

## SEEKING A CONSOLIDATED FEMINIST VOICE FOR PROSTITUTION IN THE US

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### INTRODUCTION

Liberal, social, and radical feminism are among the most predominant feminist doctrines on the issue of prostitution. The core tenets of these schools of thought are vastly different. Each focuses on what they believe to be the root causes of prostitution and each seeks to improve the quality of life for these women in different ways. Some lobby for legal reform while others believe the remedy lies principally in social change. Each finds that the goals and solutions sought by the others so fundamentally conflict with their own that they have vowed not to cooperate.<sup>1</sup>

The purpose of this paper is to show that with respect to the U.S. legal system's treatment of prostitution, the fundamental aims of these groups are not so vastly different. Although their core moral beliefs differ, in the legal realm many of these differences can be reconciled to attain a unified voice that argues for the same basic improvements in the lives of prostitute women.

This note begins with a list of some common definitions of terms used throughout this note, followed by a brief history of prostitution in the US. Part II is a general sketch of three of the most renowned feminist schools of thought.<sup>2</sup>

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<sup>1</sup>Holly B. Fechner, *Three Stories of Prostitution in the West*, 4 Colum. J. Gender & L. 26, 35 (1994). Fechner notes that the three organizations count on different allies to help further their goals. "They do not consider one another as allies, and in fact partake in heated public disputes." *Id.*

<sup>2</sup>The three schools of feminist thought discussed in this note – liberal, socialist, and radical – are not the only schools, but the most well-known. Sarah Bromberg, *Feminist Issues in Prostitution*, <http://www.feministissues.com/index.html> (last revised 1997). Other schools include Marxist, and existentialist feminism. Marxist feminism is very similar to socialist feminism in that both are centered around the teachings of Karl Marx, and thus both focus on economic determinism as the primary source of the oppression of prostitutes. The socialist feminist, however, believes there is more to the oppression of these women than just money. Socialist feminist views are discussed in Part II of this note. Existentialist feminism derives from the teachings of Simone de Beauvoir who believed that one of the keys to a woman's

Part III examines some of the more alarming problems with prostitution in the U.S.. Part IV outlines the fundamental goals of each group in an effort to reconcile them into a single voice. In Part V this single voice will argue for legal change to address the alarming problems of prostitution in the U.S..

## PART I: DEFINITIONS AND HISTORY

### A. DEFINITIONS:

- Prostitution – 1. The act or practice of engaging in sex acts for hire  
 2. The act or instance of offering or devoting one’s talent to an unworthy cause.<sup>3</sup>

This note uses the term prostitution only in reference to definition (1).

- Prostitute – 1. One who solicits and accepts payment for sex acts.  
 2. One who sells one’s abilities, talent, or name for an unworthy purpose.<sup>4</sup>

Again, this note uses the term prostitute only in reference to definition (1). Prostitute is a gender neutral word. However the aim of this note is to address issues specific to prostitute women. Thus, unless indicated otherwise, any use of the term prostitute within this note refers to a female who sells sex for money.

Articles written on this subject frequently refrain from using the term prostitute, and instead refer to women who sell sex for money as “commercial sex workers.”<sup>5</sup> This is to avoid the negative connotation that accompanies the term

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liberation is economic, but recognized that this is not the only key. Prostitution can be a valuable means of allowing women to escape from their dependency on men in a way that does not leave them victims, but empowered women. The illusion of power that men get from hiring a prostitute is only an illusion, for it is the prostitute who is using her sexuality as a weapon to gain the customer’s money. The man is a slave to his own sexual desires, and in turn to the prostitute who can fulfill them. *Id.*

<sup>3</sup>Houghton Mifflin Co., *The American Heritage dictionary of the English language* (4<sup>th</sup> ed. 2000).

<sup>4</sup>*Id.*

<sup>5</sup>Elizabeth Bernstein, *What’s Wrong with Prostitution? What’s Right with Sex Work? Comparing markets in Female Sexual Labor*, 10 *Hastings Women’s L.J.* 91 (1999). “Unlike the word ‘prostitute,’ with its connotations of shame,

prostitute, and to avoid the secondary meaning of prostitute as selling one's talent for an unworthy cause.<sup>6</sup> Writers often argue that the word prostitute both "describes and condemns" at once.<sup>7</sup> It is certainly understandable why writers who advocate for the rights of prostitute women make this effort to avoid any negative stigma that the word prostitute carries.

However, for purposes of this note I find it unnecessary to do so,<sup>8</sup> and I will use the term prostitute throughout this note to refer to women who sell sex for money.

Pimp – 1. One who finds customers for a prostitute.<sup>9</sup>

The term pimp often refers to one who lives off the earnings of prostitutes, or a prostitute's agent or manager.

Panderer – 1. A sexual procurer.<sup>10</sup>

The term panderer often refers to one who encourages someone to work as a prostitute.

Decriminalization – 1. To reduce or abolish criminal penalties for.<sup>11</sup>

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unworthiness or wrongdoing, the term 'sex-worker' tries to suggest an alternative framing that is ironically both a radical sexual identity...and a normalization of prostitutes as 'service workers' and 'care-giving professionals.'" *Id.*

<sup>6</sup>Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. Cal. L. Rev. 523, 525 (2000).

<sup>7</sup>*Id.*

<sup>8</sup>As John F. Decker, author of the study, *Prostitution: Regulation and Control* reminds us, "changing labels by itself will have little effect, what is more sorely needed is a change in attitude." *Id.* Prostitution is a delicate subject that requires sensitive but strong arguments to effectively address its issues. But advocating for prostitute women does not require a new vocabulary. You can destigmatize their label, but at best this will marginally improve the reality of their condition. Prostitutes are persons who sell sex for money, and in order to change the attitude and policy of the U.S., advocates must meet the opposition head on and argue that prostitutes, stigma and all, nonetheless deserve our aid.

<sup>9</sup>Houghton Mifflin, *supra* note 3.

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

In the context of prostitution, decriminalization refers to the repeal of laws against consensual adult sexual activity, in commercial and non-commercial contexts.

Legalization – 1. To make legal or lawful; authorize or sanction by law.<sup>12</sup>

In the context of prostitution, legalization refers to a system of criminal regulation and government control of prostitutes wherein certain prostitutes are given licenses which permit them to work in specific and usually limited ways, generally requiring periodic health checks and residency in certain zones.

## B. A HISTORY OF PROSTITUTION IN AMERICA

Prostitution existed throughout the world long before the U.S. was formed.<sup>13</sup> Before 1800, colonial America was composed of a disproportionately large number of men.<sup>14</sup> The result was a seller's market of men seeking the companionship of the available women.<sup>15</sup> These women were predominantly of European decent, Native American, and slaves.<sup>16</sup>

Authorities became concerned, largely for moral reasons, with the growing appeal of prostitution in colonial America. Ironically,<sup>17</sup> brutal policing tactics were used to dissuade the practice.<sup>18</sup> Many historians believe this early approach

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<sup>12</sup>*Id.*

<sup>13</sup>Susan E. Thompson, *Prostitution-A Choice Ignored*, 21 Women's Rights L. Rep 217, 218 (2000). Although researchers have yet to determine an exact time that prostitution began, it is clear that its roots date back to early human history. Further, although it is mainly considered a practice unique to humans, studies on animal behavior indicate that some variation of prostitution exists even in the animal kingdom. Researchers "of primate behavior have observed chimpanzees offering sexual benefits to other chimps in exchange for food." *Id.*

<sup>14</sup>Vern Bullough & Bonnie Bullough, *Women and Prostitution: A Social History*, 210-11 (1987).

<sup>15</sup>*Id.* Bullough calls these women "unattached females" and states that they were "always...willing to look with favor on the sexual approaches of unattached males." *Id.*

<sup>16</sup>*Id.* at 211-15.

<sup>17</sup>This brutal treatment of prostitute women is ironic considering that the reason for the brutal treatment was a *moral* concern for society.

to handling prostitution helped set the stage for the racial subjugation that followed.<sup>19</sup>

In the late Eighteenth century, the industrialization of many American cities created numerous factory jobs, which often employed single women.<sup>20</sup> But factory work was strenuous and paid very little.<sup>21</sup> Many female workers turned to prostitution either to escape the strain of factory work, or in hopes of finding a husband to support them.<sup>22</sup>

At the turn of the Nineteenth century, the US generally tolerated prostitution as a “necessary evil” to keep married women safe from the sexual desires of men.<sup>23</sup> But between 1900 and 1920, the first criminal sanctions arose at the state level,<sup>24</sup> and by 1925 all states had enacted some form of legal

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<sup>18</sup>Micloe Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 *Yale J.L. & Feminism* 69, 71 (1998). In early seventeenth century New England, residents charged with being a prostitute or operating a brothel were sometimes “stripped to the waist, tied to the tail end of a cart, and whipped as the cart moved through town.” *Id.*

<sup>19</sup>See Alan Hunt, *Governing Morals: A Social History of Moral Regulation*, 110 (1999). Historians John D’Emilio and Estelle Freedman argue that sexual regulation helped facilitate racial subjugation: “Both scientific and popular thought supported the view that whites were civilized and rational, while members of other races were savage, irrational, and sensual...At a time when middle-class morality rested heavily upon a belief in the purity of women in the home, stereotypes of immoral women of other races contributed to the belief in white superiority.” *Id.* at 120.

