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Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform

Katie Beran†

Introduction

*“When the state legalized prostitution, to me, it legalized rape.”
—former Danish prostitute¹*

The legalization of rape—surely no feminist would be so antiwoman as to advocate for such a policy. Still, there has been debate within the feminist community for decades about the most effective government policy approach to prostitution, and many feminists and prostitutes argue for its legalization. The fact that feminists and prostitutes take a position one former prostitute considers tantamount to the legalization of rape reflects the complexity of this debate. Prostitution—a topic that implicates philosophical and moral questions of autonomy, power, gender, and oppression—is far too complicated to elicit a uniform response from feminist legal advocates.

Prostitution, often referred to as “the oldest profession,”² involves the exchange of sex for money.³ “Most common law

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1. When I heard these haunting words leave the mouth of a former Danish prostitute, my conception of prostitution was changed forever. While studying in Denmark in 2007, I took a course that explored the politics of prostitution in Europe. As part of the class, we heard from many former and current prostitutes. This particular speaker was incredibly moving, and her story inspired me to write this article. I have omitted her name to protect her anonymity.

2. Some feminists take issue with the premise that prostitution is the world’s oldest profession.

It would be more correct to say that this claim is the world’s oldest excuse. Prostitution is not a profession. Prostitution is an age-old consequence of an unequal power structure. . . . The cliché that prostitution is the world’s oldest profession legitimates prostitution as an original—not to say unchangeable—part of the ‘labour market’ reserved for the poorest women and the women with the least resources all over the world.

KFUK’S SOCIALE ARBEJDE, TEN MYTHS ABOUT PROSTITUTION 3 (2005) (detailing arguments by Danish NGO KFUK’s Sociale Arbejde that purchasing prostitution services constitutes a violent act that should have consequences for the purchaser).

3. Though other parts of the sex industry, such as pornography, live sex

defines prostitution as ‘offering or agreeing to engage in, or engaging in, a sex act with another person in return for a fee.’⁴ Prostitution is widely understood to be a woman’s profession⁵ because women traditionally comprise the vast majority of prostitutes,⁶ and buyers, often referred to as “tricks” or “johns,” are usually male.⁷ In fact, “very few women have been numbered among the clients.”⁸ In the United States, there are approximately one million adult prostitutes,⁹ and it has been estimated that forty million dollars per day is spent on prostitution.¹⁰ The average age of entry is fourteen,¹¹ with most prostitutes never completing high school or holding any occupation outside the sex industry.¹² More than half of all prostitutes are runaways.¹³ A significant portion of prostitutes have dependent children, and many are women of color.¹⁴ One report by the prostitutes’ rights group Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER) found that most former prostitutes report prior instances of childhood sexual abuse, including incest and rape.¹⁵

shows, peep shows, exotic dancing, and stripping, are often linked to prostitution, I will not examine them, as they are outside the scope of this article.

4. SHERYL J. GRANA, *WOMEN AND JUSTICE* 195 (2d ed. 2010).

5. While some men engage in prostitution, male prostitution is far less common than female prostitution. See JUDITH A. BAER, *WOMEN IN AMERICAN LAW: THE STRUGGLE TOWARD EQUALITY FROM THE NEW DEAL TO THE PRESENT* 280 (3d ed. 2002). I also will not examine transgender prostitutes specifically, as I consider the complicated nature of transgender issues to be outside the scope of this article. However, further research on the specific issues faced by transgender prostitutes is recommended.

6. See CATHARINE A. MACKINNON, *WOMEN’S LIVES—MEN’S LAWS* 153 (2005); Int’l Comm. for Prostitutes’ Rights, *International Committee for Prostitutes’ Rights World Charter and World Whores’ Congress Statements*, in *LIVING WITH CONTRADICTIONS: CONTROVERSIES IN FEMINIST SOCIAL ETHICS* 133, 136 (Alison M. Jaggar ed., 1994).

7. BAER, *supra* note 5. It also should be noted that male prostitution raises significantly different issues than female prostitution. Karen Peterson-Iyer, *A Feminist Ethical Analysis*, 14 *J. FEMINIST STUD. RELIGION* 19 n.3 (1998).

8. BAER, *supra* note 5. Notably, empirical evidence “indicates that three-quarters of the clients of prostitutes are married men.” Carole Pateman, *What’s Wrong with Prostitution?*, in *LIVING WITH CONTRADICTIONS: CONTROVERSIES IN FEMINIST SOCIAL ETHICS*, *supra* note 6, at 127, 127. Even male prostitutes “usually serve[] other men.” BAER, *supra* note 5.

9. Evelina Giobbe, *Confronting the Liberal Lies About Prostitution*, in *LIVING WITH CONTRADICTIONS: CONTROVERSIES IN FEMINIST SOCIAL ETHICS*, *supra* note 6, at 120, 123.

10. Pateman, *supra* note 8.

11. Giobbe, *supra* note 9.

12. *Id.*

13. GRANA, *supra* note 4, at 194.

14. Giobbe, *supra* note 9.

15. *Id.*

The WHISPER Oral History Project found that ninety percent of participants reported being the victim of an “inordinate amount of physical and sexual abuse during childhood: ninety percent had been battered in their families; seventy-four percent had been sexually abused between the ages of 3 and 14. . . . [F]ifty percent of this group had also been molested by a non-family member.”¹⁶ Another study found that seventy-five percent of prostitutes are survivors of incest.¹⁷ Many prostitutes are impoverished, homeless, often sick, and afflicted with drug addiction.¹⁸ In sum, prostitutes disproportionately include socially and economically vulnerable women, as well as women who have suffered sexual abuse.

