Decriminalizing Prostitution: Liberation or Dehumanization?

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DECRIMINALIZING PROSTITUTION:
LIBERATION OR DEHUMANIZATION?

CARLIN MEYER*

...we live in a culture where many of us must pay people both
to take care of our bodies and to listen to our feelings.1

The prostitute is really at the extreme end of a continuum few
women ever escape... Exploited by a society that treats wo-
men as second class citizens fit to be recipients of men's domi-
nation and exploitation.2

“If anybody should feel guilt or shame,” says Lena, “it's cer-
tainly not me! The greedy landlords who've exploited the
immigrants and the fools in the government who don’t know or
care what's happening, they should feel guilty.”

Lena, a Russian-Israeli wife, mother, and prostitute.3

If I might be so bold, I would like to retitle this panel. I
would call it: criminalizing prostitution — feminist program or
prop to patriarchy? For to me, the issue is not what
decriminalization would do, but what criminalization and hyper-regulation of
prostitution have done historically and continue to do, not
merely to individual women victims of police, pimps, prosecu-
tors, mobsters and “johns,” but to women as a whole.

There are currently three major systems used to handle
prostitution: criminalization, decriminalization, and regulation.
Criminalization typically defines as illegal the exchange of sex for
money, as well as a variety of associated acts such as public solici-
tation, pimping, and transporting women for the purpose of
prostitution. Laws typically make the act of trading sex for
money per se illegal;4 several jurisdictions criminalize patroniz-

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2 Belinda M. M. Cheney, Prostitution - A Feminist Jurisprudential Perspective, 18 VA. U. WELLINGTON L. REV. 239, 244 (1988). "Prostitutes are prosecuted for soliciting in a way 'respectable women' who flirt are not. They are prosecuted for running a brothel if they take money for sex in a way 'respectable women' who have sex in their homes are not. Their mistake, their punishable mistake, is that they get paid for what working women are supposed to do as part of their 'duty.' Women are supposed to have sex for love, not money." Id.
3 Lena, a married Russian woman working as a prostitute in Israel's Upper Nazi-
4 Black's Law Dictionary defines prostitution as an "act of performing, or offering,
ing as well, though enforcement is rare.\textsuperscript{5} The United States is
the only industrialized country that in large measure continues to
criminalize the act itself; specifics vary among states.\textsuperscript{6} Criminal-
ization generally removes prostitutes from the protection of wage
and hour laws, social security, insurance and pension laws, safety
and health protections and collective bargaining rights.\textsuperscript{7}

Decriminalization of the individual sale of sex is the norm in
the majority of developed nations today, although most continue
to criminalize public solicitation, pimping, and brothel owning —
that is, most still attempt to limit prostitution's visibility and to
reduce third party profiteering from the sale of sex. In some
countries, prostitutes have organized to lobby for health insur-
ance, old age pensions, and other benefits.\textsuperscript{8} Decriminalization is
often accompanied by extensive regulation.

\textsuperscript{5} See Richard Symanski, IMMORAL LANDSCAPE: FEMALE PROSTITUTION IN WESTERN
SOCIES 84-89 (1981); Albert Sion, PROSTITUTION AND LAW 53-46 (1977). See also
People v. Superior Court, 562 P.2d. 1315 (1977) (targeting prostitutes justified as a
rational attempt to concentrate on the "profiteer" rather than on the customer); People
v. Crystal, 432 N.Y.S.2d 312 (City Ct., Buffalo 1980) (holding that lack of police man-
power justified arresting female prostitutes rather than their male clients). However,
some courts have recognized the discriminatory enforcement of prostitution law against
Ct. 1986) (holding selective prosecution of prostitutes systematically against women);
State v. Burgess, 689 S.W.2d 637, 641 (Mo. Ct. App. 1984) (Gaertner, P.J. dissenting)
(,arguing that Missouri prostitution statute applied to client as well because it is unjust to
prosecute only prostitutes when their clients are "equally guilty").

\textsuperscript{6} Ellen Pillard, Rethinking Prostitution: A Case for Uniform Regulation, 1 NEV.
PUB. Rv. 45 (1991), citing Sion, supra note 5.

\textsuperscript{7} I agree with Barbara Meil Hobson that while several writers have touted attain-
ment of collective bargaining rights as an important way to empower prostitutes and
eliminate its worst abuses, in fact it is unlikely to do so. Like domestic workers, prosti-
tutes are not positioned well to work collectively in the best of circumstances. And
United States labor laws make organizing extremely difficult for those far better posi-
tioned to organize. Barbara Meil Hobson, UNEASY VIRTUE: THE POLITICS OF PROS-
STITUTION AND THE AMERICAN REFORM SYSTEM x-xi (1987). For discussion and explanation of
the dire position of American labor, see Paul Weiler, GOVERNING THE WORKPLACE: THE
FUTURE OF LABOR AND EMPLOYMENT LAW (1990). On the other hand it is worth noting
that prostitutes apparently lived much more social and collective lives in the brothels of
early 19th century France, and might well be better able to gain political and social
power in Canada, Scandinavia and Europe than under current U.S. and British law.

