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# Working Women: The Subterranean World of Street Prostitution

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## BOOK REVIEW

WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION. By Arlene Carmen & Howard Moody. New York: Harper & Row, 1985. Pp. 208. \$16.50.

Reviewed by The Honorable Kristin Booth Glen\*

Whether or not prostitution is the world's oldest profession, the authors of this fine new book remind us "it clearly is one of the most persistent and universal social issues in the history of both ancient and modern cultures."<sup>1</sup> For as long as there have been written laws, states have attempted to deal with prostitution in numerous ways<sup>2</sup>—through registration, regulation, geographic confinement or outright criminalization.<sup>3</sup> Among Western democracies and developed countries throughout the world, only the United States (excepting Nevada) maintains criminal sanctions against prostitution.<sup>4</sup> These anti-prostitution laws reflect the society in which they are made, and are indicative of the diverse social and political needs for control<sup>5</sup> as well as the

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1. CARMEN AND MOODY, *WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION 2* (1985) [hereinafter cited as *WORKING WOMEN*].

2. For a general history see, e.g., V. BULLOUGH, *THE HISTORY OF PROSTITUTION* (1964); G. SCOTT, *A HISTORY OF PROSTITUTION FROM ANTIQUITY TO THE PRESENT DAY* (1936). More recent and more politically oriented studies of particular state responses include J. WALKOWITZ, *PROSTITUTION AND VICTORIAN SOCIETY* [hereinafter cited as *WALKOWITZ*] (1980); J. HARSIN, *POLICING PROSTITUTION IN NINETEENTH CENTURY PARIS* (1985) [hereinafter cited as *POLICING PROSTITUTION*]; L.L. OTIS, *PROSTITUTION IN MEDIEVAL SOCIETY* (1985).

3. This was the approach of most Western societies until the Enlightenment, see, e.g., M. Gibson, *The State and Prostitution: Prohibition, Regulation or Decriminalization in HISTORY AND CRIME: IMPLICATIONS FOR CRIMINAL JUSTICE POLICY* (J. Inciardi & C. Faupel eds. 1980) [hereinafter cited as *The State and Prostitution*] primarily based on the Church's crusade against, and prosecution of, deviant sexuality. See also, J. Brundage, *Prostitution in the Medieval Canon Law*, *SIGNS* (1976).

4. See Rosenbleet & Pariente, *The Prostitution of the Criminal Law*, 11 *AM. CRIM. L. REV.* 373 (1973) for a review of the statutes concerning prostitution in all the states.

5. For example, Walkowitz sees the enactment of the Contagious Diseases Acts in the

strength of religious tradition over utilitarian or liberal concerns,<sup>6</sup> but they fail to incorporate the continuing modification of the role of women in society. These laws have, of course, been made almost overwhelmingly by men, and in the debates underlying legislation on prostitution we hear moral philosophers,<sup>7</sup> legal scholars,<sup>8</sup> judges, police and prosecutors,<sup>9</sup> but almost never the voices of prostitutes themselves.<sup>10</sup> Social scientists write about prostitutes,<sup>11</sup> historians and authors may even attempt to recreate their lives and social relations,<sup>12</sup> but the women who actually live "the life" are crucially absent from the debate. This book counteracts that deficiency and markedly enriches our understanding of the law's limited capacity to deal meaningfully and humanely with the "problem" of prostitution.

1860's as a response to the growing underclass created by industrialization and an opportunity to legitimize and constitutionalize surveillance of the potentially dangerous poor, at least as much as their stated purpose of limiting the spread of venereal disease among British troops during the Crimean War. WALKOWITZ, *supra* note 2.

6. For the former, see, *Prostitution in the Medieval Canon Law*, *supra* note 3; for the latter see, e.g., REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION, Cond. 247, HMSO, London (1957), reprinted 1968 (better known as the *Wolfenden Report*) and discussion in J. WEEKS, *SEX, POLITICS AND SOCIETY: THE REGULATION OF SEXUALITY SINCE 1800* (1981).