With so many complicating social forces inextricably linked to prostitution, it is not surprising that feminist legal advocates have debated the best government policy approach for decades. Narrowing the scope of the debate, there are four leading policy approaches. First, some governments, many of which are in Europe and most notably the Netherlands, have legalized prostitution, thereby creating regulations that include licensing, controlling public solicitation, and limiting where prostitutes can practice.¹⁹ Similarly, other governments, including New Zealand, have decriminalized prostitution, meaning that all laws regarding prostitution are removed—including laws against pimps and johns—but it is not regulated or taxed by the government.²⁰ Third, in 1999, Sweden instituted a radical new policy of partial decriminalization where the client’s action is criminalized while the prostitute is considered the victim.²¹ Iceland and Norway have since followed suit.²² Finally, many other governing bodies, including the vast majority of states in the United States, criminalize

16. *Id.*

17. GRANA, *supra* note 4, at 194.

18. *Id.*

19. Sophie Day et al., *Prostitution Policy in Europe: A Time of Change?*, 67 FEMINIST REV. 78, 81–82 (2001).

20. Melissa Farley, “*Bad for the Body, Bad for the Heart*”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087, 1087 (2004); *Myths and Facts About Decriminalization of Prostitution*, PROSTITUTION RES. & EDUC., http://www.prostitutionresearch.com/Decrim_fact_sheet.htm (last visited Oct. 13, 2011).

21. BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.); *see also* Day et al., *supra* note 19, at 83.

22. Benjamin Perrin, *Sweden’s Fix: Jail the Johns*, GLOBE & MAIL (Toronto), Oct. 1, 2010, at A25.

both the buyer and the prostitute, with Nevada uniquely leaving the choice of prohibiting prostitution to each county.²³

There is no uniform feminist position on prostitution. However, surveyed literature of the last few decades reveals two competing feminist camps.²⁴ Some feminists, often termed “liberal feminists,”²⁵ argue that the choice to engage in prostitution is like any other employment decision.²⁶ A woman who first weighs her options in order to make the most advantageous decision before choosing prostitution deserves the same rights and privileges as a person in any other occupation.²⁷ These feminist theorists advocate for the legalization of prostitution.²⁸ Another camp of feminists, which I term “radical feminists,”²⁹ argue that prostitution reflects larger systems of gender inequality and oppression, and as a result, women do not choose prostitution, but are coerced into becoming prostitutes.³⁰ These scholars generally advocate for the eradication of prostitution.³¹ However, if given the choice

23. Coty R. Miller & Nuria Haltiwanger, *Prostitution and the Legalization/Decriminalization Debate*, 5 GEO. J. GENDER & L. 207, 208 (2004); see also NEV. REV. STAT. § 201.354(1) (2010) (making it unlawful to engage in prostitution except in “a licensed house of prostitution”).

24. I am consciously choosing to omit the perspectives of other feminist camps, most notably conservative feminists. Conservative feminists see prostitution as immoral—an attack on the connection between sex and love and the institution of marriage. See Karen Green, *Prostitution, Exploitation and Taboo*, 64 PHIL. 525, 532 (1989). They advocate restricting intercourse to the marital relationship and defend the woman’s traditional place in the home. *Id.* Conservative feminists would support the current status quo of criminalizing all aspects of prostitution. *Id.* While this perspective likely still receives a great deal of public support, embodied perhaps in the continued criminalization of prostitution in the United States, it is not relevant to this Article. Indeed, such a position serves to perpetuate the social problems I have diagnosed as being in desperate need of reform as a prerequisite to the entirety of my analysis.

25. Jody Freeman, *The Feminist Debate over Prostitution Reform: Prostitutes’ Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, in APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN’S LIVES: SEX, VIOLENCE, WORK, AND REPRODUCTION 237, 238 (D. Kelly Weisberg ed., 1996).

26. Peterson-Iyer, *supra* note 7, at 25–26.

27. *Id.*

28. *Id.* (“According to [the liberal feminist] view, prostitution is no less legitimate than any other contractual business arrangement; while the state may have an interest in taxing and/or regulating it, the state has no business in banning it.”).

29. Freeman, *supra* note 25, at 242. This feminist perspective is sometimes referred to as the “domination” or “subjection” approach. See Peterson-Iyer, *supra* note 7, at 28. Radical feminism can also be known as the “abolitionist” position. See Berta E. Hernández-Truyol & Jane E. Larson, *Sexual Labor and Human Rights*, 37 COLUM. HUM. RTS. L. REV. 391, 400 (2006).

30. Hernández-Truyol & Larson, *supra* note 29.

31. Allison M. Jaggard, *Prostitution*, in LIVING WITH CONTRADICTIONS: CONTROVERSIES IN FEMINIST SOCIAL ETHICS, *supra* note 6, at 102, 108.

between current international approaches, many radical feminists support the Swedish partial decriminalization model, which decriminalizes the prostitute, but criminalizes the buyer.³² This position cannot be extended unequivocally to all radical feminism because much radical feminist discourse took place before the Swedish law was enacted in 1999.³³ Nonetheless, for the purposes of this Article and policy reform, I generally ascribe the position of partial decriminalization to radical feminists as being most in line with their values.

This Article details a comprehensive overview of the two primary feminist positions on prostitution, and suggests potential legal and social reforms governments might adopt.³⁴ Based on my survey of relevant literature, there is a significant disconnect between feminist theory and prostitution policy in law journals. While there is much written about feminist theory in social science and gender studies journals, there is very little analysis of feminist theory in legal journal articles that discuss prostitution policy.³⁵ Although many articles exploring prostitution policy briefly mention opposing feminist theories, very few include an in-depth feminist analysis of prostitution.³⁶ Shallow descriptions too often fail to provide a full picture of feminist theory, with some

32. See Hernández-Truyol & Larson, *supra* note 29, at 401; Miller & Haltiwanger, *supra* note 23, at 232 (arguing that feminists who come from what I term the radical feminist perspective “endorse the repeal of all laws criminalizing prostitution itself, but call for the enhancement of criminal penalties for pimps and johns”).

33. See, e.g., ANDREA DWORKIN, LETTERS FROM A WAR ZONE (1988); CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW (1987); Giobbe, *supra* note 9; Pateman, *supra* note 8.

34. I am striving to introduce these two feminist positions at the risk of oversimplification. This Article attempts to zero in on the heart of their arguments in order to situate my analysis of prostitution reform in a feminist context. However, as both feminist camps exist on a continuum, this Article does not claim to represent a comprehensive view of either, but rather attempts to introduce and highlight those portions of both arguments most relevant to policy reform. Accordingly, this Article examines the concepts adopted by the majority of feminists who identify with each camp respectively, while purposely omitting fringe positions. When relevant, fringe positions are referenced by footnote.