<sup>20</sup>Bullough, *supra* note 14, at 216. Women often preferred working in factories to working as domestic servants because of the greater freedom that factories provided, even though conditions at the factory boarding houses were cramped and unpleasant. *Id.*

<sup>21</sup>*Id.*

<sup>22</sup>*Id.* at 217. American cities were filled with hard working men who emigrated from Europe and elsewhere without their families. These men would typically send most of their earnings home, but would keep a portion to help ease their lives of hard work and loneliness. *Id.*

<sup>23</sup>*Id.* People concerned with this tolerance by police enforcement formed organizations like the Society for the Suppression of Disorders. *Id.*

<sup>24</sup>Matthew Green, *Sex on the Internet: A Legal Click or an Illicit Trick?*, 38 *Cal. W. L. Rev.* 527, 531 (2002). A state’s police power includes the authority to regulate “public morals.” *Id.*

prohibition against prostitution.<sup>25</sup> Additionally, in 1910, a number of large U.S. cities published vice commission reports which called attention to the harmful effect of vices like prostitution.<sup>26</sup> In response, many states passed laws punishing what we now know as acts of pimping and pandering.<sup>27</sup> Some states opted to confine brothels to “red light districts.”<sup>28</sup>

This anti-prostitution trend followed at the federal level. In 1910 Congress passed the Mann Act,<sup>29</sup> which prohibited any man from taking any woman across state lines for “immoral purposes.”<sup>30</sup> Religious groups surprisingly responded to the troubles of prostitution with great compassion.<sup>31</sup> Protestant and Catholic

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<sup>25</sup>Jessica Drexler, *Government's Role in Turning Tricks: The World's Oldest Profession in the Netherlands and the United States*, 15 Dick. J. Int'l L. 201, 205 (1996).

<sup>26</sup>Bingham, *supra* note 18, at 76.

<sup>27</sup>*Id.*

<sup>28</sup>Bullough, *supra* note 14, at 224. The term “red light district” “derived from the practice of trainmen leaving their signal lanterns in front of a house or shack while making a visit there.” *Id.*

<sup>29</sup>Law.com dictionary, key word: Mann Act, <http://dictionary.law.com/http://www.law.com/index.shtml>. The Mann Act was intended to prevent the movement of prostitutes from one state to another or in and out of the country in the so-called “white slave” trade. However, it also applies to a male taking his under-age girlfriend to a love-nest in a neighboring state, or a female transporting an under-age boy across the state line for such purposes. *Id.* As encoded, the Mann Act reads as follows: “Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged for a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.” 18 U.S.C.S. 2421 (2005).

<sup>30</sup>Drexler, *supra* note 24, at 204. The Mann Act was passed “in part as a response to an increase in the number of opium dens which were used to entice young girls into prostitution.” *Id.* In Chicago, Illinois, ice-cream parlors were regulated for similar reasons. *See* Hunt, *supra* note 19, at 131.

<sup>31</sup>*See* Bullough, *supra* note 14, at 62-63. In Bullough’s view, despite the Christian tradition of hostility toward sex, especially extra-marital sex, the Christian church adopted a compassionate attitude toward prostitution. This attitude is the result of the story of Mary Magdalene, who was portrayed as a former prostitute. Mary Magdalene is considered to be “the greatest example of a converted sinner in the New Testament.” *Id.* at 63. In Christian tradition, Mary Magdalene is thought to be the second most important female figure, next to Mary, mother of Jesus. Her

organizations established the first “prostitution shelters” in the U.S. for those women who potentially may fall into prostitution, and those women already fallen.<sup>32</sup> Appropriately called Magdalene Societies, or Female Reform Societies, these religious organizations provided prostitutes with, among other things, a home and some legitimate form of employment.<sup>33</sup>

During the 1960's and 1970's, courts began to strike down laws that prohibited sexual-related acts like birth control and abortion.<sup>34</sup> But laws prohibiting prostitution remained untouched by the judiciary.<sup>35</sup>

Many legal scholars believe that the practice of prostitution became illegal in the Twentieth Century as a result of several public policy concerns. One author summarized these concerns as follows:

First, fornication violates widely held Judeo-Christian morality...Second, societal morality stigmatizes the image of women roaming the streets selling sex, in plain view of the general public, and the statutes were intended to dissuade this practice. Third, prostitution statutes were

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story portrays the belief that prostitutes, or “fallen women,” are capable of repentance and salvation. “The legend of Mary Magdalene also emphasizes the difficulty of a woman making her way in the world alone without male guidance, and this appears in Christian attitudes towards prostitution as well.” *Id.*

<sup>32</sup>Bingham, *supra* note 18, at 73.

<sup>33</sup>*Id.* “The underlying religious principle behind these Magdalene Societies was that even prostitutes deserve compassion and can be redeemed. The Reverend John McDowall established the well-known Five Points Mission in New York City, and with financial help from a merchant established the New York Magdalene Society.” *Id.* at 74. Reverend McDowall waged a campaign to encourage other clergy members to support this cause. But these clergy leaders were soon replaced by women reformers from the New York Female Reform Society, which had 250 local groups by 1837. *Id.*

<sup>34</sup>Drexler, *supra* note 24, at 205. The following cases were decided during this period of the Supreme Court expanding privacy and personal liberty. *Roe v. Wade*, 410 U.S. 113 (1973) (extending the personal liberty present in the Due Process clause to include a woman’s choice to have an abortion, with certain limitations); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (finding the fundamental right to privacy was infringed upon by a law prohibiting the sale, dispensing, or use of birth control drugs or devices); *See also Romer v. Evans*, 517 U.S. 620 (1996) (striking down class-based legislation directed at homosexuals); *See also Lawrence v. Texas*, 539 U.S. 558 (2003) (overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986), and finding unconstitutional a law that criminalizes homosexual sodomy).

<sup>35</sup>*See id.*

instituted to combat the spread of sexually transmitted diseases and to protect the health and safety of the community. Fourth, the criminalization of prostitution was seen as a mechanism to protect the prostitute from being a perpetual victim of violent crimes...Fifth, the statutes were seen as a way to eliminate collateral crime...Finally, it was believed that prosecuting prostitutes could reduce the number of prostitutes on the street, and subsequently could diminish the number of children who are victims of commercial sexual exploitation.<sup>36</sup>

By 1971, prostitution was illegal everywhere in the US, with the exception of thirteen counties in Nevada.<sup>37</sup> Today, Nevada employs a legalized system of prostitution where the state government maintains significant control over the lives of prostitute women.<sup>38</sup>

## PART II: THE FEMINIST VOICES

### A. COYOTE – THE LIBERAL FEMINIST VOICE

Call Off Your Old Tired Ethics, or COYOTE, is a self proclaimed prostitutes rights organization, perhaps the most reputable throughout the United States.<sup>39</sup>

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<sup>36</sup>Green, *supra* note 23, at 532.

<sup>37</sup>*Id.* Historically, Nevada had a large mining industry which was accompanied by an influx of prostitutes. By the twentieth century, the growth in Las Vegas tourism caused great concern that the Vegas appeal would be hindered by prostitution and would cause development to slow. In response, Nevada passed a statute which required any brothel to be licensed by the county in which it was located. This allowed the county encompassing Las Vegas the ability to refuse licenses. Today, any county with a population over 250,000 people may not house a brothel, and the four largest cities in Nevada have prohibited prostitution. Drexler, *supra* note 24, at 224. Because of the legalized and heavily regulated system in Nevada, the rate of S.T.D.s among legal prostitutes in the state is zero. *Id.* at 227.

<sup>38</sup>*See id.* at 225.

<sup>39</sup>Bernstein, *supra* note 5, at 110. Arguably the most well-known group of the three discussed in this note, COYOTE tends to react defensively to its radical feminist critics who maintain that their celebrations of “happy hookerdom” are the result of white, middle-class privilege, and that they are not fit to be spokeswomen for prostitutes. *Id.*

Founded in San Francisco, California, in 1973 by a young bohemian feminist named Margo St. James, COYOTE has become the leading voice in the “liberal feminist” theory of prostitution in the United States.<sup>40</sup> COYOTE is the United States affiliate of the International Committee for Prostitutes Rights and is a sister affiliate of the Netherlands Red Thread organization.<sup>41</sup>

COYOTE takes a prostitution-as-work or contractarian perspective.<sup>42</sup> These women believe that prostitution is legitimate work, and they reject the argument that it is merely a degrading sale of one’s body.<sup>43</sup> They regard prostitution as a contract between two consenting adults, and believe that these contracts should be respected by law like other legitimate contracts.<sup>44</sup>

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<sup>40</sup>*Id.*

<sup>41</sup>Fechner, *supra* note 1, at 38. The Red Thread (De Rode Draad), founded in the Netherlands in 1985 by prostitutes and ex-prostitutes, advocates for nearly all of the same causes as COYOTE, only it does so in a far more accepting community than that of the United States. *Id.* Through its umbrella organization, the International Committee for Prostitutes’ Rights, the Red Thread sponsors a “World Whores’ Congress” each year which provides women a platform to discuss various issues of prostitution on a broad scale. The women of the Red Thread use the term “whore” to describe themselves in a creative effort to reclaim the term as their own and diffuse its power to demoralize them. Patricia Padrino, “*Bad Women Deserve Equal Protection: A Look at the Constitutionality of the Florida Prostitution Statute*,” 14 St. Thomas L. Rev. 641 (2002).