\textsuperscript{8} Serge Schmemann, A Red Light District Loses Its Allure, N.Y. TIMES, May 14, 1988, at
A4; Lance Gay, Plan to Legalize Brothels in Holland Has Prostitutes Seeing Red, CHI. TRIBUNE,
June 18, 1992, at 2; Prostitutes Seek Professional Statues, Benefits, THE WEEK IN GERMANY,
Nov. 9, 1990.
Regulation generally aims at preventing the spread of sexually transmitted diseases (STD's) — venereal disease and more recently AIDS — as well as at imposing what might be called time, place and manner restrictions on the practice or advertisement of prostitution. Licensing of prostitutes, brothels and bars is currently practiced, for example, in the Philippines. Many other jurisdictions regulate and limit street solicitation, or use zoning to confine brothels to certain neighborhoods.

Where regulation prevails, police often closely govern the daily life activities of prostitutes. In Nevada, where brothel prostitution is legal in six counties, prostitutes are often confined to their “brothels,” prohibited — along with their families — from residing or vacationing in the community where they work, forbidden to have visitors who are not clients, and restricted from leaving their brothels except to go to such places as beauty parlors and doctor’s offices. Nevada law mandates AIDS testing and publication of names and photos of prostitutes who test HIV positive. Similarly oppressive confinement has characterized other regulatory systems, from the highly regulated nineteenth century French system of Maisons de Close to that of contemporary West Germany.

I advocate decriminalization of the act of prostitution and the activities of prostitutes, and would countenance only such regulation as is aimed directly at empowering prostitutes to gain adequate wages, protection from disease and abuse, and employment benefits. To that end, regulatory schemes should be — like most others — voluntary in the sense that prostitutes choose whether to avail themselves of benefits ranging from AIDS

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9 Susan Marquez Owen, Men and Women of ‘Sun City’, S.F. CHRON., Aug. 5, 1990, at 8/Z.

10 See generally, JOHN F. DECKER, PROSTITUTION: REGULATION AND CONTROL (chapter 4) (1979); HOBSON, supra note 7, at 222-33 (zoning system in Holland); Barbara Yondorf, Prostitution as a Legal Activity: The West Germany Experience, 5 POL’Y ANALYSIS 417 (1979).

11 Pillard, supra note 6.

12 ALAIN CORBIN, WOMEN FOR HIRE: PROSTITUTION AND SEXUALITY IN FRANCE AFTER 1850 (1990), cited in Francine du Plessix Gray, Splendor and Miseries, N.Y. REV., July 16, 1992, at 31. What we now call sex trade workers were in nineteenth century France obsessively classified into numerous named sub-categories such as “filles en carte” (duly registered whores), “filles en numero” (those few lucky women who received a percentage of their clients’ payment from the patronnes), “insoumises or filles de barrières” (literally, unregistered “streetwalkers”), “femmes galantes,” “femmes a parties,” and “femmes de spectacle et de théatres” (higher class sex workers or courtesans, later referred to as cocottes, mangeuse d’hommes, or grandes horizontales. These were considered by Parent-Duchatelet the most subversive of the lot; for through their social mobility they threatened.) Id. at 31-32.

13 HOBSON, supra note 7, at 224-33.
screening to overtime pay. (Prostitutes should be subject to, like the rest of us, mandatory income tax and social security laws.)

And while I favor efforts to eradicate mobs and middlemen, I believe this should be accomplished within the framework of general criminal laws, not laws directed at prostitution per se. Even with this limitation, caution is necessary: history demonstrates that most such efforts have ultimately harmed women. For instance, England's 1885 Criminal Law Amendment Act which held landlords responsible for renting to brothels, resulted in denial of housing to all women living alone, since all were potentially prostitutes. The ironic result was to force prostitutes into the arms of pimps.

In my view, criminalization and regulation of prostitution, far more than prostitution itself, institutionalizes male sexual domination and social control of women. As Michael Foucault and many others have shown, modern so-called "disciplinary society" uses formal law as well as medical and scientific surveillance, categorization, and regulation to ideologize and actualize social control. And feminists have shown that social control has been aimed especially at women. In the words of Carol Smart, "legal, medical and early social scientific discourses intertwine to produce a woman who is fundamentally a problematic and unruly body; whose sexual and reproductive capacities need constant surveillance and regulation because of the threat that this supposedly 'natural' woman would otherwise pose to the moral and social order."

When society regulates prostitutes, it ideologizes and enforces a pervasive system of control of women's bodies, not merely through direct control of "bad girls," but by establishing indirect and rigid codes for "good girls." It is no accident that in cultures which most prize virginity — such as the Philippines —


15 Id.


17 Carol Smart, Introduction, in Regulating Womanhood, supra note 14, at 7. See also EMILY MARTIN, THE WOMAN IN THE BODY (1987); BARBARA EHRENREICH & DIERDRE ENGLISH, FOR HER OWN GOOD: 150 YEARS OF EXPERTS' ADVICE TO WOMEN (1978).
prostitution flourishes. Women who cross the sexual divide — from pure to sullied; from private to public — can seldom return. And women cross that divide not merely by selling sex, but by giving it improperly away in youthful indiscretion or adultery, by having it taken from them by incest and rape, by defying societal sexual and reproductive norms.

