a woman's choice to say "no" to sex, it only makes sense that we should also demand acknowledgment of a woman's choice to say "yes" to sex if she chooses.

In a larger context, advocating support for the individual rights of prostitutes to engage in their chosen profession will ultimately translate to the support of rights and choices of *all* wo-

388. See Fechner, *supra* note 277, at 39-40.

389. See *id.* at 41.

390. See Clements, *supra* note 231, at 57.

391. Freeman, *supra* note 302, at 91 (quoting SIMONE DE BEAUVOIR, *THE SECOND SEX*, 542-25 (H.M. Parshely ed. & trans., 1952)).

392. See Fechner, *supra* note 277, at 38.

393. See *id.*

394. See *id.* at 38-39.

395. Hauge, *supra* note 229, at 34.

396. See Cooper, *supra* note 84, at 109.

397. See *id.*

398. See *id.*

399. See *id.*

400. See Cooper, *supra* note 84, at 109.

men outside the realm of prostitution.⁴⁰¹ This may include the right or choice to have an abortion or the free right or choice not to participate in the institution of marriage. To stress the importance of this concept, "a choice for the prostitute, is a choice for all women," pro-prostitute activists carry signs and wear T-shirts with the slogan, "good girls go to heaven; bad girls go everywhere."⁴⁰² When we recognize prostitution as one of many choices available to women, we maximize women's opportunity to make informed decisions that will in turn affect them socially, economically, and politically.

IV. LEGAL MODELS OF CONTROL

From country to country, the issue of prostitution has been a source of heated debate and controversy. Central to each discussion is the million dollar question, "what should be done?" Throughout its existence, societies have either condoned, prohibited, or tolerated prostitution.⁴⁰³ However, despite the chosen method of control, prostitution has continually flourished.⁴⁰⁴ When governments and lawmakers ponder how best to deal with prostitution in their country or state, three proposed models of control are utilized as starting points: criminalization, legalization, and decriminalization.⁴⁰⁵ Each model is distinguishable from the other based on the amount of government control involved.⁴⁰⁶

In most of the United States, a system of criminalization is enforced by the government and law enforcement.⁴⁰⁷ However, this system of control has become very problematic. Excessive costs, wasteful use of resources, and vilification of the female prostitute have deemed criminalization ineffective to deal with the issue of prostitution.⁴⁰⁸ An alternative system of legalization exists in Nevada, but the restrictions

and conditions resemble that of the modern day female slave.⁴⁰⁹ The last model is referred to as decriminalization. Arguably the most appropriate form of control, decriminalization attempts to erase the "us" versus "them" dichotomy and treat prostitution as a legitimate profession.

A. Criminalization

The criminalization of prostitution makes the act itself as well as all activities associated with prostitution illegal.⁴¹⁰ This would include public solicitation, pimping, living off the avails of prostitution, and the trafficking of women for the sale of sex.⁴¹¹ In New York, the act of prostitution is considered a class B misdemeanor.⁴¹² The act of patronizing a prostitute for sexual services is also a criminal offense of varying degrees, depending on the age of the prostitute.⁴¹³ As the age of the prostitute decreases, the penalties increase in severity.⁴¹⁴

Arguments in favor of criminalization echo those put forth by the conservative moral approach.⁴¹⁵ Similar to the moral view, proponents for criminalization argue that prostitution should remain illegal because it is immoral and connected with other criminal activity.⁴¹⁶ The immorality argument is based on the view that the law should not condone any immoral practice or behavior.⁴¹⁷ Any support of prostitution is believed to grant a license permitting the individual to have sexual intercourse outside of marriage.⁴¹⁸

The notion of a shared public morality is not as widely accepted as those in favor of criminalization would have society believe.⁴¹⁹ Studies in various American cities have indicated that a growing number of Americans disagree with the present criminalized status of prostitution.⁴²⁰ Acknowledging that criminalization has been ineffective in reducing or elimi-

401. See *Sex Trade Workers and Feminists: Myths and Illusions*, in *GOOD GIRLS/BAD GIRLS*, *supra* note 373, at 202.

402. INE VANWESENBEECK, *PROSTITUTES' WELL-BEING AND RISK* 8 (1994).

403. See Drexler, *supra* note 264, at 201.

404. See *id.*

405. See Carlin Meyer, *Decriminalizing Prostitution: Liberation or Dehumanization?* 1 *CARDZO WOMEN'S L.J.* 105, 105 (1993).