<sup>42</sup>Bingham, *supra* note 18, at 78. COYOTE’s campaign for prostitutes’ rights is based on three basic claims: (1) Prostitution is foremost a work issue and the concept of work should replace the concept of crime as the stance of society toward prostitution; (2) Most prostitutes choose to work as prostitutes; (3) Prostitution is work that people should have the right to choose. *Id.* COYOTE member Carol Leigh coined the term “sex-work” to be used in place of “prostitute” so as to avoid the connotations of shame, unworthiness, and wrongdoing generally associated with the word. *See* Bernstein, *supra* note 5.

<sup>43</sup>Thompson, *supra* note 13, at 236. “For liberal feminists, 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 economic independence.” Many prostitutes are independent businesswomen who enjoy the flexibility of the job. They are their own bosses, they choose their clientele, and they name their own price. *Id.*

<sup>44</sup>*See* Padrino, *supra* note 40, at 643.

According to COYOTE, most prostitutes choose their work willingly,<sup>45</sup> and as few as fifteen percent are actually coerced into it.<sup>46</sup> Of course, the majority of COYOTE members are white, middle-class, fairly well educated, high-priced call-girls and escorts.<sup>47</sup> In other words, this organization does not represent street prostitutes, who are perhaps the type of prostitute most injured by the legal system as it exists in the U.S. today.<sup>48</sup>

#### LEGAL CHANGES SOUGHT BY COYOTE

In the opinion of COYOTE co-founder Precilla Alexander: “Decriminalization of prostitution and the regulation of pimping and pandering, it seems to me, offers the best chance for women to gain some measure of control over their work.”<sup>49</sup> Decriminalization would not require the passage of new laws, but the repeal of all existing laws punishing voluntary prostitution and the relationships surrounding it.<sup>50</sup> COYOTE seeks an end to the criminalization of engaging or agreeing to engage in prostitution, soliciting prostitution, pimping, pandering, and keeping a house for the purpose of prostitution.<sup>51</sup> Instead of punishing women for performing a legitimate service, the government should increase penalties for violence committed against prostitutes by pimps and customers.

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<sup>45</sup>See Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 Women’s Rts. L. Rep. 99, 102 (1989). Cooper agrees that freedom of choice is essential to individual autonomy, but acknowledges that “choice” may be influenced by various outside factors like economic status and education. *Id.*

<sup>46</sup>Law, *supra* note 6, at 581.

<sup>47</sup>See Bernstein, *supra* note 5, at 110. Many COYOTE members work out of expensively-furnished homes or apartments by placing advertisements in newspapers, and earn not only enough money to pay rent, but also to help finance other business endeavors. *Id.*

<sup>48</sup>See Law, *supra* note 6, at 529. “Street walkers—those who openly solicit on the street—represent the lowest, most marginalized class of prostitutes. They are most likely to be controlled by pimps, and to be subjected to violence in their work.” *Id.*

<sup>49</sup>Bingham, *supra* note 18, at 80.

<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

COYOTE further demands that the government guarantee prostitutes all human rights and civil liberties including the right to unemployment insurance, health insurance, and housing.<sup>52</sup> It also argues that there should be no laws relegating prostitutes to specific zones or requiring mandatory health checks for prostitutes unless they are required for all sexually active people.<sup>53</sup> Since it sees prostitution as a legitimate profession, COYOTE strives for the unionization<sup>54</sup> of prostitutes so as to improve working conditions for these women by gaining various safety and health protections.<sup>55</sup>

## B. ECP – THE SOCIALIST FEMINIST VOICE

The English Collective of Prostitutes (ECP) is a “socialist feminist” organization. Founded in 1975 by prostitutes and ex-prostitutes involved in the Internal Wages for Housework Campaign, the ECP is a government funded part of the London Women’s Center.<sup>56</sup> In 1979, the ECP found an affiliate group in the United States called the U.S. Prostitutes Collective. The views of these two groups are nearly identical.

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<sup>52</sup>*Id.* The International Committee for Prostitutes’ Rights demands that governments guarantee prostitutes all human rights and civil liberties, including freedom of speech, travel, immigration, work, marriage, etc. *Id.*

<sup>53</sup>*Id.*

<sup>54</sup>*See* Thompson, *supra* note 13, at 245. Thompson argues that the decriminalization of prostitution will permit prostitutes to organize and form unions. “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. 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.” *Id.* *But see* Law, *supra* note 6, at 598, finding that the “unionization experience of exotic dancers and other legal sex workers is not encouraging...Where women have sought to organize a union, they have been rebuffed by established labor organizations.” *Id.*

<sup>55</sup>*See* Thompson, *supra* note 13, at 238. COYOTE argues that prostitutes deserve the same rights and protections afforded to other workers. The only true difference between prostitution and other forms of labor is that prostitution happens to involve the sale of sexual services. *Id.*

<sup>56</sup>Fechner, *supra* note 1, at 34.

The ECP advances a Marxist theory of materialism which argues that the institution of capitalism exploits the labor of prostitutes for the benefit of those who control the means of its production, like pimps, and the government.<sup>57</sup> According to this theory, poverty is the main cause of prostitution.<sup>58</sup> Indeed, many socialist feminists believe that “if there were no poor women, there would be no prostitutes.” Prostitutes are simply women who refuse to be poor by “making money from what most women give to men for free.”<sup>59</sup> In their view, it is the lack of money in women’s hands that is immoral and criminal, not the act of prostitution.<sup>60</sup>

Unlike liberal feminist organizations such as COYOTE, the ECP believes that women are not free to choose prostitution as work since their need for money often leaves them with no alternative.<sup>61</sup> The ECP estimates that seventy percent of prostitutes are mothers, and most support their families alone.<sup>62</sup> The evidence it cites suggests that “hooking is the only job where women are paid more than men,”<sup>63</sup> and so the argument goes, it is no wonder so many women turn to this lifestyle.

Socialist feminists typically see three problematic themes in prostitution: (1) Poverty causes prostitution; (2) Women are often poor; and (3) The government supports these conditions by its inaction. In an attempt to combat this chain of causation, the ECP published a pamphlet in 1981 entitled “A Guide

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<sup>57</sup>Cooper, *supra* note 44, at 234.

<sup>58</sup>See Thompson, *supra* note 13, at 233. The socialist feminist argues the sole reason women enter into prostitution is for economic gain. *Id.* “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. It is this interconnection between the forces of capitalism and the forces of patriarchy that creates the institution of prostitution.” *Id.* at 234.

<sup>59</sup>*Id.* at 235. In this light, the author argues, “prostitution represents women’s protest against the perils of poverty.” *Id.*

<sup>60</sup>Fechner, *supra* note 1, at 43.

<sup>61</sup>Thompson, *supra* note 13, at 235. The ECP believes that factors such as unemployment, discrimination, and low-paying jobs force women into prostitution to escape poverty. Prostitution can never be a deliberate choice when the threat of poverty leaves women with no alternatives. *Id.*

<sup>62</sup>Fechner, *supra* note 1, at 45.

<sup>63</sup>Thompson, *supra* note 13, at 234.

to the Rules of the Game: A to Z for Working Girls.”<sup>64</sup> This material was designed to protect prostitutes from the injustices of government criminalization by educating them about the legal side of prostitution.<sup>65</sup>

#### *LEGAL CHANGES SOUGHT BY THE ECP*

The ECP believes the solution to prostitution lies in rechanelling money into women’s hands. Proposed methods include increasing social welfare benefits, increasing wages for female workers, providing wages for housework, and promoting low-cost housing and legal services tailored for women.<sup>66</sup>

Like COYOTE, the ECP argues for decriminalization of all laws against prostitution, including penalties for customers.<sup>67</sup> Instead, it supports stern criminal laws for pimps and others who profit financially from prostitution, except of course the prostitute herself.<sup>68</sup> Further, the ECP opposes legalization of prostitution since it would result in state control and the institutionalization and isolation of prostitutes.<sup>69</sup> The ECP also stresses the value of public education about prostitution, and advocates for improved social conditions and legal services for women.<sup>70</sup>

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<sup>64</sup>Fechner, *supra* note 1, at 46.

<sup>65</sup>*Id.* The pamphlet covers issues such as advertising, fines and prison sentences, and brothel keeping. In 1982, the ECP created the Legal Action for Women Network, or LAW, to provide its followers with access to free legal advice. *Id.*

<sup>66</sup>International Prostitutes Collective, *Sex Workers: What We Stand For*, at <http://allwomenscount.net>. (last visited Aug. 17, 2005).

<sup>67</sup>Fechner, *supra* note 1, at 47.