Criminalizing prostitution helps legitimize marital rape and battery by suggesting that sexploitation is usually confined to the world of marginalized public sex exchange, whereas sex within private so-called consensual marriage — traded for the right to clean house and raise children on a permanent basis (or for its prelude, dinner at Lutece or Bouley) — is generally non-exploitative. Criminalization suggests that while in prostitution, degradation is the norm, within marriage and long-term liaisons, it is unusual. It is odd that many feminists assume — despite our vehement opposition to spousal abuse — that marital privacy necessarily offers women greater potential for equality and control than does the public market. For however exploitative the relations of the market, most of us seem to believe them an improvement on slavery and indenture.

Criminalization of supposedly deviant sexuality is part and parcel of a broader ideological attack on women's sexual and reproductive freedom — an attack which, by the way, is echoed in the ways we disparage one another — as promiscuous, as

18 Susan Marquez Owen, Men and Women in 'Sin City,' supra, note 9. In some African cultures the attitude toward prostitutes and prostitution is more ambivalent and complex, perhaps because the lines between public and private sex are less rigid. Thus, for example, husbands permit or encourage their wives to engage in prostitution; some women combine trading in goods and trading in sex and profit from both is treated as a legitimate form of earning. Studies in Prostitution (East, West and South Africa, Zaire and Nevada), (Erasto Muga ed., 1980).


20 It is unsurprising that those who define women's sexual deviance cannot agree on whether it is characterized primarily by promiscuity or commercial exchange: the "bad girl" has changed her sexual shape over the centuries. See supra note 4 on the definitions of prostitution; Smart, supra note 16.

Indeed, in some cultures that believe exposed female flesh to be sinful, the divide between good women and bad can relegate dancers and wearers of modern dress to "whore" status. In 1990, Saudi women who abandoned their veils, exposed arms and legs, and drove cars in protest against the bondage of muslim women were vilified as whores, fired from jobs, and even physically assaulted. See Judith Miller, The Struggle Within, N.Y. Times, Mar. 10, 1991, at § 6 (Magazine), at 27; Alan Thompson, Canada First in Recognizing Abused Women as Refugees, Toronto Star, Mar. 10, 1993, at A2.

“power-fuckers,” as inviting abuse by “provocative” or “whorish” dress. We are all prostitutes in the eyes of patriarchy, even, often, when we are compliant monogamous wives or partners. Indeed, I think it naive to imagine that we can neatly separate regulation of women’s sale or trade of sex, and regulation of women’s control over other bodily activities like contraception, reproduction and all forms of non-commercial sex.

It should tell us something that those who would suppress prostitution have directed their ire more at the visibility of prostitution than at its brutality, exploitativeness, and danger to women. Regulation and criminalization have been aimed at zoning commercial sex, getting it off the streets, hiding and privatizing it — segregating sex into private bedrooms, brothels, and red light districts.22

Criminalization of prostitution helps not only to construct gender relations and sexual relations, but race and, especially, class relations as well.23 In New York, in the Philippines, in Korea and throughout Southeast Asia, indeed, throughout recent history in industrial and industrializing societies, the targets of state surveillance and control have always been the lowest caste of sex-sellers, the street walkers: poor, immigrant and minority. When the Paris police raid the Bois de Boulogne, they jail poor Brazilian immigrants;24 when the Philippine authorities haul in young girls for their bi-weekly medical exams, they take the rural poor, the victims of incest and rape, pariahs because, unlike those from families who can provide bedroom doors to lock, they are no longer virgin “cherry girls;”25 when New York or Milwaukee cops round up their “girls,” they are the disproportionately black streetwalkers;26 when Israeli police arrest street women, they arrest Soviet immigrants, many of whose husbands have encouraged them to sell their bodies to pay for rent and food.27 The vast majority of prostitutes are poor, single mothers of mul-

22 See generally, Symanski, supra note 5; Sion, supra note 5; Pillard, supra note 6.
23 See Gilman, supra note 16, for close relation between racial and sexual stereotyping in the scientific construction of the prostitute.
25 Susan Marquez Owen, Men and Women of Sin City, supra note 9. In Olongapo City, "Asia's largest brothel," prostitution is technically illegal but there are 6000 "entertainment women" or "bar girls" (paid for their "company"), as well as 14,000 unlicensed streetwalkers and 500 go-go bars, massage parlors and short term hotels. Ten percent of the bars and hotels are owned by retired U.S. servicemen. Id.
26 See Decker, supra note 10, at 98; Symanski, supra note 5, at 91-94.
27 Kaye, supra note 3. In the late 1940's, Israeli prostitutes were Rumanian and Polish; these women were soon followed by North African immigrants. Today's prostitutes are Russian.
gressive portrayal of men as "johns." (Criminalization renders these men virtually immune from child support enforcement.) These women are, in the words of Andrea Dworkin "the despised — by virtue of race, class, or ethnicity." 29