406. See *id.*

407. See *id.* at 203.

408. See Drexler, *supra* note 264, at 202.

409. See Alexander, *supra* note 100, at 210.

410. See Drexler, *supra* note 264, at 205-06.

411. See Meyer, *supra* note 405, at 105.

412. See N.Y. PENAL LAW § 230.00 (McKinney 1999).

413. See *id.*

414. See §§ 230.00-.06.

415. See Cooper, *supra* note 84, at 99.

416. See Drexler, *supra* note 264, at 206. See *infra* Part III.A.

417. See *id.*

418. See *id.*

419. See Cooper, *supra* note 84, at 104.

420. See *id.*

nating prostitution as a whole, Americans tend to favor a regulated or licensed form of prostitution control as more appropriate.⁴²¹ For example, a 1980 survey of 15,000 people found that 43% favored decriminalization of everything except pimping, and 75% thought there was a better way to deal with prostitution than criminalization.⁴²² Another poll taken in Boston showed that "only 14% of those surveyed, believed prostitution to be immoral, 50% of Californians thought prostitution was a good idea, and 69% of the 15,000 respondents in a survey by a California Assembly favored legalization."⁴²³

Those in favor of maintaining prostitution's illegality argue that various criminal activities are inherently connected to prostitution.⁴²⁴ Drug activity, organized crime, illegal corruption of police officers are considered a natural offspring of prostitution.⁴²⁵ Additionally, the clients are also subjected to victimization by prostitutes.⁴²⁶ Referred to as "rolling," prostitutes will either drug their clients, steal from them or assault them, instead of providing the agreed upon sexual services.⁴²⁷ While there is some truth to this, rolling is not an everyday occurrence.⁴²⁸

As previously mentioned, the argument that police officers are the victims of bribery and corruption at the hands of prostitutes, is clearly mistaken. Prostitutes are often victims of assault, battery, and rape at the hands of the officers, clients, or pimps.⁴²⁹ This line of argument assumes that there is an equal balance of power between the police and prostitute,⁴³⁰ which supposedly provides the prostitute with the bargaining power needed to banter with the officer for her freedom. This assumption is an erroneous one. When prostitutes are robbed or

beaten, they often do not seek justice from the legal system because they feel unprotected.⁴³¹ This increases the vulnerability of prostitutes, driving them to work underground in order to avoid detection from the police.⁴³² For that reason, prostitution often takes place in "unsafe and secluded areas where prostitutes are forced to rely on pimps to protect them from customer and police harassment."⁴³³

At the 1986 Second World Whores' Congress in Brussels, former Los Angeles police officer turned prostitute, Norma Jean Amodovar, passionately discussed the issue of police violence against prostitutes based on her personal experience on both sides of the fence.⁴³⁴ She vividly notes "[p]olicemen force prostitutes to have sex with them before arrest. We call that rape! Women who dare to tell on the police and try to get them fired are often found murdered. If they are not murdered, sometimes their children are taken away. We want these things stopped."⁴³⁵ In essence, although pro-criminalization is intended to protect prostitutes from exploitation, the very structure of criminalization actually guarantees that exploitation will take place.

A significant argument opposing criminalization of prostitution, involves the social costs and legal resources used to enforce continued criminalization.⁴³⁶ This system of criminalizing prostitution has proven to be very expensive and ineffective in eliminating prostitution itself.⁴³⁷ A 1985 study of sixteen of the nation's largest cities found that each state had spent an average of approximately \$7.5 million to enforce the laws against prostitution.⁴³⁸ For some cities this expenditure was more than what was spent for education or public welfare.⁴³⁹ For other cities, this amount embarrassingly ex-

421. DECKER, *supra* note 4, at 449.

422. Cooper, *supra* note 84, at 104 n.30 (citing R. Syman-ski, *The Immoral Landscape: Female Prostitution in Western Societies* (1981)).

423. Drexler, *supra* note 264, at 210 n.86 (citing Linda M. Rio, *Psychological and Sociological Research and the Decriminalization or Legalization of Prostitution*, ARCHIVES SEXUAL BEHAV., 205, 207-08 (1991)).

424. *See id.* at 208.

425. *See id.*

426. *See id.* at 209.

427. *See* DECKER, *supra* note 4, at 331.

428. *See id.*

429. *See* Alexander, *supra* note 100, at 201; *infra* Part III.A.

430. *See* Alexander, *supra* note 100, at 201.

431. *See* Hauge, *supra* note 229, at 30.

432. *See id.*

433. *See id.*

434. *See* Pheterson, *supra* note 240, at 81.

435. *Id.*

436. *See* Michael Conant, *Federalism, The Mann Act, and the Imperative to Decriminalize Prostitution*, 5 CORNELL J.L. & PUB. POL'Y 105 (1996).

437. *See id.* at 105.

438. *See* Julie Pearl, *The Highest Paying Customers: America's Cities and the Costs of Prostitution Controls*, 38 HASTINGS L.J. 769, 772 (1987).