35. This is based on my personal impression of existing literature through my own research for this Article.

36. See, e.g., Michèle Alexandre, *Sex, Drugs, Rock & Roll and Moral Dirigisme: Toward a Reformation of Drug and Prostitution Regulations*, 78 UMKC L. REV. 101, 123–37 (2009) (proposing a combination approach of legalization and decriminalization, and including a brief section on opposing feminist views with less than two pages of explanation about both camps); Miller & Haltiwanger, *supra* note 23, at 232 (including an extremely brief section on feminist theory that does not fully capture the complicated nature of the debate, as the majority of the article focuses on the legal elements and defenses of prostitution laws in the United States).

articles even mischaracterizing such theories.³⁷ This Article serves to contribute to existing legal literature by bridging feminist theory and prostitution policy reform, while also charging feminists and policymakers alike to collaborate with each other to pursue a novel and superior policy approach that resolves the harms found in existing prostitution policy.

Part I introduces the complicating factors of class, race, disease, drugs, and violence in order to call into question the notion of prostitution as a “victimless crime.”³⁸ Parts II and III present the heart of the feminist debate over prostitution legislation: Part II examines the liberal feminist position in favor of legalizing prostitution, and Part III explores radical feminism. Part IV introduces misconceptions and critiques of liberal and radical feminism, and draws conclusions based on common ground found within both schools of thought. Part V examines the successes and failures of legalization and partial decriminalization in practice, focusing on the Netherlands, Australia, and Sweden.³⁹ Part VI concludes with policy recommendations derived from an analysis of feminist theory and the efficacy of various prostitution policies in practice.

I. Is Prostitution a Victimless Crime? Introducing the Complicating Factors of Class, Race, Violence, Disease, and Drugs

A. Class and Race

Prostitutes oppressed by racism and classism are perhaps the most silenced and violated of all women.⁴⁰ The economic class of a prostitute ranges from the stereotypical street prostitute (with or without a pimp) to the most upscale escort or call girl,⁴¹ but,

37. See, e.g., Lars O. Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment*, in APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN'S LIVES: SEX, VIOLENCE, WORK AND REPRODUCTION, *supra* note 25, at 208, 215 (displaying a misunderstanding of radical feminism by ascribing to it a contempt for prostitution and the female sex).

38. For information on how these factors impact transgender prostitutes, see ALLIANCE FOR A SAFE & DIVERSE DC, MOVE ALONG: POLICING SEX WORK IN WASHINGTON, D.C. (2008).

39. Part V excludes complete decriminalization and criminalization, and only addresses the legalization and partial decriminalization models, as these policies are most in line with the values of liberal feminism and radical feminism respectively. Further research is recommended on the effects of complete decriminalization and criminalization in practice.

40. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 138.

41. Peterson-Iyer, *supra* note 7, at 20.

unsurprisingly, the vast majority of prostitutes are poor women.⁴² This phenomenon follows logically from our social world, as women who have attained the economic status of professionals do not need to turn to prostitution out of economic despair.⁴³ One survey found that the leading reason women pursue prostitution is their economic situation, with many women facing debts in need of repayment.⁴⁴ Another leading economic motive given by prostitutes is the wish to support their dependent children.⁴⁵

The destitute economic background of the average prostitute is exacerbated by the trend that prostitution is most often preceded by victimization.⁴⁶ This pattern is confirmed by studies examining the history of prostitution.⁴⁷ Barbara Meil Hobson found this trend historically consistent with the present day, as the demographic composition of nineteenth-century prostitutes parallels leading character traits of their contemporary counterparts.⁴⁸ Prostitutes consistently tend to be younger women who expect prostitution to be a transitory phase; most are seeking control over their sexual and financial lives.⁴⁹ Similarly, married women who pursue prostitution often do so in a desperate attempt to escape domestic abuse through achieving economic independence.⁵⁰

Due to the intersection of race and class, many prostitutes are women of color,⁵¹ and many are immigrants.⁵² Non-White prostitutes are the most vulnerable to abuse and harassment by law enforcement as a function of racism and racial profiling.⁵³ Forty percent of street prostitutes are non-White, but they constitute fifty-five percent of those arrested and eighty-five percent of those jailed for prostitution.⁵⁴ These statistics are more

42. *Id.* at 21.

43. KFUK'S SOCIALE ARBEJDE, *supra* note 2, at 3.

44. *Id.*

45. *Id.*

46. *See supra* notes 15–17 and accompanying text.

47. MARY WELEK ATWELL, EQUAL PROTECTION OF THE LAW?: GENDER AND JUSTICE IN THE UNITED STATES 100 (2002).

48. BARBARA MEIL HOBSON, UNEASY VIRTUE: THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION 86–99 (1990).

49. HOBSON, *supra* note 48, at 86–87.

50. *Id.* at 91.

51. ATWELL, *supra* note 47, at 101.

52. HOBSON, *supra* note 48, at 88.

53. *See Peterson-Iyer, supra* note 7, at 22.