7. See, e.g., D. Richardson, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 U. PA. L. REV. 1195 (1979).

8. In addition to the numerous law review articles concerning prostitution, see the differing positions in definition taken by the American Law Institute. Compare MODEL PENAL CODE, § 251.2 (Proposed Official Draft 1962) with its Tentative Draft (1957), which contains the activities of women who might be described as "mistresses." The definition was narrowed in the Proposed Official Draft in favor of one involving only more indiscriminate commercial sexual activity.

9. See, e.g., the arguments for and against prostitution as summarized in decisions involving constitutional challenges to anti-prostitution laws, e.g., Commonwealth v. King, 274 Mass. 5, 372 N.E.2d 196 (1977); People v. Superior Court (Hartway), 19 Cal.3d 338, 562 P.2d 1315, 138 Cal. Rptr. 66 (1977); and Cherry v. Koch, No. 84-19016 (Kings Co. Sup. Ct. July, 1985).

10. Prostitutes have organized and spoken out in France, see, e.g., J. Coffin, *Artisans of the Sidewalk* in 26 RADICAL HISTORY REVIEW 89 (1982); PROSTITUTES: OUR LIFE (C. Jaget, ed. 1980); and to a lesser degree in England, *id.* at 205-16. There have been some similar attempts in the U.S., especially on the West Coast, with the organization of such groups as U.S. Prostitutes Collective (U.S. Pros.) and No Bad Women, Just Bad Laws. See, *Hookers Form Legal Co-op Against the Cops*, San Francisco Examiner, Mar. 17, 1984, at A3; Wall Street Journal, West Coast Ed., Mar. 28, 1984, at col. 1.

11. E.g., C. WINICK & P. KINSIE, *THE LIVELY COMMERCE* (1971); H. BENJAMIN & R.E.L. MASTERS, *PROSTITUTION AND MORALITY* (1964).

12. See, e.g., R. ROSEN, *THE LOST SISTERHOOD: PROSTITUTION IN AMERICA 1900-18* (1982); A.M. BUTLER, *DAUGHTERS OF JOY, SISTERS OF MISERY: PROSTITUTION IN THE AMERICAN WEST* (1985); POLICING PROSTITUTION, *supra* note 2.

The silencing of prostitutes' voices is not merely inequitable, it results in an almost complete distortion of the discussion. The role of untested assumptions—or to put it more bluntly, unexamined prejudices—in formulating the policy of continuing or increasing criminalization of prostitution<sup>13</sup> must not be underestimated. There are virtually no facts or data to test the unproven, but widely repeated assertions that prostitutes are the major transmitters of venereal disease,<sup>14</sup> that they are the helpless victims of vicious pimps who coerce them into the trade,<sup>15</sup> that prostitution is controlled by organized crime,<sup>16</sup> leads to other forms of crime, or threatens or destroys the family. Although these assumptions constitute the common justification

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13. Manhattan District Attorney Morgenthau is leading a fight in the New York Legislature to require, for the first time, mandatory imprisonment for second and subsequent prostitution offenses. Intro to S.5327, A.4476 (1984).

14. An even more pernicious variation on this is the allegation that prostitutes spread AIDS. The most current federal study estimates that less than five percent of all sexually-transmitted diseases flowing from women to men can be linked to prostitutes. Women as a group constitute approximately four percent of all known AIDS victims, although this percentage is consistent among prostitutes and non-prostitutes alike; the most common causal connections attributed to intravenous drug use and sexual contact with bisexual partners. Intravenous drug use, which is by no means peculiar to prostitutes, has been linked with manifestations of AIDS as early as the mid-1970's. Regardless of the overwhelming data targeting intravenous drug users as a significant high-risk group, those studies that have been conducted in an effort to draw a direct connection between prostitutes and AIDS-transmission have been non-scientific; that is, they have failed to segregate intravenous-drug users from the subject group of prostitutes.