439. *See id.*

ceeded the amount spent on all health services and hospitals in 1982.⁴⁴⁰

New York City alone spent \$2.3 million to enforce prostitution laws in 1985.⁴⁴¹ With that amount, “the city could have purchased the entire 1982 police departments of Toledo, Tampa, Rochester, or St. Paul, or the fire departments of Atlanta, Honolulu, Indianapolis, Miami, or St. Louis.”⁴⁴² This study clearly demonstrates how a system of criminalization wastes large amounts of funds and police manpower. These same funds could be put to use for protection from more serious crimes, towards the implementation of social services for members of the community, or provide rehabilitation services or job training to help prostitutes get off the streets.

Additionally, under a system of criminalization, racism tends to fuel the reasoning why poor women of color are often the most penalized prostitutes.⁴⁴³ As noted earlier, 85% of the prostitutes sentenced to jail are women of color.⁴⁴⁴ Studies have indicated that Black women are seven times more likely to be arrested for prostitution than non-Black prostitutes.⁴⁴⁵ One New York study found that the reason for the disproportionate number of arrests of women of color was due to the racial bias of white police officers.⁴⁴⁶ The study suggested that the police were actually more active in white neighborhoods where white prostitutes were working than in predominantly minority neighborhoods where women of color worked.⁴⁴⁷ Therefore, police went out of their way to arrest prostitutes who were women of color. In Las Vegas, Nevada, where prostitution is illegal, the number of arrests of Black prostitutes was also disproportionately high compared to non-Black prostitutes.⁴⁴⁸ Priscilla Alexander noted that “[e]legant prostitutes who look like the stereotype of a Las Vegas showgirl are allowed to work with impunity, so long as they don’t draw customers away from the gambling tables.

Black prostitutes, however, are not allowed to work in the casinos and hotels.”⁴⁴⁹

The consequences of criminalization are not limited to physical harm.⁴⁵⁰ Once prostitutes are arrested by the police, they will more than likely receive a criminal record.⁴⁵¹ “Since a criminal record makes it extremely difficult to obtain any form of legal employment, it ensures that a prostitute will have few economic options other than prostitution.”⁴⁵² Therefore, criminalization is no more than a senseless, circular solution that actually helps perpetuate the very activity it wishes to eliminate.

The criminalization of prostitution is the ultimate form of social control over women.⁴⁵³ Support for this system of control is implicit support for control over women’s sexuality and other aspects of their bodies, such as reproduction, contraception, and the like.⁴⁵⁴ If antiprostitution advocates wish to eliminate prostitution and its associated problems, criminalization is not the answer. This method of control has only managed to suppress prostitution’s visibility and force it into hiding; away from public view. Enforcing the laws of criminalization is costly, taking officers away from controlling more serious crimes, and encouraging violence and racist treatment toward a particular group of women.⁴⁵⁵ Criminalization not only fails to curtail prostitution, it encourages the vilification of prostitutes who have voluntarily chosen prostitution as a career. Criminalization of voluntary, adult prostitution has achieved only one true success, it has single-handedly created a vicious merry-go-round of inefficiency and harm.

B. Legalization

The legalization of prostitution involves removing restrictions against prostitution, but allows for various regulatory schemes such as licensing, registration, and mandatory health

440. *See id.*

441. *See id.* at 780.

442. *Id.*

443. *See Alexander, supra* note 100, at 197.

444. *See id.*; *infra* Part II.A.

445. *See Drexler, supra* note 264, at 215.

446. *See Alexander, supra* note 100, at 197 (citing BERNARD COHEN, *DEVIAN STREET NETWORKS: PROSTITUTION IN NEW YORK CITY* (1980)).

447. *See id.*

448. *See id.*

449. *Id.*

450. *See Sylvia Davis, Prostitution in Canada: The Invisible Menace or the Menace of Invisibility* (visited Apr. 6, 2000) <<http://www.walnet.org/csis/papers/sdavis.html>>.

451. *See id.*

452. *Id.*

453. *See Meyer, supra* note 405, at 108.