<sup>68</sup>*Id.*

<sup>69</sup>*Id.* Nevada has adopted a system of legalized prostitution – a method that the ECP strongly opposes: “The system followed in Nevada is one where the prostitution laws touch most aspects of the prostitutes’ lives. The prostitutes are told where to live. Their lives outside of work are extremely structured. The prostitutes are prevented from raising their own children, driving a car within the city limits, and shopping between the hours of five p.m. and eight a.m. Furthermore the women may eat at restaurants only accompanied by the manager of the brothel, they may not dress in any way that invites speculation about their occupation, and they may not sunbathe nude or semi-nude.” Drexler, *supra* note 24, at 225.

<sup>70</sup>Fechner, *supra* note 1, at 33.

### C. WHISPER – THE RADICAL FEMINIST VOICE

Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER)<sup>71</sup> is a “radical feminist” group founded in 1985 by survivors of prostitution and women’s advocates.<sup>72</sup> Located in Minneapolis, WHISPER is funded through local and regional foundation grants and receives part of its financial aid from the Minneapolis Department of Corrections.<sup>73</sup> The group advocates primarily on behalf of street prostitutes,<sup>74</sup> although it does seek to represent the interests of all female prostitutes.

If COYOTE’s mantra is prostitution-as-work, WHISPER’s is prostitution-as-exploitation.<sup>75</sup> The radical feminist criticizes the liberal feminist view that prostitution is a “choice exercised by women to work.”<sup>76</sup> The idea that prostitution is a choice is a “mistake[n] illusion of power.”<sup>77</sup> Social and economic inequalities between men and women render it nearly impossible for a woman to actually choose to become a prostitute.<sup>78</sup> Since men are socially and economically dominant, and women are subordinate in these respects,<sup>79</sup> women are defined by

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<sup>71</sup>Thompson, *supra* note 13, at 232. According to WHISPER spokesperson Sarah Wynter, the acronym WHISPER was chosen for a significant reason. In her words, “women in systems of prostitution do whisper among [themselves] about the coercion, degradation, sexual abuse and battery in [their] lives...” *Id.*

<sup>72</sup>Fechner, *supra* note 1, at 33.

<sup>73</sup>*Id.* at 34.

<sup>74</sup>*Id.*

<sup>75</sup>Bingham, *supra* note 18, at 81.

<sup>76</sup>Thompson, *supra* note 13, at 232. The radical feminist argues that various social and economic inequalities between men and women make the idea of choice in prostitution nearly impossible to achieve. *Id.*

<sup>77</sup>Fechner, *supra* note 1, at 49. Fechner quotes the following in her article. “In the real world, [men’s] gender and class [are] disproportionately rewarded with privilege and status. The danger for women in prostitution, and for all women, is to make this *illusion* [of power a] reality.” *Id.*

<sup>78</sup>Fechner, *supra* note 1, at 50.

<sup>79</sup>*Id.* at 49.

a male perspective.<sup>80</sup> This being so, women can never truly own their sexuality, and without ownership of self, unconstrained choice is not possible.<sup>81</sup>

WHISPER further argues that prostitution is not work. Rather, it is on par with other types of sexual oppression of women by men,<sup>82</sup> like domestic violence, sexual assault, rape, and pornography.<sup>83</sup> The exchange of money for sexual services that women are forced to perform does not change sexual violence against women into work.<sup>84</sup>

Unlike liberal feminists who focus on the individual rights of women with their prostitution-as-work perspective, radical feminists focus on the rights of women collectively since, in their view, prostitution is the result of the subordination of the entire female gender.<sup>85</sup>

#### LEGAL CHANGES SOUGHT BY WHISPER

Because women suffer the harms of prostitution, WHISPER supports social and legal reforms that would shift this burden to men, who benefit from prostitution.<sup>86</sup> WHISPER would like to see all laws penalizing prostitutes

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<sup>80</sup>Thompson, *supra* note 13, at 233.

<sup>81</sup>Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the Impossibility of Consent*, 5 Berkley Women's L. J. 75, 94 (1989-90). Radical feminist Catherine MacKinnon argues that consent to prostitution is impossible because women have no "self." Since women are defined by a male perspective, they cannot own their sexuality and therefore cannot own themselves. In MacKinnon's words, "[women] cannot be aware of their own self-interest, since they perceive their needs only as a reflection of male desire." *Id.*

<sup>82</sup>Thompson, *supra* note 13, at 232.

<sup>83</sup>Alexandra Bongard Stremler, *Sex for Money and the Morning After: Listening to Women and the Feminist Voice in Prostitution Discourse*, 7 J. Law. & Pub. Pol'y 189, 200 (1995). Stremler recognizes that although few scholarly articles link pornography to prostitution, the two are nonetheless intimately connected in the harm they cause women. Indeed, Stremler notes that "[t]he same factors which force women into prostitution can also force them into the production of violent pornography...The victims of prostitution and pornography frequently overlap." *Id.*

<sup>84</sup>Fechner, *supra* note 1, at 49.

<sup>85</sup>Bingham, *supra* note 18, at 83.

<sup>86</sup>Fechner, *supra* note 1, at 48.

repealed or decriminalized.<sup>87</sup> Further, the group advocates for public education about prostitution in the form of presentations at high schools, community groups, and conferences.<sup>88</sup> It also works actively with rape crisis centers and battered women's shelters to sensitize these institutions to the issues of prostitution.<sup>89</sup> WHISPER supports strong legal penalties against all parties playing any roll in prostitution, including pimps, panderers, customers, and owners of houses that profit from prostitution.<sup>90</sup>

### PART III: A NATIONWIDE PROBLEM

#### A. HEALTH CONCERNS

Aside from the common belief that prostitution is immoral,<sup>91</sup> another, and perhaps stronger argument for its criminalization is the belief that prostitutes

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<sup>87</sup>*Id.* at 52. WHISPER argues that a criminalized system of "prostitution leaves women doubly victimized: first by the abuses of both pimps and customers, and second, by a criminal system that blames and punishes them for their victimization." *Id.*

<sup>88</sup>*Id.* at 51. The group produced a documentary video, an educational series aired on public radio, booklets discussing prostitution as a system of female oppression, and a slide show for children who witnessed violence against their mothers. A principle project of WHISPER is a free education group for female prostitutes that meets weekly and covers a six-month curriculum. In its teachings, WHISPER distinguishes between the radical education program and a support group. Rather than focusing on individual women's problems, the group focuses on a curriculum that aims to help women "free themselves from victim-blaming ideas they have encountered in our culture [about prostitution]." WHISPER actively recruits women for its radical education groups through word of mouth, flyers, and posters placed in areas where prostitutes will likely see them. *Id.* at 51-52.

<sup>89</sup>*Id.* at 51. WHISPER offers in-service training to rape crisis centers and battered women's shelters. In its effort to educate these shelters about the perils of prostitution, the group is compiling a collection of oral histories of women currently or previously in prostitution to reveal the coercion and innocence of many of these women. The compilation is not a plea of innocence, but rather an attempt to humanize prostitutes in the eyes of women's shelters. *Id.*

<sup>90</sup>*Id.* at 52.

<sup>91</sup>Linda M. Rio, *Psychological and Sociological Research and the Decriminalization or Legalization of Prostitution*, Archives Sexual Behav., Nov.

spread disease. The third most common way for a man to contract AIDS (after homosexual sex and intravenous drug use) is from a prostitute.<sup>92</sup> Estimates conclude that as many as half of the street prostitutes in Washington, DC, and New York are HIV positive.<sup>93</sup> In Newark, NJ, the figures are closer to sixty percent.<sup>94</sup> Reports like these render prostitutes easy scapegoats for the AIDS epidemic in the U.S..<sup>95</sup>

These statistics, however, are somewhat misleading in the conclusions they imply. Prostitutes are more often the victims of the transmission of AIDS and other sexually transmitted diseases than the causes.<sup>96</sup> Medical research indicates that HIV is twenty times more likely to be transmitted by a man to a woman during sex.<sup>97</sup> Indeed, the US Department of Health has reported that only three to five percent of the sexually transmitted diseases in the US are

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2, 1991, 205, 206. Despite this common belief, studies have shown that most Americans do not believe prostitution is immoral. *Id.* Many Americans found prostitution to be offensive only when it was in their neighborhood as it may lower property values. Susan Rook, *Talk Back Live* (CNN television broadcast, Nov. 16, 1994). A study in Boston, Massachusetts, found that only 14% of those surveyed believed prostitution to be immoral, and a national sample found that only 46% of the respondents thought that prostitutes do more harm than good. Rio, *supra* note 90, at 207-08.

<sup>92</sup>*American Survey*, *The Economist*, Sept. 7, 1991, at 28.

<sup>93</sup>*Id.*

<sup>94</sup>*Id.*

<sup>95</sup>*See* Drexler, *supra* note 24, at 226. Drexler argues that the blame for disease is often misplaced on prostitutes in the U.S.. "When a new sexually transmitted disease reaches epidemic proportions, prostitutes are used as scapegoats and targeted by legislation directed at prostitution." *Id.*

<sup>96</sup>*See* Bruce Lambert, *AIDS in Prostitutes, Not as Prevalent as Believed, Studies Find*, *N.Y. Times*, September 20, 1988.