How could one disagree with Professor Baldwin when she writes that our "class system of sex" injures women? Surely no one in this room doubts that women's bodies are exploited in nearly all modern societies. We are exploited to sell cars and cigarettes. 30 We are dismembered in pornographic portrayals, in slasher films, in surrealist art. 31 We are kidnapped as prostitutes for the Japanese army when we are not forced into prostitution by economic and social circumstances. 32 We are raped and brutalized in marriage and out, on the streets and in our own bedrooms. And all this is memorialized in films and novels, 33 and institutionalized by the association of violence against women with patriotic militarism and sports competition, 34 and underpinned and perpetuated by economic, religious, and other institutionalized practices and ideologies. 35

But is prostitution significantly responsible for this exploitation? It is easy to hate prostitution — what it is, what it represents, and what it does to the lives of women. Especially young women: in nineteenth century New York, before the age of consent was raised from ten to sixteen, young women were prized

29 According to Dworkin, these women "compose the bulk of the prostituted." ANDREA DWORIN, PORNOGRAPHY: MEN POSSESSING WOMEN 119 (1979).
30 See LAWRENCE GOLDSTEIN, THE FEMALE BODY (1991), especially essays by Margaret Atwood at 1 and John Updike at 6.
31 See Susan Gubar, Representing Pornography: Feminism, Criticism, and Depictions of Female Violence, in For Adult Users Only (Susan Gubar & Joan Hoff eds., 1989); Carol J. Clover, Her Body, Himsel: Gender in the Slasher Film, 20 REPRESENTATIONS 187 (1987); FEMINISM AND ART HISTORY: QUESTIONING THE LITANY (Norma Brout & Mary G. Garrard eds., 1982).
33 See, for examples, the films BODY DOUBLE (Columbia Tri-Star, 1984) and The Accused (1989), or BRENT EASTON, AMERICAN PSYCHO (1991).
34 See CYNTHIA ENLOE, DOES KHAKI BECOME YOU? (1988); MYRIAM MIEDZIAN, BOYS WILL BE BOYS: BREAKING THE LINK BETWEEN MASCULINITY AND VIOLENCE (1991); LOIS A. WEST, WIFE ABUSE IN THE ARMED FORCES (1981); ALISON BASS, MACHO STEREOTYPES LINKED TO SEX ABUSE RATE, BOSTON GLOBE, Aug. 15, 1990, at 9 (Research shows that members of these groups of fraternities, athletic teams are more likely to engage in inappropriate sexual aggression); Robert Lipsyte, Must Boys Always Be Boys? N.Y. TIMES, Mar. 12, 1993, at B7; Mike Capuzzo, Aggressiveness in Sports has a Sorry Spilloff: Studies show a link to wifebeating, CHI. TRIB., Jan. 27, 1992, at 8.
both because most did not menstruate until fifteen or older, and thus were less likely to become pregnant — and because having sex with a virgin was in some circles thought to cure venereal disease.\(^{36}\) Today, young women are prized for their firm flesh and their vulnerability to domination by pimps and mob cartels.\(^{37}\) Prostitution leaves thousands upon thousands of women diseased, brutalized, self-hating, dependent and vulnerable. It is easy to abhor — and it is an easy leap from abhorrence to suppression.

But it is the wrong leap: in the wrong direction, with the wrong focus, the wrong target and the wrong allies. Advocates of suppression conflate signification and cause: they see in prostitution the symbol, the epitome, the most visible expression of gender victimization and oppression, and believe that because it is the most visibly blatant expression, suppression will effectively reduce female degradation and abuse. Andrea Dworkin evocatively writes that “[t]he prostitute is the emblematic used woman, natural in that she most purely fulfills her sexual function. . . . Prostitution signifies in and of itself male power in every sphere and constitutes in and of itself a bedrock of sexual excitement.”\(^{38}\) Notice her language: emblematic, signifies, most purely fulfills, constitutes. Not causes, creates, reinforces, perpetuates.

Laurie Shrage who, while opposing criminalization, advocates eradication and suggests that prostitutes are the “Uncle Toms” of gender, writes that prostitution “epitomizes and perpetuates pernicious patriarchal beliefs and values” in ways that “lesbian sex, and egalitarian heterosexual economic and romantic relationships, do not”.\(^{39}\) Apart from the fact that Shrage’s saccharine view of lesbian and “egalitarian” heterosexual relationships is far from accurate (one wonders if she has ever looked at lesbian S & M literature),\(^{40}\) the notion that “pernicious patriarchal beliefs,” such as those which confine legitimate sex to that occurring within monogamous, romance-based, long-term or marital heterosexual relationships, are products of prostitution is

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\(^{38}\) See Dworkin, supra note 29, at 119.


\(^{40}\) I refer here to literature written by and for lesbians, not the pornography which portrays for male gratification scenes of supposed lesbian sex. See, e.g., Pat Califia, Lesbian S/M Safety Manual (1988) or Pat Califia, Macho Sluts (1988).
simply misguided. There is a vast difference between epitomizing, and perpetuating, gender oppression.