54. *Id.*

alarming given that White call girls compose the largest fraction of prostitutes.⁵⁵ Johns are rarely arrested or punished.⁵⁶

In addition to disparate impact of unjust enforcement on prostitutes of color, White privilege and male supremacy create oppressive conditions that make women of color particularly vulnerable to coercion and recruitment into prostitution.⁵⁷ Institutionalized racism and White privilege combine to limit grossly the educational and career opportunities available to people of color⁵⁸ while simultaneously creating unfair advantages for White people.⁵⁹ In effect, poverty is continually reproduced through generations, creating a society where women of color are disproportionately dependent on an inadequate welfare system.⁶⁰ Moreover, racist law enforcement coerces women of color into remaining prostitutes so that they may pay their legal fines or other penalties, such as bail bond debts,⁶¹ which only further intensifies the cycle of poverty to which so many women of color are subjected from birth. "Selective application of laws prohibiting prostitution creates a kind of de facto regulation in which a tax is levied primarily against women of color by White men who design, maintain, control and benefit from the system of abuse in which the women are trapped."⁶² Thus, women of color are unduly impacted by prostitution in two ways: they are more likely to be forced into a life of prostitution due to the intersection of race and class, and they are subjected to unjust enforcement mechanisms that have the power to keep them dependent on prostituting themselves out of economic desperation.⁶³ It is essential that the voices of women of color who engage in prostitution be considered by feminist discourse when strategizing reform, as these are the women who are the most silenced and devoid of legal rights.⁶⁴

B. Disease and Drugs

In order to maximize efficacy, any public policy addressing prostitution must take into account the complicating factors of sexually transmitted diseases and drug use. American culture

55. Miller & Haltiwanger, *supra* note 23, at 226.

56. Peterson-Iyer, *supra* note 7, at 22.

57. Giobbe, *supra* note 9, at 122.

58. *Id.*

59. See ALAN G. JOHNSON, PRIVILEGE, POWER, AND DIFFERENCE 23–24 (2006).

60. Giobbe, *supra* note 9, at 122.

61. *Id.*

62. *Id.*

63. *Id.*

64. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 138.

depicts the prostitute as immoral, having no concern for the health of “innocent” clients, essentially constructing the prostitute as a “vector” of disease.⁶⁵ Furthermore, rather than viewing clients who engage in unprotected sex with a prostitute as “co-actors in unsafe sex,”⁶⁶ the prostitute is portrayed as unilaterally spreading sexually transmitted diseases from one client to a multitude of others.⁶⁷ Despite the unfounded stereotypes that permeate American society, studies show that prostitutes actually have a lower risk of carrying HIV than their customers.⁶⁸ Researchers have hypothesized that because of the inherent risk in the profession, prostitutes are more likely to require condoms and other methods of protected sex.⁶⁹ One study even showed that prostitutes who do not use intravenous drugs are less likely to transmit HIV/AIDS than sexually promiscuous men.⁷⁰ Most notably, in the majority of documented cases, it is the client—not the prostitute—who desires unsafe sex.⁷¹ As a result, research reveals that the “more economically dependent upon prostitution the person becomes, the more willing that prostitute will be to engage in unsafe sex.”⁷² That is, the more the prostitute needs the income, the more likely she is to risk disease in hopes of retaining the customer.⁷³ Thus, even when a prostitute submits to the demands of a customer for unsafe sex, her decision is likely “based on economic reasons, rather than out of a lack of morality or judgment.”⁷⁴ In other circumstances, prostitutes may also submit to unsafe sex because of physical coercion or the threat of force.⁷⁵

Concerns about drug use among prostitutes are more legitimate.⁷⁶ While certainly not all prostitutes use drugs, drug use is another societal ill that creates a cycle of desperation in which women become indefinitely dependent on prostitution.⁷⁷ Prostitutes controlled by pimps may be forcibly introduced to

65. KATRI K. SIEBERG, *CRIMINAL DILEMMAS: UNDERSTANDING AND PREVENTING CRIME* 53 (2d ed. 2005).

66. *Id.*

67. *Id.*

68. *Id.* at 52.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 53.

73. *Id.*

74. *Id.*

75. *Id.* at 52; see *infra* Part I.C.

76. SIEBERG, *supra* note 65, at 55.

77. See *id.*

addictive drugs.⁷⁸ In addition, prostitutes may be more likely to be attracted to drug use based on the trend of victimization preceding prostitution.⁷⁹ Studies show that prostitutes who use illegal drugs are more at risk, because being under the influence of drugs has the power to impact negotiation skills and create an increased willingness to have unsafe sex.⁸⁰ Consequently, any policy addressing prostitution must be mindful of these risks, as well as attempt to counter false notions and stereotypes regarding sexually transmitted diseases.

C. Violence

Prostitution is often referred to as a “victimless crime,”⁸¹ but countless anecdotes and statistics illustrating the violence and oppression faced by the average prostitute tell a different story. Margaret Baldwin states, “To be a ‘prostitute’ is to be rapable, beatable, killable and *why* women are (righteously to noncontroversially) raped, beaten and killed.”⁸² One prostitute also responds to the faulty notion of prostitution as a victimless crime, explaining that prostitution is “the worst form of violence against women because you get abused by the johns, you get abused by the pimps, you get abused by the police. Society in general turns their [sic] back on you.”⁸³ Statistics prove this prostitute’s experience to be a representative example.⁸⁴ The WHISPER⁸⁵ Oral History Project found that “[s]eventy-four percent [of women interviewed] reported assaults by customers; of these, seventy-nine percent reported beatings by a customer, and fifty percent reported rapes [by customers].”⁸⁶ In addition, up to ninety-eight percent of prostitutes work for pimps, many of whom “sexually, verbally and physically assault them.”⁸⁷ Prostitutes also

78. BAER, *supra* note 5, at 279.

79. *See id.* at 277–79 (detailing how women who turn to crime usually come from impoverished backgrounds, which cause them to run away, become prostitutes, and use drugs).

80. SIEBERG, *supra* note 65, at 55.

81. *Id.* at 49.

82. Ann Russo, *Lesbians, Prostitutes, and Murder: Media Constructs Violence Constructs Power*, in FEMINISM, MEDIA & THE LAW 249, 253 (Martha A. Fineman & Martha T. McCluskey eds., 1997).

83. Giobbe, *supra* note 9, at 125.

84. *See id.* at 124 (stating that pimps and customers beat their prostitutes).

85. *See supra* notes 15–16 and accompanying text.