<sup>97</sup>Charles Clark, *Prostitution*, *CQ Researcher*, June 11, 1993, at 510. *See also* Mary Anne Bobinski, *Women and HIV: A Gender-Based Analysis of a Disease and Its Legal Regulation*, 3 *Tex. J. Women & L.* 7, 39 (1994). Sex workers confront a far greater risk of contracting HIV from their male customers than the customers face of contracting the virus from them. *Id.* Gerald H. Friedland & Robert S. Klein, *Transmission of the Human Immunodeficiency Virus*, 317 *New Eng. J. Med.* 1125, 1130 (1987). Even when a sex worker is infected with HIV, it is difficult for her to transmit the disease to a man via sexual intercourse. Transmission by vaginal fluid was not found. *Id.*

related to prostitution.<sup>98</sup> Likewise, the Center for Disease Control reported in 1998 that of the 570,425 male AIDS carriers in the US, roughly four percent had contracted the disease through heterosexual contact.<sup>99</sup> Of that four percent, half contracted AIDS via sex with an intravenous drug user.<sup>100</sup> The remaining two percent represent the number of men who contracted AIDS from sex with non-intravenous drug using women.<sup>101</sup>

These statistics indicate that prostitutes are most often victims of the spread of sexually transmitted diseases in the U.S., and thus are not to blame for this epidemic. Rather, the evidence more clearly points to intravenous drug use as the culprit.<sup>102</sup>

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<sup>98</sup>PENet, *Prostitution Issues: Statistics*, at <http://bayswan.org/stats.html>.

<sup>99</sup>Centers for Disease Control, 10 HIV/AIDS Surveillance Report 1, 14 tbl. 5 (Dec. 1998).

<sup>100</sup>*Id.* Intravenous drug use has significantly heightened STD rates among prostitutes around the world, not just in the U.S.. For example, in Italy, prostitutes who did not use intravenous drugs had HIV infection rates of 1.6%, while those who did use intravenous drugs had rates of 36%. Similarly in Spain, non-intravenous drug using prostitutes had HIV rates of 3.4%, while the HIV rates of those using intravenous drugs was 51.7%. A study of prostitution in Glasgow, Scotland in 1990 reported similar results. Intravenous drug using prostitutes had an HIV infection rate between 3% and 5%, while non-drug users had a rate of 0%. Law, *supra* note 6, at 547.

<sup>101</sup>*Id.* Women are much more likely to contract HIV through heterosexual sex than men. The CDC reports that thirty-nine percent of women and four percent of men contract HIV through heterosexual contact. *Id.*

<sup>102</sup>*See* Philip J. Hilts, *Spread of AIDS by Heterosexuals Remains Slow*, N.Y. Times, May 1, 1990, at C1. "Of 634 heterosexual contact cases reported in the city (New York) through late 1989, 627 were women who acquired the virus from men and only 7 were men, all of whom had sexual contact with female intravenous drug users." *Id.* The percentage of women arrested for drug-related offenses has skyrocketed above all other crime. Women are increasingly arrested for drug offenses in both federal and state criminal justice systems. Social scientists have pointed out that drug use is a common way for a woman to medicate herself to dull the senses to the violence she may be experiencing at home or elsewhere. Michelle S. Jacobs, *Prostitutes, Drug Users, and Thieves: The Invisible Women in the Campaign to End Violence Against Women*, 8 Temp. Pol. & Civ. Rts. L. Rev. 459, 471 (1999). Further, a woman's need to buy drugs may factor into her commission of other crimes, particularly theft, burglary, and robbery. *Id.* at 473.

Prostitutes are also victims of various forms of physical abuse.<sup>103</sup> This is especially problematic since prostitutes rarely report such violence to law enforcement for fear of legal repercussions against them.<sup>104</sup> Those who do report abuse are systematically ignored by the police,<sup>105</sup> leading most prostitutes to the conclusion that these violent crimes are not worth reporting. Many abusive men are fully aware of the legal dilemma that prostitutes face, and often take advantage of their legal vulnerability.

Though statistics vary depending on the sample population, one survey showed that sixty-five percent of prostitutes have been seriously injured by a customer.<sup>106</sup> Another survey reported that two-thirds to three-fourths of street prostitutes are raped or beaten an average of four to fifteen times a year.<sup>107</sup>

These women are murdered at equally alarming rates. Studies show that serial murderers kill more than one thousand female prostitutes each year.<sup>108</sup> In fact, the mortality rate among prostitutes is forty times the national average.<sup>109</sup>

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<sup>103</sup>Law, *supra* note 6, at 581. “Experience in relation to the prosecution of rape and domestic violence suggests that crimes of violence against commercial sex workers will be taken seriously and prosecuted effectively by police and prosecutors only if these people are trained and sensitized to the special problems presented by violence against women in commercial sex.” Domestic abusers will commonly defend their actions by asserting that the abused woman is a prostitute/slut undeserving of the full protection of the law. *Id.*

<sup>104</sup>Stremmer, *supra* note 83, at 199. Recognizing that prostitutes do not receive legal protection for many reasons, e.g.: “discrimination, fear of prosecution, and physical coercion limit access to justice.” *Id.*

<sup>105</sup>Carol Leigh, *A First Hand Look at the San Francisco Task Force Report on Prostitution*, 10 *Hastings Women's L.J.* 59, 81 (1999). A report by the San Francisco Task Force on Prostitution showed that prostitutes “uniformly expressed fear and frustration that when they are victims of crime the police do not work to protect them or find the perpetrators.” *Id.*

<sup>106</sup>Rio, *supra* note 90, at 212.

<sup>107</sup>Deborah L. Rhode, *Who is the Criminal?*, *Nat'l L. J.*, Sept. 25, 1995, at A22.

<sup>108</sup>*Id.* Serial killers often prey specifically on prostitutes. For instance, between 1982 and 1985, “The Green River Killer,” a serial killer in the Seattle area, was responsible for the deaths of over forty prostitutes. Other infamous prostitute slayers include Jack the Ripper, the Yorkshire Ripper, and Ted Bundy. While their motives are often unclear, we know that Jack the Ripper and the Yorkshire Ripper aimed to “extirpate vice by assassination.” It is also commonly assumed that they started killing prostitutes because they were the most accessible of victims. Ed Cameron, *Some Psychoanalytic Aspects of Serial Homicide*, 24 *Cardozo L. Rev.* 2267, 2271 (2003).

These figures are not surprising however, when one considers the options available for a prostitute to seek help. Not only are prostitutes frequently ignored by law enforcement, but they are often explicitly excluded from domestic violence shelters.<sup>110</sup> Many shelters have written policies of barring women who engage in “illegal activities of any kind.”<sup>111</sup> Rescue service shelters are among the few groups that do offer shelter and services to prostitutes.<sup>112</sup> However, these groups are small, few in number, and poorly funded.<sup>113</sup>

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<sup>109</sup>*Id.* Many people believe that prostitutes have no rights. This view hinders the efforts needed to diligently investigate prostitute murders. In fact, the murders of prostitutes are often referred to as “misdemeanor murders” or “NHIs,” which stands for No Humans Involved. Terms like these reflect the attitude that not only are prostitutes unworthy of police resources, but they are also unworthy of being labeled human beings. Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politicians and Judges*, 10 Hastings Women’s L.J. 199, 120-21 (1999).

<sup>110</sup>Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 Yale J.L. & Feminism 46, 79-80 (1992). Most shelters exclude drug and alcohol dependent women, or women who participate in illegal activity of any kind. Prostitutes often feel compelled to lie about their circumstances to gain admission, which in turn reduces the possible benefits of support they receive. *Id.* Gay and lesbian victims of domestic violence face similar exclusions. For instance, Minnesota provided services to women abused by men only, hence excluding lesbians. Similarly, Indiana limits services to women abused by a spouse or former spouse. Nancy J. Knauer, *Same-Sex Domestic Violence: Claiming A Domestic Sphere While Risking Negative Stereotypes*, 8 Temp. Pol. & Civ. Rts. L. Rev. 325, 345 (1999).

<sup>111</sup>Baldwin, *supra* note 111, at 79-80. Jacobs points out that few shelters are legally able to accept prostitutes due to out of house regulations. “Sometimes the gift envelope that contains state or federal aid also establishes the restrictions shelters must enforce in order to qualify for that aid.” Many restrictions have the practical effect of denying benefits to women who need them the most. Jacobs, *supra* note 103, at 476.