454. *See id.*

455. *See Drexler, supra* note 264, at 212, 215.

checks.⁴⁵⁶ Under this system of control, whatever form of prostitution is legalized leaves all other forms of prostitution illegal and subject to penalties.⁴⁵⁷ Therefore, if the government has only permitted brothel prostitution to be legalized, independent prostitution, escort services, and massages parlors, for example, would be considered illegal.⁴⁵⁸

Presently, Nevada is the only U.S. state to practice a system of control under a model of legalization.⁴⁵⁹ Although prostitution remains illegal in most of Nevada, individual counties are able to decide whether to permit brothel prostitution in their respective counties.⁴⁶⁰ Of the seventeen counties in Nevada, four of its largest cities prohibit the practice of prostitution, this includes Las Vegas and Reno.⁴⁶¹ However, brothels located outside or near the cities of Reno and Las Vegas are the busiest and most profitable establishments.⁴⁶² Six counties ban prostitution in the unincorporated areas, and seven permit prostitution in their counties.⁴⁶³

Nevada's system of legalization requires strict adherence to specific regulations set by the government. Under Nevada's statute, the government is permitted to prohibit the licensing of brothels located in counties with a population of 400,000 or more.⁴⁶⁴ The statute also makes it illegal to operate a brothel or house of "ill fame," within 400 yards of a school or religious structure, such as a church.⁴⁶⁵ Although prostitution may be legal in some counties, an individual is guilty of a criminal misdemeanor if he or she engages in prostitution or solicitation outside a licensed brothel.⁴⁶⁶

Proponents for the legalization of prostitution often cite the mandatory health checks as one of the major benefits associated with a system of legalization.⁴⁶⁷ This system of control is aimed at preventing the spread of sexually

transmitted diseases, especially AIDS. Similar to the statute, the Nevada Administrative Code has a number of regulations that prostitutes are required to follow.⁴⁶⁸ For example, the Code requires that any person in search of employment as a prostitute in a licensed brothel must submit to various tests for HIV, syphilis, gonorrhea, and chlamydia.⁴⁶⁹ Once employed, they have to agree to monthly HIV and syphilis tests and weekly tests for gonorrhea and chlamydia.⁴⁷⁰ The Code mandates that an employed prostitute of a licensed brothel insist that customers use condoms before engaging in sexual intercourse or sexual contact.⁴⁷¹ Furthermore, the Code requires that persons operating a licensed brothel post health notices and report any known communicable diseases to the necessary health authorities.⁴⁷²

Under the Nevada Revised Statute, any person who continues to engage in prostitution or solicitation after testing positive for HIV, is guilty of a class B felony, punishable by a two- to ten-year prison sentence and/or a \$10,000 fine.⁴⁷³ As a result of the strict health regulations, the rate of infection from AIDS and STDs for legal prostitutes in Nevada is zero.⁴⁷⁴ Of 41,000 tests taken of 350 legal prostitutes, only one returned positive, and that was later found to be negative.⁴⁷⁵ An additional benefit under the Nevada system of legalization is the low incidence of crime committed against prostitutes. Prostitutes who work on the streets in Nevada are more vulnerable to violence than brothel prostitutes who are protected by management and the presence of other females.⁴⁷⁶

Although a system of legalization appears to be a viable alternative to criminalization, legalization is very problematic on its own. Opponents to legalization argue that it represents the ultimate form of control over women's bodies and sexuality.⁴⁷⁷ While the typical "pimp-

456. See Freeman, *supra* note 302, at 77.

457. See Alexander, *supra* note 100, at 210.

458. See *id.*

459. See Nicole Bingham, *Nevada Sex Trade: A Gamble For The Workers*, 10 YALE J.L. & FEMINISM 69, 69 (1998).

460. See *id.* at 87.

461. See *id.* at 86.

462. See *id.*

463. See *id.* at 88.

464. See NEV. REV. STAT. § 244.345 (1997).

465. NEV. REV. STAT. § 201.380 (1997).

466. See NEV. REV. STAT. § 201.354 (1997).

467. See *e.g.*, Meyer, *supra* note 405, at 107.

468. See *e.g.*, NEV. ADMIN. CODE ch. 441A, §§ 800, 805 (1998).

469. See NEV. ADMIN. CODE ch. 441A, § 800 (1998).

470. See NEV. ADMIN. CODE ch. 441A, § 800 (1998).

471. See NEV. ADMIN. CODE ch. 441A, § 805 (1998).

472. See NEV. ADMIN. CODE ch. 441A, §§ 810, 815 (1998).

473. See NEV. REV. STAT. § 201.358 (1997).

474. See Drexler, *supra* note 264, at 228.

475. See *id.*

476. See *id.* at 230.

477. See Meyer, *supra* note 405, at 107.

prostitute" relationship is seemingly non-existent, the government's tight control over prostitution, creates a situation where the government may be considered the pimp.⁴⁷⁸ Similar to the traditional pimp, the government controls with whom, when, and where the prostitute engages in prostitution through a rigid series of time, place, and manner restrictions.⁴⁷⁹