86. Giobbe, *supra* note 9, at 123–24.

87. GRANA, *supra* note 4, at 194.

face a risk of “premature death [that is] forty times the national average.”⁸⁸

One harmful consequence of criminalizing prostitution is that it leaves victims of violence with few avenues for recourse due to fear of police action and a general lack of legal protection.⁸⁹ One former prostitute relates her story of physical assault and rape:

I had been working eight months when I opened the door for the wrong person[.] . . . He pushed his way in and another man followed. One put a knife to my throat and they raped me[.] . . . I don't understand why people always assume that, when a prostitute talks about being raped, she's describing a situation in which she has sex and then she doesn't get paid. Short of physical torture, the threat of murder and torture is the most traumatic element of this type of rape. . . . After I was raped, I learned from some of the other women that these men had been doing the same thing to women at other parlors in town. No one passed the information around, I guess, from a feeling of hopelessness. . . . I couldn't call the police after I was raped. The owners of the parlor where I worked begged me not to, as it might focus attention on our parlor, which could result in my co-workers getting busted, the parlor being closed down and my co-workers being forced out on the street.⁹⁰

This woman's story illustrates how the fear of prosecution works in tandem with unequal gender power dynamics to create a world where prostitutes are particularly vulnerable to abuse.

The frequency of violence against prostitutes is only exacerbated by oppressive cultural norms and biased media representations of prostitutes. The murder of prostitutes is a common occurrence worldwide.⁹¹ Abhorrently, murders in this category are considered less offensive by most cultures than other murders, as proven through the fact that those who murder prostitutes are rarely prosecuted.⁹² Sometimes, they are not even pursued by police.⁹³ In addition, if prostitutes are assaulted or raped, the criminal justice system will rarely see them as being completely innocent.⁹⁴ Rather, they might be viewed as assuming the risk of violence perceived as inherent in the profession of prostitution, and therefore be blamed for the attacks against

88. MACKINNON, *supra* note 6, at 159.

89. See SIEBERG, *supra* note 65, at 62–63.

90. *Id.* at 62.

91. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 140.

92. *Id.*

93. *Id.*

94. ATWELL, *supra* note 47, at 103.

them.⁹⁵ Rapists often justify their attacks by proclaiming prostitutes deserve it or consent to it by the nature of their job.⁹⁶

Through the media's construction of prostitutes as social outcasts, the public subconsciously views prostitutes as legitimate targets of violence, in turn reifying social hierarchies.⁹⁷ Police brutality, stigma, punishment, daily harassment, and violence against prostitutes is historically legitimized and condoned in the United States.⁹⁸ "The harassment, rape, and murder of women working in prostitution is also either socially invisible or conceptualized as 'just life.'"⁹⁹ The media response to violence against prostitutes mimics a larger culture of stigmatization and alienation. In 1988, in the wake of serial killings in New Bedford, Massachusetts, the unidentified murdered women "were always referred to as women who frequented an area of New Bedford 'known for prostitution and illegal drug activity.'"¹⁰⁰ Once the identities of the women were discovered, their lives were constructed to imply that their involvement in prostitution caused their murders, even in the face of family members refuting those claims.¹⁰¹ "What we learn from the police is that they often have the same attitudes toward the women as the killers do, attitudes which the media legitimates and the general public comes to accept."¹⁰² As a result, feminist legal advocates must advance awareness to combat the stigmatization of prostitution and promote reform that addresses the violence and lack of protection faced by prostitutes.

II. Outlining the Feminist Debate: Liberal Feminism and the Argument for Legalization

Liberal feminists take a contractarian view of prostitution, reasoning that women should have the legal right to freely choose prostitution as a legitimate occupation. The liberal feminist argument "implies that there is nothing wrong with prostitution that is not also wrong with other forms of work."¹⁰³ Many theorists

95. *Id.*

96. Russo, *supra* note 82, at 253.

97. *Id.* at 250.

98. *See id.* at 250–51 (presenting an overview of how U.S. media legitimizes the stigmatization of prostitutes in America).

99. *Id.* at 252.

100. *Id.* at 253.

101. *Id.*

102. *Id.* at 254.

103. Pateman, *supra* note 8. Note that Pateman introduces the liberal feminist perspective in her article before going on to espouse her own views, which fall

claim that there is a universal, natural impulse for sex, just like there is a natural impulse to eat.¹⁰⁴ Comparable to providing the public with services to buy food, sexual desires are just as basic and natural, and as such, should also be freely available.¹⁰⁵ This view reflects the liberal ideals of “individualism, equality of opportunity, and the free market to sexual life.”¹⁰⁶ Inherent in this position is the belief that prostitutes are able to freely consent to sex with customers (as opposed to viewing prostitution as rape).¹⁰⁷ As the liberal feminist presumptively views sexuality as implicitly consensual, it allows sex to take on a liberating and empowering role for individual women should they choose to pursue that avenue.¹⁰⁸ These feminists portray prostitutes as strong, independent women choosing to literally profit from their sexuality.

Most fundamentally, liberal feminists perceive prostitution as the sale of sexual service motivated by economic gain.¹⁰⁹ These theorists view prostitution as analogous to any other contract a party may enter into for a benefit, with each party trying to strike the best deal.¹¹⁰ Correspondingly, the liberal feminist recommendation is to treat prostitution as an ordinary business transaction,¹¹¹ where the state has the same interest in prostitution as it has in any other contract, and may regulate it accordingly.¹¹² “For instance, the law may concern itself with such matters as hygiene, control of disease, minimum standards of service and of working conditions, misleading advertising, payment of taxes and social security, etc.”¹¹³ In addition, liberal feminists see sexual free choice as the bottom line, noting that the separation of sex and love has the capacity to contribute to gender equality by liberating women.¹¹⁴ Margo St. James proclaims, “I’ve always thought that whores were the only emancipated women.

under radical feminism. *Id.* at 129–32.

104. *Id.* at 129.

105. *Id.* Pateman goes on to say that this argument by liberal feminists is based on faulty logic; without food, people die—no one has ever died from not fulfilling their sexual urges. *Id.*

106. Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, in *APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN’S LIVES: SEX, VIOLENCE, WORK, AND REPRODUCTION*, *supra* note 25, at 217, 217.

107. Freeman, *supra* note 25, at 237 (discussing how prostitutes’ rights groups view prostitution as voluntary, respectable work).

108. *Id.*

109. Jaggar, *supra* note 31, at 103.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. Peterson-Iyer, *supra* note 7, at 32.