True, signifiers and symbols — as semiotics scholars have taught us — can play an important role in perpetuating ideology and hence subjugation. But is prostitution a more important emblem than the everyday imagery and institutionalization of sexploitation found in media representation, in sports competition, military madness, romance films and novels? Is it really the existence of this emblem — prostitution — rather than the construction of the deviant sexual woman through our surveillance, our regulation, our ostracism of her — that most harms women? I find Laurie Shrage’s references to prostitutes as similar to “Uncle Toms” particularly disturbing. We are all victims, agents, and participants in a vast system of sexploitation. Aren’t those of us who get tummy tucks, face-lifts, or wear make-up equally Aunt Toms? How about those of us who fall into patterns of diet abuse - of anorexia and bulimia - or for that matter addictive shopping for that sexy look? We all decorate, mutilate, or hide our bodies in complicity with a system that values us according to male idealizations of female beauty and sexual attractiveness. And most of us have many more choices about how to live our lives than does the average prostitute.

It is troubling that in our zeal to remove from view the worst of sexploitation, we often ignore what criminalization does to individual prostitutes. Our unfortunately absent co-panelist Arlene Carmen knows far more than I about this, and would have told us in distressing detail. Without her, suffice it to say that the vast majority of writers on the subject agree that criminalization puts prostitutes at the mercy of pimps, police, mafia cartels, regulators and “johns,” subjects them to lifelong stigma, to disease, to self-hate, and deprives them of even minimal health, employment and pension protections. Moreover, criminalization has never significantly reduced the incidence of prostitution (although it has occasionally diminished its visibility.) Partly due

41 Shrage, supra note 39, at 357. In thus labelling prostitutes, Shrage fails to maintain what Christine Overall has called “the crucial moral distinction between prostitutes as sex workers and prostitution as a practice and an institution.” See Overall, supra note 1, at 708. While Shrage states that “we should not blame the workers in the sex industry,” id., her analogy does precisely that.

42 Decriminalization could offer wage, hour, health, child labor, social security and pension benefits to prostitutes. (And, of course, it would free up enormous police and criminal justice resources which could be used to offer voluntary health screening, drug treatment, childcare and other necessaries for all women.) True, there would remain, as there does in every area of employment law, an underclass of unprotected, black market, employees— immigrant, underage, and always poor. But it would be a start.
to men's compulsive pursuit of sex; partly due to the desperate economic and social position of women and the foreclosure of alternative economic opportunities; partly due to sexual ideology that equates loss of virginity — whether by rape, incest or divorce — and female promiscuity with prostitution; partly due to the profit mania of those who dominate and control the sex trade; and partly due to individual women's singular and creative adaptability — prostitution flourishes, some studies suggest more so when criminalized. With electronic dating, escort, phone and video services rendering the easily arrestable streetwalker increasingly obsolete, criminal enforcement requires more resources and sophistication, and is ever less likely to succeed.

Some suggest criminalizing only the purchase of sex — jailing only the “johns.” What fun to hear the outcry from the Reagan-Bush judiciary over this violation of equal protection! But I wonder whether cops would jail their fellow workers, brothers and friends.

Sure — let's prosecute the “johns” — only let's start at the top. Let's jail the U.S. military. They're the ones that created the hundreds of thousands of “entertainment girls” and “bar girls” in the city of Olongapo outside the Subic Bay naval station, in the “comfort stations” of Vietnam, Cambodia, Hong Kong and throughout Asia. Or let's go after the Japanese military.

43 I do not mean to suggest that male sexual pursuit is necessarily biologically driven or inevitable. Rather, as with all sexual engagement, it is surely driven by a combination of social, cultural and biological factors. And, of course, in any individual, it may result from a variety of motivations, both conscious and subconscious. See generally, Jeffrey Weeks, Sexuality and Its Discontents: Meanings, Myths and Modern Sexualities, 232 (1985).

44 Some studies point to a correlation between prostitution and a decreased incidence of sex crimes. See, e.g., Pillard, supra note 6, at 46 (no report of a sex crime for many years in some Nevada counties where prostitution is allowed); Richard Posner, An Economic Theory of Criminal Law, 85 Colum. L. Rev. 1193, 1199 (1985) (suggesting prostitution as a “rape” substitute). In addition, criminal prosecution of prostitutes may decrease the visibility of prostitution, but does not necessarily thereby reduce its incidence. See generally, Symanski, supra note 5; John Lowman, Strolling Through a Legal Minefield: The Law Is Contradictory and Confused. Let's Change it, VANCOUVER SUN, Mar. 25, 1992, at A13 (police attempt to control street prostitution generally only serve to relocate it somewhere else).