Instead of providing women with a degree of control and personal autonomy over their lives, the system of legalization ensures that prostitutes have no input over their lives and livelihood. This lack of choice and control, leaves women fully dependent on the government for every aspect of their work.⁴⁸⁰ Once a prostitute is licensed to work in the legal brothel, she automatically gives up her freedom to choose who her customers are, when to work, and how much she will receive for her services.⁴⁸¹ A brothel prostitute typically works fourteen hour shifts, everyday, for a three-week period.⁴⁸² During that time, a brothel prostitute may see at least ten to fifteen men a day.⁴⁸³ Prostitutes have no control over the clients they see so they have no right to refuse or deny a customer service, unless the customer is aggressive and abusive.⁴⁸⁴ Legal brothel prostitutes may generate a decent income from their work, however, they must split their earnings with management and are expected to pay for expenses, such as room and board, condoms, maid services, and a portion of weekly venereal disease checkups.⁴⁸⁵ Additionally, prostitutes' movements outside of the brothel are strictly controlled.⁴⁸⁶ Once licensed, the female prostitute may not live in the same area that she works, socialize outside the brothel, or vacation in the same area.⁴⁸⁷ On the whole, prostitutes are forbidden to leave the brothels except to go to a doctor's appointment or the beauty salon.⁴⁸⁸

The mandatory health checks have been influential in reducing the rate of STDs and AIDS in prostitution.⁴⁸⁹ However, the mandatory health controls do little to protect the prostitute from infected clients who are either unaware they are infected or aware and continue to visit legal brothels.⁴⁹⁰ Once the prostitute tests positive for a disease such as AIDS, she is forced to give up her only means of income, with no chance of receiving disability or unemployment insurance to compensate her for her loss.⁴⁹¹ Additionally, mandatory health care may present some problems regarding the right to refuse medical treatment when prostitutes are forced to undergo medical examinations.⁴⁹²

Lastly, the legalization of prostitution through a system of licensing and registration stigmatizes prostitutes as a group of women in need of regulation and control.⁴⁹³ Although prostitutes are no longer stigmatized as criminals, under a system of criminalization, they are stigmatized as "bad girls."⁴⁹⁴ The system of legalization perpetuates the ideology of the whore/ madonna dichotomy by emphasizing that whores are the source of diseases and licensing is the only way to control their behavior.⁴⁹⁵ Alternatively, the madonna is the pure, good girl, who unlike the "other" woman, does not have to be controlled by strict regulations. Arguably, there is a fine line between the whore/madonna which can easily be crossed by not only selling sex, but by giving it away improperly through adultery or promiscuity.⁴⁹⁶ This forced stigmatization may cause some prostitutes to work illegally, for fear that registration and licensing may make their identity known.⁴⁹⁷ Under this scheme of control, the prostitute is not granted the same rights of privacy afforded to the clients who enter the brothels.⁴⁹⁸ Clients who seek the service of a brothel prostitute do not face registration or

478. See Bingham, *supra* note 459, at 93.

479. See *id.* at 93-94.

480. See *id.* at 93.

481. See *id.* at 94.

482. See Alexander, *supra* note 100, at 210.

483. See *id.*

484. See *id.*

485. See Bingham, *supra* note 459, at 94.

486. See Alexander, *supra* note 100, at 210.

487. See Meyer, *supra* note 405, at 107.

488. See *id.*

489. See Drexler, *supra* note 264, at 228-29.

490. See Bingham, *supra* note 459, at 90.

491. See Clements, *supra* note 231, at 89.

492. See *id.* at 88.

493. See Meyer, *supra* note 405, at 108-10.

494. See *id.* at 108.

495. See Cooper, *supra* note 84, at 102.

496. See *id.*

497. See Bingham, *supra* note 459, at 94.

498. See *id.* at 95.

risk friends and family finding out about their activities without their knowledge.⁴⁹⁹ Had clients been forced to register before visiting a brothel, one is left to wonder, how many, if any, would continue to frequent brothels under such strict conditions?

At first glance, the system of legalization appears to be the best model of control, for allowing women the freedom to practice prostitution if they choose. However, a closer examination shows that legalization does not promote freedom or choice in prostitution, but rather eliminates all freedom associated with the choice of prostitution. In some ways, the legalized system of control is more exploitative and criminal than the criminalized model of prostitution control. Under legalization, women are not given any options. Either they work within the strict regulations that dictate their behavior and activities, or work outside of the law and risk potential violence and arrest. Although brothel prostitutes may make a decent living, they enjoy less freedom than the average worker at a fast-food restaurant.⁵⁰⁰ In some ways, the worker at a fast-food establishment may actually fare better than the brothel prostitute because that worker is not subjected to mandatory weekly and monthly health examinations, and is free to walk and travel where she pleases.⁵⁰¹ More importantly, if she loses her job or is unable to work, unemployment, disability insurance, and other social benefits are available for her protection. The system of legalization is a form of modern day slavery—created, operated, and condoned by the government, in order to control women's sexuality.⁵⁰² In essence, the legalized prostitute is the most exploited worker under a system of capitalism. She is forced to work for the "master," with no questions asked. This legalized system of imprisonment is carefully structured so the prostitute does all the work and receives none of the benefits. The system of legalization forces us to question who truly benefits from the laws of legalization?