We are the only ones who have the absolute right to fuck as many men as men fuck women."¹¹⁵ It is important to note that liberal feminists do not support partial decriminalization because they do not condemn the buyer of sexual services.¹¹⁶ Liberal feminists see legalization as the best legal scheme because it serves to legitimize prostitution as a profession and works to combat the stigmas and stereotypes about the sex industry that permeate society.¹¹⁷

Prostitutes have even formed organizations and special interest groups to advocate for prostitutes' rights as business-women, including Cast Off Your Old Tired Ethics (COYOTE) and Dump Obsolete Laws—Prove Hypocrisy Isn't Necessary (DOLPHIN).¹¹⁸ Both groups strive to legitimize the choice of selling sex, emphasizing that it can be one of the most lucrative fields for women, and that many women make a calculated decision to become a prostitute because it pays better than other available occupational options.¹¹⁹ Similarly, the draft statement from the Second World Whores' Congress in 1986, written by the International Committee for Prostitutes' Rights, argued that women already use male sexual desire to provide financial sustenance.¹²⁰ That is, marriage can be construed "as a contract between free individuals for the sake of sexual relations and the bearing of children,"¹²¹ in which women traditionally receive the consideration of financial support by their husband in exchange for their services—both sexual services and domestic labor. Therefore, following logically, women should be able to use male sexual desire to obtain financial independence.¹²²

In addition to prostitutes' rights groups, numerous scholars, including Lars O. Ericsson, liken marriage to prostitution, claiming that the wife is no different than the prostitute because she too contracts away her body in exchange for financial support.¹²³ Ericsson uses an extended analogy comparing the prostitute to a middle class suburban housewife in order to call

115. *Id.* at 31.

116. See Jaggar, *supra* note 31, at 103 (discussing how liberal feminists view prostitution like a contract where neither party is doing anything wrong because "each [party is] striking the best bargain that she or he is able").

117. See Peterson-Iyer, *supra* note 7, at 43.

118. GRANA, *supra* note 4, at 194.

119. *Id.* Note that yearly incomes range from high-end call girls making more than one hundred thousand dollars a year to prostitutes working in massage parlors making a mere eight thousand dollars annually. *Id.*

120. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 135.

121. Green, *supra* note 24.

122. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 135.

123. See Ericsson, *supra* note 37, at 208, 212; Pateman, *supra* note 106, at 217.

into question which woman is truly in need of liberation.¹²⁴ Ericsson assumes that both the prostitute and the housewife are relatively well off financially, but the housewife depends on her husband financially while the prostitute can achieve financial independence.¹²⁵ Ericsson concludes that the only significant difference between these women is one “hires out her body on piecework while the other hires it out once and for all.”¹²⁶

In her article *A Most Useful Tool*, Sunny Carter relates her intimate story of how prostitution served her well when she was faced with her infant son’s extraordinarily expensive diagnosis of cystic fibrosis.¹²⁷ Carter, a medical technician at the time of her son’s diagnosis, immediately knew that the prognosis was not good—the average life expectancy being a mere twelve years at the time.¹²⁸ Carter’s yearly salary as a medical technician was nine thousand dollars, and she knew she would need at least ten thousand dollars a year just to keep her son alive for as long as possible.¹²⁹ She genuinely considered selling drugs and robbing banks before realizing there was an easier answer: she could learn to be a “hooker.”¹³⁰ And a hooker she was until her son died just two months shy of his tenth birthday.¹³¹ She maintains she has no regrets, seeing prostitution as a very useful tool that served her well.¹³²

Prostitution, in itself, is neither good nor bad. Each woman brings to it what she will. How else can a woman without the years of education necessary to become a doctor or lawyer still earn the kind of money a lawyer or doctor earns? In fewer hours? How else could I have had so much time to spend with my son, when time was so precious?¹³³

Prostitution allowed Carter to provide her son with the “best private schooling, the chance to travel, [and] the best medical care.”¹³⁴ Carter’s knowledge that she provided those material benefits and life experiences for her son fills her with an enormous

124. Ericsson, *supra* note 37, at 212.

125. *Id.* Ericsson also remarks that prostitutes who work under pimps are still the “breadwinner in the family.” *Id.*

126. *Id.*

127. Sunny Carter, *A Most Useful Tool*, in *LIVING WITH CONTRADICTIONS: CONTROVERSIES IN FEMINIST SOCIAL ETHICS*, *supra* note 6, at 112, 112–16.

128. *Id.* at 113.

129. *Id.*

130. *Id.* at 114.

131. *Id.* at 116.

132. *Id.*

133. *Id.*

134. *Id.*

sense of pride and accomplishment.¹³⁵ She reflects on her time as a prostitute fondly, explaining, "I did it, I'm glad I did it, and I applaud those who do it now. Here's to the Ladies of the Night—Carry On!"¹³⁶

As illustrated by Carter's story, many liberal feminists concede that women generally choose prostitution when faced with no better career alternatives.¹³⁷ More explicitly, "[w]omen choose prostitution as a means of survival among very limited options."¹³⁸ However, liberal feminists do not connect this constraint of choice as being a larger reflection of a patriarchal society: "[L]iberal contractarianism systematically excludes the patriarchal dimension of our society from philosophical scrutiny."¹³⁹ Ericsson asserts that a prostitute's limited financial options are not a consequence of the systemic subordination of women by men, but rather the oppressive force of social conditions that offer some individuals no better financial alternative than becoming a prostitute.¹⁴⁰ Though liberal feminists recognize economic coercion as a complicating factor, they still argue that there is nothing inherently wrong with prostitution, and it is possible to reform the sex industry through regulation to truly allow for free choice.¹⁴¹

In essence, those who adopt the liberal feminist position suggest that prostitution should be reformed through legalization rather than abolished.¹⁴² These feminists do not see prostitution as inherently antiwomen, and wish only to regulate it to better suit the needs of prostitutes.¹⁴³ Ericsson explains, "The most important part of that reform does not concern prostitution and prostitutes but our *attitudes* toward them."¹⁴⁴ Liberal feminists believe that prostitution and social attitudes must be reformed to create a sound, respectful, and safe institutionalized occupation.¹⁴⁵ Sound prostitution is legal, socially valued as fulfilling the function of "decreasing the amount of sexual misery in society," and is composed of women who freely chose their career like any

135. *Id.*

136. *Id.*

137. Ericsson, *supra* note 37, at 212.

138. Peterson-Iyer, *supra* note 7, at 37.

139. Pateman, *supra* note 106.

140. Ericsson, *supra* note 37, at 212.

141. *See id.* at 215.