<sup>112</sup>Vednita Carter, at <http://breakingfree.net> (June 19, 2004). “BREAKING FREE”, a non-profit organization founded in Minnesota in 1996 provides counseling, advocacy, and various other services for women wanting to leave prostitution, and abuse of any kind. *Id.* Another non-profit group calling itself “Breaking Free” was founded in 2000 by the joint efforts of Nadia Telsey, a consultant and expert on self-defense, and Phyllis Barkhurst, a long time activist in the movement to end violence against women. The group currently has three main projects: (1) Self-Defense from the Inside Out (SDIO) is a series of closed group sessions that consist of activities and discussions that transform the way women live in today’s violent world; (2) Self-defense workshops consisting of physical defense moves to supplement the teachings of the SDIO program; and

## B. COSTS AND RESOURCES

The cost of maintaining a criminalized system of prostitution in the U.S., in terms of money spent and resources used, is staggering. One study conducted in 1985 estimated that each of America's largest cities spends twelve million dollars a year fighting prostitution.<sup>114</sup> Another study conducted on Los Angeles, estimated a cost of one hundred million dollars annually to that city alone.<sup>115</sup> Many cities spend more money on the criminal enforcement of prostitution than on education, public welfare, and health services combined.<sup>116</sup>

In 1996, 99,000 people were arrested in the U.S. on prostitution related charges.<sup>117</sup> A 1980's report found that the run-of-the-mill prosecution of a prostitute costs nearly two thousand dollars.<sup>118</sup> The cost of prostitution to the U.S. government in terms of lost tax dollars is not a figure that can be accurately calculated, yet many agree that it is astronomical.<sup>119</sup>

Not only does the U.S. spend an exorbitant amount of money fighting prostitution, but it does so inefficiently. The criminal law is most frequently

(3) The Monthlies are self-defense workshops held once a month, specializing in working with mothers and daughters. Telsey, Barkhurst, at <http://breaking-free.net>.

<sup>113</sup>Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 Vand. L. Rev. 1041, 1048 (1991). In 1970 there were no shelters in the U.S. for battered women; by 1987 there were more than 700. *Id.* Although the demand for these shelters has risen dramatically, the supply has not kept pace. In 1998, the U.S. Conference of Mayors found that shelters for homeless people and victims of domestic violence were often filled to capacity and thirty-two percent of requests for shelter by homeless families were denied in 1998 due to lack of resources. Law, *supra* note 6, at 580.

<sup>114</sup>The Economist, *supra* note 91.

<sup>115</sup>*Id.*

<sup>116</sup>James R. Stout & Thomas S. Tanana, Esq., *Could California Reduce AIDS by Modeling Nevada Prostitution Law?*, 2 San Diego Justice J., 491, 497-98 (1994).

<sup>117</sup>Bureau of Just. Stat., U.S. Dep't Of Just., Sourcebook of Criminal Justice Statistics 1997, at 324 tbl. 4.1.

<sup>118</sup>Rhode, *supra* note 108.

<sup>119</sup>See Drexler, *supra* note 24. One estimate found that prostitution costs the federal government roughly three billion dollars annually in uncollected tax revenue. *Id.* at 212.

enforced against street prostitutes, the poorest and greatest minority of women who deal in sex work. Since these women are the most visible prostitutes,<sup>120</sup> they account for roughly ninety percent of all prostitution arrests.<sup>121</sup> However, street prostitutes comprise only ten to twenty percent of all prostitutes in the U.S..<sup>122</sup>

Another somewhat hidden cost of criminalized prostitution in the US is the over-dedication of police forces and the overcrowding of prisons. In 1985, police in the sixteen largest US cities made as many arrests for prostitution as for all violent crimes combined.<sup>123</sup> A study performed that year indicated that police officers working in pairs expended an average of twenty-one hours per prostitution arrest,<sup>124</sup> a gross over-commitment of limited police resources.<sup>125</sup> Not surprisingly, this practice leads to a drastic overcrowding of prisons with female prostitutes.<sup>126</sup> In over thirty-five US states, nearly half of the female inmates were arrested on prostitution related charges.<sup>127</sup>

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<sup>120</sup>Roberta Perkins & Garry Bennett, *Being A Prostitute: Prostitute Women And Prostitute Men* 5 (1985). 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. This visibility also makes them more vulnerable to physical violence. *Id.*

<sup>121</sup>PENet, *supra* note 98.

<sup>122</sup>*Id.*

<sup>123</sup>Julie Pearl, *The Highest Paying Customers: America's Cities and the Costs of Prostitution Control*, 38 *Hastings L.J.* 769, 769-70 (1987). Police in Boston, Cleveland and Houston arrested twice as many people for prostitution as they did for all homicides, rapes, robberies and assaults combined. *Id.*

<sup>124</sup>*Id.* at 773.

<sup>125</sup>*See* The Economist, *supra* note 91. In many cities, one in ten police officers are assigned to prostitution. *Id.*

<sup>126</sup>James Bovard, *Safeguard Public Health Legalize Contractual Sex*, Wash. Times, Feb. 27, 1995, at 18. There has been a 273% increase of female inmates over the last 15 years. *See* Bureau of Justice Statistics, *U.S. Dep't of Justice, Sourcebook of Criminal Justice Statistics* 1996, at 511 tbl.6.13 (Kathleen Maguire & Ann L. Pastore eds., 1997); *see also* Kate DeCou, *U.S. Social Policy on Prostitution: Whose Welfare is Served?*, 24 *New Eng. J. on Crim. & Civ. Confinement* 427, 442 (1998) (noting that from 1985 to 1995, the population of female inmates in U.S. jails increased from 19,077 to 52,136).

<sup>127</sup>The Economist, *supra* note 91.

### C. DISCRIMINATORY ENFORCEMENT OF CRIMINAL PROSTITUTION LAWS

Another problem with the US criminalized system of prostitution is that the penalties typically imposed on the prostitute are often more severe than those imposed on other parties who profit from the act.<sup>128</sup> Yet even where the laws have been amended to punish all parties equally, the enforcement of laws against prostitutes remains discriminatory.<sup>129</sup>

Most US states impose more stern penalties on those who sell sex for money than on those who buy,<sup>130</sup> and those who profit.<sup>131</sup> Indeed, some jurisdictions impose no criminal penalties on men who buy sex.<sup>132</sup> Many states follow the Model Penal Code<sup>133</sup> which deems prostitution a misdemeanor, while patronizing a prostitute is a mere infraction.<sup>134</sup> In many states prostitutes are penalized with prison sentences ranging from one month to a year, and fines ranging from one hundred dollars to one thousand dollars.<sup>135</sup> In only a few states

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<sup>128</sup>Drexler, *supra* note 24, at 215.

<sup>129</sup>*See id.* “Even when the wording of prostitution law was changed, the enforcement remained the same; women were the ones arrested.” Police departments have tried some unorthodox methods of deterring male customers. For instance, one municipality would write a section for the local newspaper that included the names of any male client arrested on prostitution related charges. When mailings were sent to the homes of those who utilized prostitutes, the practice came to a quick halt due to political protests. *Id.* Other attempted practices have included impounding autos, revoking drivers licenses, and requiring customers to attend school. Law, *supra* note 6, at 567. In San Francisco, California, in 1977, 2,938 people were arrested for prostitution. Only 325 were customers. DeCou, *supra* note 128, at 435.

<sup>130</sup>*See* Law, *supra* note 6, at 566.

<sup>131</sup>*See* Drexler, *supra* note 24, at 215. Drexler points out that pimps and hotel managers are the ones profiting from prostitution, yet they remain virtually ignored by the criminal justice system. *Id.*

<sup>132</sup>Law, *supra* note 6, at 565.

<sup>133</sup>Model Penal Code 251.2 (1980). The American Law Institute expressed the view that harsher penalties against customers are unrealistic since judges and juries would be swayed by the common perception of extra-marital intercourse as a widespread practice. *Id.*

<sup>134</sup>Law, *supra* note 6, at 565.

<sup>135</sup>Drexler, *supra* note 24, at 215.

can the customer face one year in jail and a one thousand dollar penalty,<sup>136</sup> and evidence suggests that even when customers are arrested, they are rarely convicted.<sup>137</sup>

It is common knowledge that black letter law and police enforcement strategies do not always coincide. So even where written laws have taken on a more equitable penalty scale, police practice does not conform.<sup>138</sup> A striking example of this disparate treatment was when Massachusetts amended its prostitution law in 1983 to make buyers and sellers of sex equally culpable.<sup>139</sup> Seven years later in 1990, 263 women, and not a single man, were arraigned on prostitution charges in Boston, Massachusetts.<sup>140</sup>

The explanation for this disparity is that police mainly use male decoys posing as customers while the use of female decoys posing as prostitutes is less common.<sup>141</sup> This practice has been the subject of Constitutional challenges, but courts have not yet found any equal protection violations.<sup>142</sup>

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<sup>136</sup>*Id.*

<sup>137</sup>*Id.* at 214. When a male client is arrested he is often asked to testify against the prostitute and the charges against the customer are dropped. *Id.*

<sup>138</sup>*See id.* Evidence suggests that roughly twenty percent of men solicit a prostitute in their lifetime, yet only two customers are arrested for every eight female prostitutes. Recent surveys show that there are almost as many male prostitutes as female prostitutes, yet women account for nearly ninety percent of prostitution arrests. *Id.*

<sup>139</sup>Minouche Kandel, *Whores in Court: Judicial Processing of Prostitutes in the Boston Municipal Court in 1990*, 4 *Yale J. L. & Feminism* 329, 334 (1992).

<sup>140</sup>*Id.* One author attributes the persistent growth of the U.S. sex market to the “focus of law enforcement on the supply side of the prostitution market.” Charles Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 *Suffolk U. L. Rev.* 235, 243 (2000).