45 Evidence suggests that decriminalization, not criminalization, reduces prostitution. See Hobson, supra note 7, at 223-33. Several commentators have pointed out that, in addition, criminalization wastes societal resources that could be devoted to providing social services to the “despised.” Not only are monies allocated to police and criminal justice enforcement wasted, but there is an immeasurable toll in morale because of the bribery and corruption associated with the enforcement effort. See Symanski, supra note 5, at 16-18, 223-33; Raymond I. Patias, Legislative Reform of Prostitution Laws: Keeping Commercial Sex out of Sight and out of Mind, 21 Santa Clara L. Rev. 669, 873-77 (1981); Julie Pearl, The Highest Paying Customers: America's Cities and the Costs of Prostitution Control, 38 Hastings L. J. 769 (1987).

46 ENLOE, supra note 34, at 32-45.
they're the ones that captured over 200,000 young Korean women and made them serve as prostitutes to the Japanese troops in World War II. Let's prosecute the Japanese corporations that reward their outstanding branch office managers and salesmen with all-expense-paid tours of South Korean brothels. Let's raise the standard of living and eliminate corrupt governments in Brazil, Thailand, and Malaysia so as to end the sex tourism industries. Or let's jail the state and local politician-hypocrites who pass anti-prostitution laws, and then sexually harass lobbyists and interns.

The reality is and will no doubt remain that on the rare occasions when "johns" are arrested, they are the poor and working class patrons of street women, not politicians, cops, or judges of the Court of Appeals. It bears remembering that the real profiteers from prostitution have been wealthy property owners and their ilk — a century ago in New York the brother of founding father Chancellor Robert R. Livingston made his fortune buying and selling brothel real estate. As Catharine MacKinnon has written of obscenity law, what is ultimately suppressed is

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47 Sanger, supra note 32.


49 To cite but a few examples, in the last decade, U.S. Senators Bob Packwood and Brock Adams were charged with sexually harassing numerous aides and lobbyists and, in Adams' case, with drugging and raping more than one, and the 98th Congress censured two congressmen on sex charges, one for having sexual relations with a young girl and the other for doing so with a teen-age boy. See John Balzar, Sex Charges Bring End to Brock Adams' Career, L. A. TIMES, Mar. 2, 1992, at A1; Packwood Faces 13 More Accusers, N.Y. TIMES, Feb. 8, 1993, at A15; Alice Steinback, The Accusers Add Up, But Double Standard Keeps Packwood Safe, BUFFALO NEWS, Feb. 17, 1993, at 3; Michael Posner, REUTERS, Oct. 12, 1984 (reporting censure of Congressmen). In 1961 Florida Representative E. Bert Riddle was expelled from the House for allegedly fondling a 13 year old female page; in 1980 and 1990 Florida Representatives Glinn and Lippman were accused of similar activities. See Lucy Morgan, Payment Called Double Standard, ST. PETERSBURG TIMES, Nov. 29, 1990, at 1B.

50 See, for example, Neighborhood Exposes "Johns" in an Effort to Curb Prostitution, HOUSTON CHRON., Feb. 26, 1992, at A3, indicating that those exposed were blue collar workers.

51 Gilfoyle, supra note 36, at 43-46. Today, the profiteers are often mob-controlled cartels operating hotels, travel agencies, escort services, massage parlors and "baths" throughout the world, but primarily located in third world countries such as Thailand, Malaysia and Korea. See Proceedings, supra note 48, at 175-81; Thai Help Sought by Japan in War on Yukusa Gang, XINHUA GENERAL NEWS SERV., Nov. 5, 1991; Ethics Gangs & Organized Crime, U.S. NEWS & WORLD REPORT, Jan. 18, 1988, at 29. See also, Miles Corwin, Prostitution: The Far East Link Is Growing in L.A., L.A. TIMES, Sep. 15, 1986, at B1; Police Investigate Yen-Drug Link to Colombia Cartels, JAN. ECOM. NEWSWIRE, May 26, 1992 (Colombia using women prostitutes in Japan to expand their drug network); Ken Miller, Insiders Say Asian Gangs Losing 'Robin Hood' Image, GANNETT NEWS SERV., Aug. 4, 1992 (heroin-trafficking trials in Asian countries armed with the most modern technologies are fast becoming the dominant players in international narcotics smuggling and profit from extortion, prostitution, pornography, etc).
what turns on the men that the men in power think they can afford to ignore. And imagine if the criminal justice system tried to handle the tide of testosterone — court-clogging would take on a new meaning. In one sweep of a computerized escort service, the names of 8000 "johns" were seized. The result? In the words of U.S. Attorney Angelo Calfo: "I can’t see we’d be able to charge 8000 people."

It troubles me that while most religious, military, and sports institutions, as well as mainstream media of all kinds, daily express in teaching and practice the denigration, subordination and abuse of women, we feminists somehow always seem to focus on those forms of exploitation that target and involve Dworkin’s "despised." And it troubles me that our program often coincides suspiciously neatly with that of the social purity movements and vice squads of the nineteenth century, along with their modern heirs, from Pat Robertson to Tipper Gore.