C. Decriminalization

The decriminalization of prostitution involves the removal of all existing criminal laws and regulations regarding voluntary prostitution between consenting adults.⁵⁰³ Voluntary relationships between prostitutes and their managers (pimps) will also be free from criminal regulations and sanctions.⁵⁰⁴ Under decriminalization, no new legislation will be implemented specifically directed at prostitution, instead, prostitution will be subject to the same civil, business, and professional codes of conduct that cover all legal businesses.⁵⁰⁵ Presently, no system of decriminalization exists anywhere in the United States.

Unlike the United States, most European nations do not prohibit the entire practice of prostitution.⁵⁰⁶ Countries such as Sweden, France, and Belgium recognize prostitution as a legal activity.⁵⁰⁷ Similarly, the Netherlands has accepted prostitution as a legitimate profession under a system of decriminalization.⁵⁰⁸ Known for having the least repressive laws on prostitution, the authorities in the Netherlands tolerate the brothels and escort services.⁵⁰⁹ Although the government does not actively interfere with the practice of prostitution, per se, it does control illegal activities associated with it.⁵¹⁰ Section 250b of the Dutch Penal Code, currently prohibits "certain prostitution-related activities such as pimping, facilitating prostitutes, and running prostitution enterprises."⁵¹¹ Under a system of decriminalization, prostitutes are given their independence to work freely in their chosen profession.⁵¹² "Any laws concerning prostitution focus on monitoring safe working conditions and protecting the women from abuse and crime."⁵¹³

The majority of prostitution activities takes place in Amsterdam and Utrecht.⁵¹⁴ Amsterdam's policy tolerates existing prostitution

499. See Clements, *supra* note 231, at 88.

500. See Bingham, *supra* note 459, at 96.

501. See *id.*

502. See Meyer, *supra* note 405, at 107.

503. See Alexander, *supra* note 100, at 209.

504. See *id.*

505. See *id.*

506. See Drexler, *supra* note 264, at 202.

507. See VANWESENBEECK, *supra* note 402, at 3.

508. See Drexler, *supra* note 264, at 202.

509. See *id.* at 219-20.

510. See *id.* at 216.

511. *Id.* at 217.

512. See *id.* at 216.

513. See *id.* at 216-17.

514. See *id.* at 219.

houses, but prevents new ones from opening.⁵¹⁵ In Utrecht, a “zone of tolerance” exists where within a specified, separated area, prostitutes solicit men under the watchful protection of plainclothes police officers and other prostitutes.⁵¹⁶ Under this policy, “[w]hen a prostitute leaves with a customer, another will take note of the license plate number; if she is gone longer than usual, an authority will be notified.”⁵¹⁷

Decriminalizing the act of prostitution and all associated activities is directly aimed at empowering prostitutes to take control over their lives and their work conditions.⁵¹⁸ Prostitute’s lives are dependent upon healthy, safe, and economically viable work conditions. Protection alone is meaningless if prostitutes are continually denied the right to work, organize, and participate in social security programs.⁵¹⁹

Decriminalization will permit prostitutes to organize and form unions in order to voice their needs and concerns. As a professional union, prostitutes would be better able to fight for improved working conditions and even develop standard professional codes of ethics and behavior that regulate their occupation.⁵²⁰ Recognition as a legal activity would permit prostitutes to demand implementation of satisfactory health and safety standards, which would legally have to be followed by those who employ prostitutes.⁵²¹ Prostitutes would be able to request a leave of absence for illness and vacations when the stress of the job become too much to handle. Additionally, decriminalization would give prostitutes the opportunity to create and operate job-related training programs publicly for new prostitutes and refresher courses for the more experienced prostitute. Training in “self-defense, sexual techniques, money management . . . and the creation of mutual aid and support networks” would empower prostitutes with formal control over themselves and their environment.⁵²²

Presently, under a system of criminalization, prostitutes are unable to gain access to adequate health care or become eligible for workmen’s compensation or disability. If prostitutes are injured or become sick on the job, they have no insurance to compensate them while they are unable to work.⁵²³ However, under a model of decriminalization, recognizing prostitution as a legal profession would alter this grim reality.