<sup>141</sup>*Id.*

<sup>142</sup>*See People v. Superior Ct.*, 562 P.2d 1315 (Cal. 1977) (accepting factual allegations that enforcement efforts are targeted at those who sell sex for money rather than at those who buy, but concluding that no equal protection claim lies here for discriminatory law enforcement). *But see Commonwealth v. An Unnamed Defendant*, 492 N.E.2d 1184 (Mass. App. Ct. 1986) (reversing an alleged prostitute’s conviction finding discriminatory patterns in local law enforcement). In *Personnal Adm’r of Mass. V. Feeney*, 442 U.S. 256, 279 (1979), the Supreme Court ruled that a claim brought under the federal Equal Protection Clause merely showing discriminatory effects will not suffice. A plaintiff must be able to show discriminatory purpose or intent such that the decision maker

#### D. THE DIVORCE MISCONCEPTION

The disparate treatment of prostitutes by the US legal system takes a subtle toll on the public's attitude toward prostitution. In over-condemning them for their roles in the prostitution industry, society is taught that prostitutes are the sole causes of the harms that result from the sale of sex for money. As a result, they are blamed for many harms that have only a tentative connection to the act of prostitution.<sup>143</sup>

For instance, the rising divorce rates in the U.S. are considered by some to have either directly or indirectly resulted from prostitution. However, studies indicate that prostitution is more often the result of divorce than the cause. Divorce and child support delinquency contribute to the economic burdens suffered by many women.<sup>144</sup> One study reported that 73% of women and children involved in divorce experience a decline in their standards of living, while 42% of men involved in divorce experience a rise in living standards.<sup>145</sup> If the socialist feminist argument that economic necessity is the main cause of prostitution has any merit, divorce can clearly force women into prostitution strictly for financial reasons.

The effects that divorce can have on prostitution appear across the globe. In Japan, a practice called *enjo kosai* has risen as a popular alternative to

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(police enforcement) chose their course of action at least in part “because of” and not merely “in spite of” its discriminatory effects – an extremely difficult standard to prove. *Id.*

<sup>143</sup>See Norma Jean Almodovar, *For Their Own Good: The Results of the Prostitution Laws as Enforced by Cops, Politicians and Judges*, 10 *Hastings Women's L.J.* 119 (Winter 1999). Almodovar articulates the fallacy of arguments which imply that prostitution is the root cause of “other serious crime”: “It has been shown statistically that there is a direct correlation between prostitution and other serious crimes in areas where high levels of streetwalking prostitution are allowed to occur.’ If one were to rephrase the above argument it could read as follows: ...‘It has been shown statistically that there is a direct correlation between hold-ups and other serious crimes in areas where there are liquor stores and 7-11 stores.’ [C]losing 7-11 and liquor stores would probably eliminate most convenience store-related crimes,” but it cannot be fairly stated that these stores *cause* such related crimes. *Id.* at 126.

<sup>144</sup>Stremler, *supra* note 83, at 198.

<sup>145</sup>Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America*, 323-56 (1985).

prostitution, which has been illegal there since the 1950's.<sup>146</sup> Many scholars believe that enjo kosai has thrived at least in part because of divorce and other forms of emotional trauma.<sup>147</sup>

#### PART IV: CONSOLIDATING THE VOICES

Consolidating the three leading feminist voices into one, even in theory, is no simple task. Each voice sees different problems with prostitution, and naturally each seeks a remedy tailored to alleviate the specific problems they have identified.<sup>148</sup> Having three feminist groups each advocating for prostitute women in ways they believe to be most effective has both pros and cons.

The seemingly positive consequence of this three pronged attack on criminalized prostitution law is the idea that three minds and three voices are better than one.<sup>149</sup> If each feminist group takes a unique approach, no harm will

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<sup>146</sup>[http://en.wikipedia.org/wiki/enjo\\_kosai](http://en.wikipedia.org/wiki/enjo_kosai).

<sup>147</sup>Tsubasa Wakabayashi, *Student Scholarship: Enjokosai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law*, 13 UCLA Women's L.J. 143 (Fall/Winter 2003).[http://en.wikipedia.org/wiki/enjo\\_kosai](http://en.wikipedia.org/wiki/enjo_kosai). Enjo kosai, or "dating for assistance," is a practice in Japan where high school-aged girls are paid by older men to accompany them on dates and/or render sexual services. In studying the various causes for the entry of young girls into enjo kosai, one author cites psychological compensation as a main factor. Girls who have grown up in physically or emotionally traumatic settings, "such as experiencing their parents' divorce," are prone to this practice since they see enjo kosai as compensation for the lack of love and the feeling of loneliness stemming from this past trauma. *Id.* at 160.

<sup>148</sup>For example, liberal feminists see an infringement on the prostitute's right to freely contract, and so seek decriminalization of laws that prohibit these contracts, including relationships between pimps, panderers, and prostitutes. The socialist feminist sees economic necessity as the prostitute's main hardship, and so seeks to decriminalize selling sex for money, but also keep laws that criminalize the acts of pimping, pandering, and others who profit from the prostitute's work, except the prostitute and the customer. The radical feminist believes the underlying system of male supremacy is the main cause of prostitution, and so seeks to end the punishment of women who sell sex for money, but strongly penalize all other parties involved, including pimps, panderers, and customers (who are each generally male parties).

<sup>149</sup>See Katharine Bartlett, *Cracking Foundations as Feminist Method*, 8 Am. U.J. Gender Soc. Pol'y & L. 31, 53 (2000). Bartlett highlights one of the benefits of having more than one voice speak on the subject. "The value of recognizing

be left unaddressed.<sup>150</sup> Furthermore, it would seem that if each group voices its concerns simultaneously, the whole will be more easily heard.

Unfortunately, these positive consequences have not materialized in the US. Rather, this three pronged attack has seemingly impeded the respective goals of each group.<sup>151</sup> Since each group has proceeded with the mentality that its own interests are the only right interests for the prostitute, each is convinced that the goals of the others are not only wrong,<sup>152</sup> but contrary and injurious to their own.<sup>153</sup> Thus the three groups are openly critical of one another, and in effect, each voice is trying to talk over the other two.<sup>154</sup>

This has at least two negative consequences. First, none of the voices are heard clearly and coherently since at the end of every argument put forth, a criticism and counter argument follows closely behind.<sup>155</sup> Secondly, the

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multiple views within feminism might easily be dismissed as misguided...in its lack of resolve and uncertain commitment...This dismissal, however, would ignore the gains to feminism of being a field of study, as opposed to a single point of view. Disciplines are formed not around a set of absolute truths but around a coalescence of agreement over the questions that are sufficiently important, and unresolved once and for all, to continue to be asked.” *Id.*

<sup>150</sup>See Fechner, *supra* note 1, at 53. Each group’s paradigm of prostitution defines different aspects of prostitution as “problems.” *Id.*

<sup>151</sup>See Law, *supra* note 6, at 534. “As a matter of principle, some feminists see commercial sex as inconsistent with a vision of a just society and inherently damaging to women, while others see commercial sex as a legitimate choice for some women in some circumstances.” *Id.*

<sup>152</sup>See *id.* Each group may believe the goals of the others are wrong because of a disagreement over facts. Author Law articulates this point nicely: “Whether prostitutes are more often sexual slaves than liberated women is not just a matter of perception, but depends on the facts of their daily existence...In the absence of hard data, people often rely on personal stories that carry divergent messages.” *Id.*

<sup>153</sup>See Fechner, *supra* note 1, at 36. It was for this reason that the ECP stated it would not work with any of the other prostitutes’ groups. *Id.*

<sup>154</sup>See *id.* at 35. “[The three groups] do not count on one another as allies, and in fact partake in vigorous public disputes.” *Id.*

<sup>155</sup>See *id.* Tensions flared between the ECP and the Red Thread at the First World Whores’ Congress in Amsterdam in 1985. The ECP boycotted the following year’s World Congress in Brussels. *Id.* at 36. “Each account [of prostitution put forth by each group] asserts the truth of its own description of and solutions to prostitution, and questions the validity of the other versions. *Id.* at 28.

credibility of the whole is damaged by the constant criticisms by one prong of the others.<sup>156</sup>

The scenario is comparable to an abused female plaintiff who retains not one, but three attorneys each with her own theory of the case. When called upon to present the case, each stands to deliver her own logical argument to the jury. While each attorney's theory may be persuasive standing alone, when combined with the criticisms and distinct theories of the other two, the clarity and credibility of the whole is compromised. The jury may not only misunderstand the larger picture that each advocate is trying to convey, but it will instinctively question the credibility of the plaintiff and the cause of her injury.

To avoid this troubling scenario, plaintiffs and defendants generally retain only one counsel proceeding on one single theory at a time. This counsel is often comprised of a group of legal minds, sometimes even with differing theories of the case. However, these theories are developed and debated in a cooperative manner before presentation at trial, as each attorney, despite her own view, seeks to achieve a common result – to help their client win.

This is not to say that each feminist voice must abandon their own beliefs to make room for those of the other two. This would have the effect of uniting, but also diluting the critical arguments to be made. Instead each group should maintain their core beliefs but be flexible and cooperative enough to recognize that their ultimate goals are really one and the same – to improve the lives of prostitutes.