142. *See id.* at 214.

143. *See id.*

144. *See id.* at 214–15.

145. *See id.*

other professional.¹⁴⁶ Katri K. Sieberg enumerates the many benefits legalization arguably grants prostitutes, beginning with control of sexually transmitted diseases.¹⁴⁷ When prostitution is legal and licensed, “health standards imposed on the profession could require prostitutes to engage in safe sex” and submit to regular testing for disease.¹⁴⁸ Aiming to better protect the prostitute who fears losing customers should she refuse to submit to unprotected sex, legal regulations can require all prostitutes to comply with safe-sex procedures.¹⁴⁹ Thus, Sieberg contends legalization controls the spread of disease better than criminalization.¹⁵⁰

Sieberg also asserts that both drug use and violence within the sex industry can be decreased through legalization.¹⁵¹ “Drugs could be prohibited in the workplace to accommodate concerns over safety lapses. If drugs were to be used, then provisions would have to be made to ensure that compliance with health and safety standards would continue.”¹⁵² In addition, Sieberg argues that criminalizing prostitution leads to an increase in violence because prostitutes do not have the protection of the law.¹⁵³ Pimps have an interest in keeping prostitution illegal so that prostitutes do not have any legal recourse against men who control and abuse them.¹⁵⁴ If prostitution were legalized, the government—rather than organized criminals—would control the sex industry.¹⁵⁵

Criminalizing prostitution can also have the unintended effect of reducing prostitutes’ ability to leave the profession based on the negative repercussions of a criminal record.¹⁵⁶ For instance, if a prostitute plans to engage in prostitution temporarily until she saves enough money to pursue subsequent legal employment, she will be profoundly set back after arrest, as a criminal record significantly decreases her chances of obtaining legal work.¹⁵⁷

146. *Id.* at 215. Liberal feminists also sometimes argue that prostitution should be equally available to both sexes, an argument available to them because they separate the prostitute from larger systems of gender inequality. *See id.*

147. Sieberg, *supra* note 65, at 52. *But see infra* Part V.A.

148. Sieberg, *supra* note 65, at 53.

149. *Id.* at 51.

150. *Id.* at 54.

151. *Id.* at 55, 62.

152. *Id.* at 55–56.

153. *Id.* at 63.

154. *Id.* at 64.

155. *Id.* at 65. Sieberg notes that the state could further benefit from legalization in the form of an economic gain through taxing the sale of sex. *Id.*

156. *See id.* at 63.

157. *Id.*

"Many prostitutes have been arrested thirty or forty times. Of course, the longer their record, the less likely they will return to conventional society."¹⁵⁸ Consequently, criminalizing prostitutes can actually have the unintended effect of expanding the sex industry.¹⁵⁹ Liberal feminists promote legalization as the legal scheme that best serves the needs of prostitutes through combating the negative effects of criminalization and working towards legitimizing prostitution as a recognized and respected profession.

III. Outlining the Feminist Debate: Radical Feminism and Partial Decriminalization

Radical feminist Evelina Giobbe proclaims that "[d]ismantling the institution of prostitution is the most formidable task facing contemporary feminism."¹⁶⁰ The radical feminist critiques the liberal feminist stance on prostitution as only "reluctantly feminist" because it does not call for structural changes to address the sexual subordination of women as a class.¹⁶¹ Radical feminists also challenge the assumption of choice and consent at the heart of liberal feminist principles, and accuse liberal feminism of merely advocating for formal equality at the expense of true equality.¹⁶² Radical feminism seeks to expose a society defined by male norms that objectify women's sexuality.¹⁶³ "It seeks to displace the ubiquitous male voice with a multiplicity of female voices. . . . Radical feminists reject the notion that women are empowered by fulfilling male desire, and they see the desire for prostitution as male."¹⁶⁴

Radical feminists further critique the contractarian perspective as failing to account for the patriarchal social reality that structures sexual relations between men and women.¹⁶⁵ "The . . . patriarchal construction of the difference between masculinity and femininity is the political difference between freedom and subjection, and . . . sexual mastery is the major means through which men affirm their manhood."¹⁶⁶ Prostitution literally

158. GRANA, *supra* note 4.

159. Sieberg, *supra* note 65, at 63.

160. Giobbe, *supra* note 9, at 126.

161. Freeman, *supra* note 25, at 239.

162. *See id.*

163. *Id.* at 242.

164. *Id.*

165. Peterson-Iyer, *supra* note 7, at 28–31.

166. Pateman, *supra* note 8, at 131.

exemplifies male domination by commodifying female bodies for male use, making clear women's status as property.¹⁶⁷ When a prostitute exchanges sex for money, she provides acknowledgment to the client of his patriarchal right over her.¹⁶⁸ Carol Pateman argues that the heart of the problem of prostitution lies in the fact that it confirms oppressive gender norms by giving men "public acknowledgment as women's sexual masters."¹⁶⁹ Thus, the sex industry represents a tangible symptom of deeper macro social problems of gender inequality, and serves to perpetuate and reify female oppression and hegemonic social conceptions.¹⁷⁰ "Whores' are widely considered 'bad girls' standing on the margins of society, available commodities to those who want to make use of them but eyesores to the 'mainstream' public."¹⁷¹ Accordingly, radical feminists are antilegalization, as the legalization of prostitution inherently condones the sex industry.¹⁷²

Radical feminists are not persuaded by prostitutes who espouse notions of free choice and autonomy, dismissing such proclamations as a reflection of internalized sexism and male privilege.¹⁷³ They view the prostitute as a victim, even if some prostitutes insist they enjoy their work.¹⁷⁴ "Radical feminists say that prostitution is not a harmless, 'private' transaction but a powerful means of creating, reinforcing, and perpetuating the objectification of women through sexuality."¹⁷⁵ They view the criminalization of the prostitute as proof that female sexuality is controlled by men who wish to keep women powerless.¹⁷⁶ Radical feminist values oppose any policy that criminalizes the prostitute because such policies serve to oppress women, and favor policy approaches that acknowledge the prostitute as a victim.