From a health perspective, many benefits would develop from decriminalizing prostitution. Firstly, decriminalization would make private health insurance available to all prostitutes.⁵²⁴ Since prostitution would no longer be illegal, private insurers would be able to provide legal coverage to prostitutes who could afford it.⁵²⁵ Secondly, decriminalization would make employer-based health coverage available to prostitutes who were employed in brothels.⁵²⁶ Economic incentives or legal sanctions could mandate that employers provide health insurance to their employees at affordable rates.⁵²⁷ Lastly, eliminating the illegality of prostitution may allow prostitutes to have access to state sponsored health care coverage, such as Social Security Disability Insurance or worker’s compensation.⁵²⁸ If excess costs were a great concern, “[t]axing prostitutes’ income would generate additional revenue for the state, which may help to offset the ever-increasing cost of national health care.”⁵²⁹

As noted earlier, enforcing the laws against prostitution is costly and a waste of valuable resources and manpower.⁵³⁰ Increasing technology and advanced methods of communication have made the easy arrest of the streetwalker virtually obsolete.⁵³¹ In order to keep up, governments have to invest more time and money to enforce prostitution laws. According to the *New York Times*, “[t]he internet, pagers, cellular phones and subterfuges like escort services have enabled more discreet forms of prostitu-

515. *See id.* at 220.

516. *See id.* at 222-23.

517. *Id.* at 223.

518. *See Alexander, supra* note 100, at 210.

519. *See id.*

520. *See id.*

521. *See Highleyman, supra* note 217, at 149.

522. *Id.*

523. *See Pheterson, supra* note 240, at 114.

524. *See Clements, supra* note 231, at 87.

525. *See id.*

526. *See id.* at 88.

527. *See id.*

528. *See id.* at 87-89.

529. *Id.* at 89.

530. *See Pearl, supra* note 438, at 772; *infra* Part IV.A.

531. *See Meyer, supra* note 405, at 114.

tion to thrive beyond the reach of the street-level crackdown"⁵³²

A 1985 study of sixteen of the nation's largest cities, indicated that each city had spent approximately \$7.5 million to enforce prostitution laws.⁵³³ This came out to an estimated \$120 million spent for all sixteen cities combined.⁵³⁴ The study further detailed that police officers working in pairs, spent an average of twenty-one hours per prostitution arrest.⁵³⁵ This included the time necessary to,

- (1) obtain a solicitation from, and make an arrest of, a suspected prostitute or customer;
- (2) transport the arrestee to the police station or detention center;
- (3) complete fingerprinting and identification processes;
- (4) write and file a report; and
- (5) testify in court. This fifth duty absorbs the majority of each arresting officer's twenty-one hours.⁵³⁶

After spending all those hours on one arrest, it is not surprising that police costs account for 40% of all public funds.⁵³⁷ All sixteen of the cities studied, had spent a total of \$35,627,496 to prosecute women for prostitution and an estimated \$31,770,211 was spent on incarcerating prostitutes.⁵³⁸ In New York, prostitutes accounted for over 50% of the population in women's jails and in California they accounted for at least 30%.⁵³⁹ The reasoning behind these figures, is simply that prostitutes usually serve longer sentences than women convicted of other misdemeanors.⁵⁴⁰

It is clear that the costs and resources wasted on enforcing prostitution laws are ridiculous. The process of policing prostitution is an inherently lengthy and tedious one.⁵⁴¹ Decriminalization would allow costs and re-

sources used for prostitution enforcement to be transferred to enforce more pressing legal concerns.⁵⁴² Not only would this be a more efficient use of presently scarce resources and precious police manpower, the costs to local taxpayers would decrease tremendously, saving Americans millions.⁵⁴³

A final argument in favor of decriminalization involves the equal protection violations against women prosecuted for solicitation.⁵⁴⁴ Prostitutes and support organizations citing an equal protection violation, address the statutory discriminatory treatment as applied to clients, married couples, and prostitutes.⁵⁴⁵ Although many states have statutes that make illegal both the solicitation and the procurement of commercial sex, prostitutes often face unfair treatment under the law.⁵⁴⁶ This selective enforcement places a disproportionate blame on women for the problems of prostitution.⁵⁴⁷ Decriminalization would grant prostitutes a privacy right to engage in consensual commercial sex, thereby affording them legal protection and rights.⁵⁴⁸ However, the state courts have failed to recognize a privacy interest to engage in commercial sex.⁵⁴⁹ *Roe II v. Butterworth*, ruled that although the Florida statute did not deny adults the right to engage in consensual sex, there was no fundamentally protected right of privacy to engage in sex for money.⁵⁵⁰

Additionally, the state courts have refused to recognize any discriminatory treatment, regarding the ways the laws treat prostitutes as compared to married couples.⁵⁵¹ When a husband offers to pay his wife for sexual services, that transaction will be afforded constitutional protection. However, the exchange of monetary compensation for sex between unmarried, consenting adults, is prosecuted under the laws

532. Bernard E. Harcourt, *Reflecting On The Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 375 (1998) (citing K. R. Roame, *Prostitutes on Wane In New York Streets But Take To Internet*, N.Y. TIMES, Feb. 23, 1998, at A1).