This must be the starting point from which these advocates proceed. The first question the three groups ought to ask themselves should be “what modes of redress do we have in common?” A brief analysis of these common goals follows.

## PART V: COMMON GOALS FOR LEGAL CHANGE

All three feminist groups condemn the United States' current legal policy of enforcing criminal sanctions against women who offer sex for money.<sup>157</sup> The liberal feminist argues that prostitution should be decriminalized since it is a

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<sup>156</sup>See Bartlett, *supra* note 145, at 45. Bartlett believes “[d]isagreements among feminists should not be surprising. Feminism addresses the entire matter of how persons are, and ought to be treated on account of their gender. Whether women are badly treated raises complex factual issues, because such basic matters as the nature and cause of the differences between men and women remain highly contested and unresolved.” *Id.*

<sup>157</sup>See Bingham, *supra* note 18, at 80. See also Fechner, *supra* note 1, at 47.

legitimate contract between consenting adults.<sup>158</sup> The socialist feminist argues that prostitution should be decriminalized because women often enter the practice out of economic necessity,<sup>159</sup> and because this would allow prostitute women to retain their earnings rather than constantly spending it on government fines.<sup>160</sup> The radical feminist argues that prostitution should not be criminal since most, if not all women are coerced into it,<sup>161</sup> and because this would avoid the double injury of legal and sexual abuse of these women.<sup>162</sup>

While each group maintains its own reasons for lobbying for the condemnation of laws against women who sell sex for money, decriminalization is a goal common to all three. Decriminalization would also serve to open the lines of communication between prostitutes and police enforcement that are currently closed due to the woman's fear of legal repercussions.<sup>163</sup> In this respect, decriminalization ties into the next common goal of protecting prostitutes from violence.<sup>164</sup>

All three feminist groups believe that violence against prostitute women is a significant problem that the US government has done a poor job of

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<sup>158</sup>See Padrino, *supra* note 40, at 643.

<sup>159</sup>Thompson, *supra* note 13, at 233. This argument is not limited to prostitution. The same economic necessity argument can be made for women who work in factories, as waitresses, as domestic servants, or in any other non-sex occupation. The point is that prostitute women are not the only women coerced by their need for money. The unstable job market, combined with the underpayment of female labor, creates similar situations for women in various fields of employment. *Id.*

<sup>160</sup>Cooper, *supra* note 44, at 234.

<sup>161</sup>Fechner, *supra* note 1, at 50. "WHISPER compares the issue of consent in prostitution and marriage: 'Unlike a labor contract, traditional marriage and prostitution are both predicated on ownership and unconditional sexual access to a women's body.' As a married woman was historically said to have consented to sex with her husband under any circumstances, prostitutes necessarily consent to all sex because they sell their body for money. It is assumed that women in prostitution are legally and socially incapable of not consenting to sex." *Id.* at 50-51. Fechner also argues that those who believe prostitution is a free choice ignore those "survivors of prostitution who have testified repeatedly that they did not experience prostitution as a career." *Id.* at 49.

<sup>162</sup>*Id.* at 52.

<sup>163</sup>Stremler, *supra* note 82, at 199.

<sup>164</sup>See discussion *infra* Part III A. Health Concerns.

addressing.<sup>165</sup> The liberal, socialist, and radical feminist groups have all voiced great concern for the physical well-being of these women. The groups believe that the prosecutions of abusers must be more tenacious and the penalties more stern.<sup>166</sup> Further, abused prostitutes need more shelters for refuge, and the existing shelters must open their doors and become sensitized to the unique circumstances of prostitute.<sup>167</sup>

The three groups each argue that prostitutes deserve access to low cost legal services and some form of social welfare benefits.<sup>168</sup> The liberal feminist argues that prostitutes deserve these benefits since other service industry workers enjoy them, and prostitution is no different from other forms of legitimate work.<sup>169</sup> The socialist feminist argues that these methods of redress are appropriate because they serve the underlying goal of channeling money into women's hands.<sup>170</sup> The radical feminist argues that prostitute women deserve these benefits because they are subordinated in so many ways by men,<sup>171</sup> and

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<sup>165</sup>See Law, *supra* note 6, at 581. In the U.S., the demand for domestic violence shelters "far outstrips supply." Rape crisis centers are also unequipped to handle the needs of rape victims. *Id.*

<sup>166</sup>See Fechner, *supra* note 1, at 52. While Fechner states that "[u]nlike the Red Thread and the ECP, WHISPER argues for greater penalties for pimps and [customers]..." *id.*, this does not imply that other feminist groups believe prosecutions against abusers should not be more stern. It merely illustrates that WHISPER considers the acts of pimps and customers as abuse of prostitute women, while other groups (Red Thread and ECP) do not view it this way.

<sup>167</sup>See Law, *supra* note 6, at 582. Currently, many shelters exclude women because space is limited, and funders often impose restrictions on who the shelter can and cannot help. Further, the women already inside the shelter may feel more comfortable if prostitutes and similarly situated women are kept out. *Id.*

<sup>168</sup>See Bingham, *supra* note 18, at 80. See also International Prostitutes Collective, *supra* note 65. See also Fechner, *supra* note 1, at 33.

<sup>169</sup>Padrino, *supra* note 40, at 643. "Choice feminists (closely akin to liberal feminists) describe women who sell sex for money as 'commercial sex workers.' The term 'commercial sex worker' has been used to equate sex work with any other type of work in an effort to convey the idea that prostitution is simply a job..." *Id.* Choice feminists believe that selling sex should be recognized as a legal and valid career choice for women. This school of thought insists that women are fully capable of making the decision to sell sex for money. *Id.* at 644.

<sup>170</sup>See Fechner, *supra* note 1, at 43.

<sup>171</sup>*Id.* at 48. WHISPER claims that the "real harm of prostitution, is that it allows men to use women as sexual objects, [in] a rape-like mentality...Prostitution

these methods could help provide women with an opportunity to take legal and financial control over their lives.<sup>172</sup> Again, the groups voice different reasons for this reform, but the reform is nonetheless a common goal of all three.

The three groups each advocate for increased public education about prostitutes and the troubling lives they lead. The liberal feminist argues that this public education will help society begin to recognize prostitution as legitimate work.<sup>173</sup> For the socialist feminist, public education about prostitution will help alleviate the negative treatment that these women receive from their struggles to stay afloat financially.<sup>174</sup> The radical feminist argues that educating the public about prostitution will help sensitize society to the victimization of prostitutes, and may help provide these women with more reliable avenues to escape their abusive lives.<sup>175</sup>

For all three feminist groups public education would serve the common goal of eradicating the social stigma attached to these women. It may also relieve prostitutes of bearing the blame for various other social problems in the US.<sup>176</sup>

## PART VI: CONCLUSION

In the above discussion, I identified many of the alarming problems that the US criminalized system of prostitution has caused for prostitute women, and society at large. I outlined the three leading feminist schools of thought on the subject and attempted to set aside their differences in an effort to reconcile their goals.

The conclusion that I consistently arrived at while writing this note is that there is not, and can never be, a best solution to the problems that the U.S. criminalized system of prostitution presents. While each school of thought poses

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allows men unconditional sexual access to women and children limited solely by their ability to pay for it.” Whisper further contends that “prostitution, sexual assault and abuse, incest, sexual harassment, domestic violence, and pornography are all pervasive types of sexual oppression of women by men.” *Id.*

<sup>172</sup>Bingham, *supra* note 18, at 83.

<sup>173</sup>See Thompson, *supra* note 13, at 236.

<sup>174</sup>See Fechner, *supra* note 1, at 33.

<sup>175</sup>See *id.* at 51.

<sup>176</sup>See discussion *infra* Part III. Prostitutes are blamed for the spread of disease, crime, and divorce throughout the U.S.. *Id.*

logical arguments for why prostitution ought to be handled its way, and not any other, no one set of beliefs can accomplish a cure-all solution.

The only resolution that this note argues for is cooperation between the three conflicting feminist groups. When analyzed with an eye toward furthering the basic goal of improving the lives of prostitute women, the differences between the three groups becomes secondary to their similarities. What remains is a set of common goals that I have argued each group must use as common ground from which to advocate for improving the lives of these women.

The fate of the female prostitute and the criminal laws surrounding her life are anything but clear. However, it is becoming increasingly clear that this fate will not be determined by any one of the schools of feminist thought as long as they vow not to cooperate. It is only with this cooperation that the feminist voice will be clearly and accurately heard. What it would say is this:

The time for a reevaluation of the criminal laws of prostitution in the U.S. is long overdue. Any moral benefit that the current system provides is outweighed by the harm it causes these women. The U.S. needs to show compassion as a nation by letting its laws reflect a merciful attitude toward those who mean no harm. Prostitutes are not criminals. They only bear this label because the U.S. government has chosen not to protect them.

They are people who have long been forced into the role of the scapegoat. Not only are they victims of the worst crimes society has to offer, but they are blamed for many of the same crimes that leave them victimized. This unique status should at the very least afford them equal protection of the law, but beyond this should afford them specialized legal aid, social benefits, and access to adequately-funded women's shelters. Lastly, public education must accompany these reforms so that the attitudes and policies of the population may become sympathetic rather than merciless.