I don’t think it’s really coincidence. As the Right well knows, targeting the marginal and the marginalized has important strategic and ideological consequences. It makes these practices and institutions seem marginal — deviant, unique, unlike the mainstream. The suppressionist, criminalizing, jailing mentality thus suggests that basic social reform, in this as in many areas, is unnecessary; that gender inequality is something that happens at the margins. It implies that we can solve the problems of women — whether individual women exploited as prostitutes and porn models or women degraded by the ideology of exploitation — by jailing them. And it takes the focus off the mainstream: off sports figures who boast of sexual conquest, and who abuse female reporters, spouses and lovers. It takes the focus off the military, off mainstream Hollywood and media portrayal, off the everyday economic and social practices that create the basis for exploitation and abuse.

Furthermore, censoring and hiding the most flagrant and visible expressions of degradation and brutalization of women may well undermine our efforts at change. It’s like getting the beggars off the subways and out of the Port Authority. Poverty isn’t gone; we just don’t notice it as much.

The suppressionist mentality fosters unthinking acceptance of ideologies which feminists need badly to examine — of moral

53 Peter Lewis, 8,000 Names on 'John' List Say Prosecutors, SEATTLE TIMES, Nov. 3, 1992, at C2.
54 See Young v. New York City Transit Authority, 903 F.2d 146 (2d Cir. 1990).
views that imprison and injure women. We need to reflect on whether romantic love is really the only valid foundation for sexual interaction; to question the view that “legitimate” sexual intimacy must be tied to spiritual connection. All too many of us seem to have swallowed wholesale this ideology: we abhor what Shrage characterizes as “impersonal” sex; we yearn for intimate “pillow talk;” we disdain the prostitute for engaging in sex without “real connection.” (Which one of us hasn’t engaged in sex without connection? It wasn’t prostitutes who told their daughters to “close your eyes and think of England.”)

We could spend an entire evening discussing whether feminism’s focus on prostitution and porn results in part from a sexual puritanism which is itself an artifact of patriarchy. Shrage, Dworkin, and Mackinnon all seem to believe that “good sex” equals sex in which two— I’m not sure about how they feel about more than two — human beings encounter one another as full, whole and equal entities (whatever that means), and that we should oppose all sexual encounters which feature power imbalances, bodily fetishization and segmentation, or unequal physical insecurity and vulnerability. Dworkin suggests that men’s incapacity to see sex partners as “whole” is necessarily — in her words — a “paralyzation of individuality.” Must we all learn to see the subjects of our sexual desire as whole, equal, non-partial, and unsegmented? Even were it desirable, can we eliminate inequality in the realm of the intimate? Can we do so before we eliminate pervasive economic and social inequality? And if not, what do we do in the meantime? Eschew all sex? Heterosex only? I am inclined to worry that — to paraphrase a long-ago speaker at one conference on this issue — after the feminist revolution, “approved” sex will consist in everyone joining hands and circling round until we all simultaneously fall asleep.\footnote{The remark was pronounced at the Barnard Scholar/Feminist Conference held in May 1982 at Barnard College, New York. For a detailed study of the Conference and controversies surrounding it, see Pleasure and Danger: Exploring Female Sexuality, (Carol S. Vance ed. 1984); Marcia Pally, The Fireworks at the Sexuality Conference: Whom Should Feminists Fuck?, N.Y. Natve 14-16 (May 24-June 6, 1982); 79 Barnard Bulletin, special edition, May 12, 1982.}

Still worse, the criminalization strategy forges false unity with the wrong allies — with religious fundamentalists, social purity types, conservative think-tankers whose aim is to return all sexuality to male-dominated bedrooms and trap all women in heterosexist marriages. We are naive, I think, if we believe that we can maintain ideological separation while forging political
bonds. Do we really think that if we join forces with the purveyors of “family values,” we will retain the power to alter the meaning of family to include lesbian and gay families? If so, the Colorado debacle should give us pause. Can we seriously prefer to strategize with Phyllis Schlafly or even Daniel Moynihan than with the prostitutes and potential prostitutes — our daughters — whose welfare is most immediately at stake? Surely a concern for victimization ought at least to include listening harder to the voices of the victims than to those of the vice squads. And the victims want the small increment of empowerment that getting the police off their backs, and the police records out of their backgrounds, would bring.

SO WHAT SHOULD WOMEN DO, THEN, ABOUT PROSTITUTION?

Decriminalization is a necessary step, but hardly a sufficient one. Another is provision of social services to prostitutes — support for the work of Arlene Carmen at the Judson Church, of my cousin Dr. Joyce Wallace who from her mobile van offers prostitutes voluntary STD screening, health care and other services, and of many, many others.