533. See Pearl, *supra* note 438, at 772.

534. See *id.*

535. See *id.* at 773.

536. *Id.*

537. See *id.*

538. See *id.* at 779-80.

539. See *id.* at 779.

540. See *id.* at 778-80.

541. See Drexler, *supra* note 264, at 212.

542. See *id.*

543. See *id.* at 210.

544. See Alexandra Bongard Stremler, *Sex for Money and the Morning After: Listening to Women and the Feminist Voice in Prostitution Discourse*, 7 U. FLA. J.L. & PUB. POL'Y 189, 193 (1995).

545. See Cooper, *supra* note 84, at 108.

546. See Stremler, *supra* note 544, at 194.

547. See *id.*

548. See Cooper, *supra* note 84, at 108.

549. See *Roe II v. Butterworth*, 958 F. Supp. 1569, 1578-79 (S.D. Fla. 1997).

550. See *id.*

551. See Cooper, *supra* note 84 at 108.

of prostitution.⁵⁵² The court in *People v. Mason* ruled that states have a rational basis for discriminatory treatment between unmarried and married adults since there exists a heightened privacy interest for all marital relationships.⁵⁵³ Theorists in favor of prostitution argue that there is essentially no difference between the exchange of money for sex in a marriage or within a prostitute-client relationship.⁵⁵⁴ According to Simone de Beauvoir, “[f]or both [marriage and prostitution] the sexual act is a service; the one is hired for life by one man; the other has several clients who pay her by the piece.”⁵⁵⁵

The decriminalization of voluntary prostitution is not only the best alternative, it is the only alternative. Only within a system of decriminalization would prostitutes be free to demand the equal justice and representation under the law they so rightly deserve. Decriminalization would empower prostitutes with the ability to demand recognition of their work as labor worthy of receiving all the benefits and protections afforded to any other profession. When society allows prostitutes to organize and form support networks, it gives them a voice to shout out against any abuse and injustice. Decriminalization acknowledges that prostitutes are not the enemies, but rather a system that marginalizes their existence and defines them as criminals is the enemy.

To deny any individual access to satisfactory health care, fair wages, and a safe work environment is inhumane. Continued criminalization of prostitution justifies such inhumane treatment of prostitutes, under the pretext that “they” are different from “us.” The demand for decriminalization sends out a message that society will no longer support a system that arbitrarily selects who will be protected from abuse under the law and who will not. Decriminalization may not be the perfect solution to all the problems associated with prostitution, but it is the answer that makes the most sense.

CONCLUSION

If anything, what history has shown us is that the difficulty in totally eradicating prostitu-

tion from society rests in the fact that prostitution is a social reality that serves a necessary function in contemporary society. Prostitution is here to stay. Whether one defines it as a “necessary evil” or a “social reality,” prostitution has stood the test of time. Its presence is so deeply interwoven into our social fabric that prostitution has become as American as apple pie. If we ignore its existence, we leave a group of women vulnerable to continual abuse and discrimination. However, if we accept prostitution as being here to stay, we are better prepared to deal with whatever problems may arise.

Although this author firmly believes that decriminalizing prostitution is the best alternative, the author also recognizes that decriminalization may not solve all the problems associated with prostitution. Decriminalization will neither convince religious conservatives to change their moral views and embrace prostitution nor leave all prostitutes free from victimization and abuse. However, it is a start. Decriminalization is the first step toward narrowing the gap between “us” and “them,” and bringing prostitution from behind the veil of shame to the forefront.

The decriminalization of prostitution will allow women to climb out of the debilitating arms of poverty and attain economic freedom. Decriminalization will further reward women for making their own personal choices to be independent and sexually autonomous however they see fit. Decriminalization will not penalize women for making their own choices and defining their own reality outside of patriarchal constructs of woman.

Regardless of how one perceives prostitution morally, the fact remains that prostitutes, like all women, should be free to decide how to live their lives. To penalize a group of women based on how they choose to earn a living suggests that women as a group are unable to decipher for themselves what is in their best interest. If we truly value the concept of freedom of choice, then we cannot sit back silently and support laws that distinguish the good girls from the bad girls.

552. See *People v. Mason*, 642 P.2d 8, 11 (Colo. 1982).

553. See *id.* at 12-13.

554. See Laurie Shrage, *Should Feminist Oppose Prostitution?*, 99 ETHICS 347, 359 (1989).

555. *Id.*