Further, prostitutes generally require the use by customers of prophylactic aids, regardless of whether the sex involves direct genital contact, oral-genital contact or physical manipulations. A more controlled study presently in progress in the San Francisco area, reveals that only 27 cases of AIDS in men have been conclusively linked to female transmitters. As a practical matter, if prostitutes did indeed represent a crucial conduit of the AIDS virus, the geometric growth of AIDS transmission since the mid-1970's would have resulted in at least tens of thousands, perhaps hundreds of thousands of present victims who could trace exposure to prostitutes, much less women as an entire group. In addition, the weight accorded in previous studies to the testimony of purportedly heterosexual AIDS victims fails to account for gaps in the veracity of those who may desire to conceal either the use of drugs or homosexual activity. Unfortunately, these "studies," though factually deficient, are being used to disenfranchise prostitutes as a class.

15. In addition to media portrayals which dramatize this "explanation" of the choice of prostitution, the view of prostitutes as victims of male exploitation is held and propagated by women in the anti-pornography movement. See, e.g., N. Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 LAW AND INEQUALITY 609 (1984).

16. The only "evidence" usually cited for this proposition is the now clearly outdated report of a 1967 Presidential Commission, PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: ORGANIZED CRIME 4 (1967).

for the continuing criminalization of prostitution, they are merely pretensions to illustrate the subjective thoughts and environment of the prostitute. This book is an ambitious conduit through which the reader is afforded real life, empirical observation of how prostitution is actually practiced in the streets of New York City, the relationship of prostitutes to each other, to the straight world, their pimps and, perhaps most surprisingly to "straight" readers, their families and children.<sup>17</sup> Finally, the book's focus on the real conditions of real prostitutes' lives serves to expose a situation which is seldom discussed, yet which threatens the civil liberties of all women—prostitutes and non-prostitutes alike. The laws which have been passed to "clean up the streets" in New York, particularly Penal Law Sec. 240.37, the Ohrenstein-McCall bill prohibiting loitering for the purpose of prostitution,<sup>18</sup> create a peculiar symbiotic relationship between the police and the courts, which undermines both due process and fourth amendment protections by inviting harassment and the implementation of illegal enforcement procedures. Abstract, clinical discussions in favor of the law's constitutionality<sup>19</sup> weaken under the book's actual accounts of law enforcement tactics and procedures that are permitted and promoted by the ambiguity of the statute.

The authors are associated with Judson Memorial Church—Moody as pastor and Carmen as staff worker. The book opens with an account of their introduction to the Working Women, when the church initiated free medical and gynecological services for prostitutes in 1975.<sup>20</sup> When, predictably, there

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17. The only other book which contains comparable direct material, *PROSTITUTES: OUR LIFE*, *supra* note 10, also stresses French prostitutes' self-identification as mothers, an identification they were able to use successfully in the strike and church occupations of 1975. "We are mothers talking to you. Women trying to bring up their children alone as best they can . . . Yes, we are prostitutes, but . . . not because we are deprived; it is the way we have found to deal with the problems in our lives." *Id.* at 46.

18. For a brief history of this law, see Hechtman, *Practice Commentary*, N.Y. PENAL LAW, § 240.37 (McKinney 1980).

19. The law was upheld against a constitutional challenge in *People v. Smith*, 44 N.Y.2d 613, 407 N.Y.S.2d 472, 378 N.E.2d 1032 (1978), the Court of Appeals expressing faith that the police would only arrest after evidence of actual conduct evincing the intent to engage to prostitution.

20. Carmen and Moody had been told that prostitutes were frequently deprived of adequate health care because of their exploitation by the few doctors who were willing to treat them.

was no response, the authors and their co-workers realized that the success of any program to aid and counsel prostitutes would depend on the sponsors' affirmation of trust and active personal involvement with their intended constituents. Their decision to pursue aggressively such an involvement produced a ten-year association, rewarded with both tangible results and the more intangible sense of friendship and intimacy which suffuse the book. In addition to distributing a handbook on prostitutes' rights under the Ohrenstein-McCall law and operating a portable shelter—actually a specially renovated bus where prostitutes could gather, socialize and find brief respite from the street—the Judson Project published *Hook-Up*, a magazine by and for prostitutes, many of whom contributed prose and poetry to the publication.