Next we should tackle the institutional purveyors of prostitution, beginning with the military. It’s not impossible: the Clinton administration has already begun to address the notorious no-gays policy. If it is really the year of the woman, then together with our new congressfolk we should demand that military teaching and practice regarding sex be wholly revamped. No longer should it be understood that “a good soldier is a sexually satisfied soldier;” no longer should the military confine its education to teaching “safe sex” with prostitutes. We can design

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57 One could, of course, argue that because moralists are a strong lobby, it makes sense to gain power in the suppression effort by joining them. But at what price? We are in an era of backlash against women’s rights — especially the right to control our bodies and reproductive and sexual capacities — and these are our enemies! Joining their frenzy against the visibly sexual female body has consequences far beyond any immediate victories in shifting prostitutes from this locale to that, or even slightly reducing their numbers.


mandatory sex education — education about sexual harassment, sexual equality, laws concerning rape, battery, child support, equality — for all members of the military, top to bottom. The new administration can change rules that leave prosecution of sex crimes by military personnel to local jurisdictions where, for economic reasons, prosecutions for battery, rape, even murder of prostitutes are rare. It can enforce child support garnishment of military pay for every soldier who fathers or has fathered a child by a prostitute, and thereby help the estimated 50,000 Amerasian children in the Philippines alone find a way out of destitution and future prostitution.

And we need to use creative — not quick fix — strategies to challenge the ideologists of women-as-unruly-body. We can't jail the major media or transform overnight the societal equation of masculinity with aggression and female sexuality with self-mutilation. We can't suddenly transform women from sissies into sisters, from targets into trusted partners. But we women have incredible skill, creativity, adaptive and imaginative strength. Where is our feminist film board, to debate if not rate sexism in film and television and music? Where is our transformative sports curriculum, which not only alters the terms of defeat and victory, but alters the very language we use to describe them?

None of this will happen unless we can engage in an honest — tentative and non-censorial — exploration of the interrelation between sexuality, power, gender, class and race. This is our toughest job: it means no longer acting as if we already know what the correct vision sexuality is, and it means examining for all of us — from prostitutes to tummy tuckers to those who enjoy dominating in the classroom if not the bedroom — the complex relation between individual acts and social meaning. And it means acknowledging that in a society pervaded by inequality in every sphere, especially that of gender, sexual practices are bound to reflect and embody that inequality. Power tripping may always be a part of sex play. But we cannot now know what part

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61 See Symanski, supra note 5, at 52-53; Men and Women of Sin City, supra note 9.

62 Jon Miller, The Children America Left Behind, TORONTO STAR, Nov. 1, 1992, at F3; Jessie Mangaliman, U.S.'s Bleak Legacy in Philippines, NEWSDAY, May 3, 1992, at 15. A well publicized policy would also provide an economic disincentive to patronizing prostitutes, or at least an incentive to use safe sex practices.
it will play in erotics when it no longer undergirds other aspects of our economic and social reality.

It is not "sexual liberalism" to decriminalize — I don't advocate it because prostitution is a job like any other. It is like many others in often being resorted to out of economic desperation. But sexuality is unique, and prostitution also involves the desperation of the defiled and despised sexual outcast. The sale of sexual services will never be equivalent to the sale of other sorts of labor power, at least so long as women are identified as and by our pure or impure sexuality. Perhaps Carole Pateman is right: that within capitalism, the sale of sex as a commodity will always constitute defilement; perhaps Peggy Radin is right: that certain things so closely tied to our personhood are "market-inalienable" and should never be sold. Unfortunately, criminalization only makes things worse, for prostitutes and for those of us who delude ourselves into thinking we can define our sexual lives in contradistinction to them. The fact is, by defining prostitutes as deviant, as criminals, we help imprison all women and men within the "normal" institutional and ideological abuses of patriarchal sexuality.

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63 The term "sexual liberal" is often used pejoratively in the anti-pornography debate to label those who question a censorship strategy as favoring individual rights to the detriment of women. See, e.g., The Sexual Liberals and The Attack on Feminism (Dorchen Leidholdt & Janice G. Raymond eds., 1990).

64 The 10,000 women of Olongapo, the thousands more in Bangkok, in Manila, in Saigon and Hong Kong are no more freely choosing prostitution than are the 71,000 Philippine, Sri Lankan, or Bangladesh women currently serving as "domestic servants" in Kuwait, where they frequently work from 5:30 a.m. to almost midnight, are beaten and abused and worse, and paid far less than are many prostitutes. See Raymond Bonner, A Woman's Place: Report from Kuwait, New Yorker, Nov. 16, 1992, at 56; Chris Hedges, Foreign Maids in Kuwait Fleeing by the Hundreds, N.Y. Times, Feb. 24, 1993, at A3. Indeed, for many prostitutes, working conditions are far better than those experienced by the American women who labor in textile mills and on poultry assembly lines. See Richard Lacayo, Death on the Shop Floor: A Murderous Fire in a North Carolina Poultry Plant Underlines the Dangers of America's Workplace, Time, Sept. 16, 1991, at 28.


66 Peggy Radin, Market Inalienability, 100 Harvard L. Rev. 1928 (1985). But see Shrage, supra note 39, at 349-50, indicating that prostitutes in Ancient Babylonia occupied a respected position in society for fulfilling social and spiritual needs. Sexuality is historically and culturally conditioned, and sex has not always been and need not always be so closely tied to "our personhood." It is far from self-evident that the importance Puritan and Western traditions place on sexual activity in defining identity (and female purity) is either historically or culturally required or beneficial.