In the course of befriending and counseling numerous street prostitutes, the authors were forced to overcome their own deeply held prejudices in order to develop an accurate picture of the women's lives. The myths that most prostitutes are drug addicts, that they were "turned out" or coerced into prostitution by pimps, or that they spread venereal disease, were dispelled by daily interactions, not only with prostitutes themselves, but by close observation of pimps and johns (customers). The authors expose the racism which colors much of society's views of pimps, and describe the crime and sometimes fatal violence which prostitutes suffer, simply because they are disenfranchised from the law's protection by virtue of their status as "outlaws." The authors thus create a rich illustration of women who are not so different from others of their race, class and gender, except for the disabilities they suffer because their work is illegal.

In the course of the authors' experience, they came to observe the interaction between the police and prostitutes, learning:

[J]ust how outrageously ambiguous the role of the police is in trying to confine, curtail and abolish a "commerce" that the makers of the law want to repudiate and punish but not really to destroy.<sup>21</sup>

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21. WORKING WOMEN, *supra* note 2, at 135.

Carmen and Moody also visited courts where they saw a variety of judicial responses, all too many of which "refused to acknowledge the humanity and individuality of women who work as prostitutes." Their observations in both areas of the criminal justice system are painful, hard-hitting and ultimately, very real.

The authenticity of their description is underscored by a now well-known incident in which Carmen's role was abruptly and unwillingly changed from observer to participant. One evening, while waiting on Eighth Avenue, Carmen was arrested in a vice-squad sweep, subjected to three routinely administered strip searches, and imprisoned for more than forty-eight hours prior to an arraignment, where the charges against her were dismissed and she was released.

The lesson learned that evening and reinforced over the years is that prostitutes are only rarely arrested for committing a criminal act. They are almost always arrested because of who they are, where they happen to be, and what they do for a living.<sup>22</sup>

The "lesson" resulted in a federal lawsuit brought by the New York Chapter of the Civil Liberties Union<sup>23</sup> in which a jury awarded Carmen damages for false imprisonment, but upheld the constitutionality of the law. The account of this incident, the subsequent litigation and the enormous mutual sense of solidarity which ensued between Carmen and the women to whom she ministered, are alone worth the price of the book.

In two final chapters, the authors give an historical explanation as well as current theological support for Judson Church's continuing concern for a ministry to prostitutes, and raise, in an entirely fresh context, the question of the appropriate role of the law in the area of prostitution. Citing the "human rights abuses" which result from enforcement of the present laws, the "fundamental denial of a woman's right to sexual autonomy" and the "senseless and profligate waste of [official] time and [taxpayers'] money . . . acknowledged . . . [as] almost completely ineffectual,"<sup>24</sup> the authors argue powerfully and persuasively for complete decriminalization of prostitution.

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22. *Id.* at 55.

23. *Carmen v. City of New York*, 78 Civ. 438 (S.D.N.Y. 1979).

24. It should be noted that in 1984 there were 18,889 city-wide arrests for prostitution-related offenses, almost all for violation of P.L. § 240.37. Figures for the first half of

In the epilogue, the authors describe their decision to write this book and the circumstances of the moment—a raw Christmas eve when prostitutes had gathered in the Judson bus for a few moments of warmth and cheer—in which the women were told of Carmen's and Moody's intentions. They write:

We said we hoped that it might make those outside their world understand them better. The women hardly contained their elation, and expressed their surprise and happiness that anyone should give them a good review. Finally, one of the women spoke, out of the experience of broken dreams and disappointments, and asked "Do you really think it will make any difference?"<sup>25</sup>

One hopes that, as a result of this strong, humane and ultimately moving book, the answer will be a resounding yes.

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1985 show a slight increase in such arrests to 9,652. In 1977, each arrest cost the city \$1,705 and the cost is now approximately \$2,500 per arrest and processing. It is thus clear that millions of tax dollars desperately needed for social services are being spent on nothing more than an entirely ineffectual revolving-door policy.

25. *WORKING WOMEN*, *supra* note 2, at 205-06.