The unequal enforcement of laws is a perfect example of how prostitution is a gendered reflection of larger unequal power dynamics. Prostitution laws historically are enforced against women to the advantage of men;¹⁷⁷ female prostitutes are

167. See Peterson-Iyer, *supra* note 7, at 29.

168. Pateman, *supra* note 8, at 132.

169. *Id.*

170. *Id.*

171. Peterson-Iyer, *supra* note 7, at 20.

172. See KFUK'S SOCIALE ARBEJDE, *supra* note 2, at 5.

173. See Freeman, *supra* note 25, at 242.

174. *Id.*

175. *Id.*

176. *Id.*

177. BAER, *supra* note 5.

criminalized while male customers go free.¹⁷⁸ This reality is particularly significant, for as long as customers go free, the demand for prostitution continues.¹⁷⁹ "Society's acceptance of the persistent male demand for prostitutes only reminds us that all women are thought to be accessible (for a price) and that their commodification is natural."¹⁸⁰ Therefore, the criminalization of prostitutes does not combat the oppression of women, but rather further subordinates and alienates the most vulnerable and stigmatized women.¹⁸¹ Many radical feminists equate prostitution to sexual slavery, reasoning that the underlying patriarchal structure allows men to demand women's bodies be sold so they can ensure access to them.¹⁸²

Catharine MacKinnon argues that disparate treatment under the law should be challenged legally on equal protections grounds under the Fourteenth Amendment.¹⁸³ MacKinnon asserts that "[c]riminal laws against prostitution make women into criminals for being victimized as women."¹⁸⁴ She explains further that criminalizing the prostitute legally ratifies and legitimates the subordination and isolation of women, and drives women deeper into civil inferiority.¹⁸⁵ MacKinnon contends:

Disparate enforcement combines with this discriminatory design to violate prostituted women's Fourteenth Amendment right to equal protection of the laws. This is not to argue that prostitutes have a sex equality right to engage in prostitution. Rather, it is to argue that prostitution subordinates, exploits, and disadvantages women as women in social life, a social inequality that criminal prostitution laws then seal with a criminal sanction. . . . While laws against the prostitution of prostituted people could be invalidated on these grounds, the argument from disadvantage on the basis of sex supports upholding and strict enforcement of laws against pimps, who exploit women's inequality for gain, and against tricks, who benefit from women's oppressed status and subordinate individual women skin on skin.¹⁸⁶

In line with MacKinnon, radical feminism supports eliminating discriminatory laws and enforcing appropriate ones by criminal-

178. *Id.*

179. *Id.*

180. Freeman, *supra* note 25, at 242.

181. *Id.* at 247.

182. ATWELL, *supra* note 47, at 103.

183. MACKINNON, *supra* note 6, at 153-55.

184. *Id.* at 155.

185. *Id.*

186. *Id.*

izing johns and pimps and decriminalizing the prostitute.¹⁸⁷

Radical feminists also challenge the liberal feminist notion of freedom of choice, arguing that women are coerced into becoming prostitutes rather than freely choosing it. MacKinnon questions, "If prostitution is a free choice, why are the women with the fewest choices most often found doing it?"¹⁸⁸ Statistics showing that most prostitutes have histories of sexual abuse and enter prostitution before adulthood undermine "the patina of freedom and the glamour of liberation that is the marketing strategy apparently needed for the users to feel free to use [prostitutes] and enjoy doing it."¹⁸⁹ In addition, the concept of free choice appears suspect when situated within the context of gender inequality in countries like the United States that severely limits women's options for employment.¹⁹⁰ Most notably, one study found that eighty-five to ninety-five percent of prostitutes want to leave the industry, but do not see leaving as an option.¹⁹¹

"WHISPER is a national organization of women who have survived the sex industry" and united with the purpose of "expos[ing] the conditions that make women and children vulnerable to commercial sexual exploitation" and invalidating cultural myths used against women to trap them in prostitution.¹⁹² These activists consciously chose the acronym WHISPER because prostitutes whisper among themselves about the "coercion, degradation, sexual abuse and battery upon which the sex industry is founded."¹⁹³ Rather than hearing these whispers, myths about prostitution are omnipresent in public perception and in the media.¹⁹⁴ WHISPER contends that this mythology "hides the abusive nature of prostitution," and is particularly illustrated by the ideology of liberal feminists who erroneously claim "that prostitution is a career choice; that prostitution epitomizes women's sexual liberation; [and] that prostitutes set the sexual and economic conditions of their interactions with customers."¹⁹⁵ WHISPER diagnoses the central flaw of the feminist liberal analysis as ignoring the plight of many prostitutes who do not

187. *Id.*

188. *Id.* at 159.

189. *Id.*

190. *See id.*

191. Perrin, *supra* note 22.

192. Giobbe, *supra* note 9, at 120-21; *see supra* text accompanying notes 17-19.

193. Giobbe, *supra* note 9, at 121.

194. *Id.*

195. *Id.*

experience sex work as a career they freely choose.¹⁹⁶ One prostitute responded to the liberal argument that prostitution is a career choice by saying:

I look at my life and when I came into this world, you know as a child, I expected to be fed, clothed, sheltered and to be treated with respect and kindness as any human being would desire. . . . I don't think I came into this world with the desire to be a prostitute. I think that was something that was put on me by the dynamics of society. Something that was taught to me.¹⁹⁷

This woman's story reveals what common sense dictates; girls do not grow up dreaming of the day they can enter the profession of prostitution, and few, if any, women would choose prostitution if they had every available career option, further calling into question the liberal notion of free choice.

Other prostitutes' rights groups oppose legalization on the ground that providing sexual service in exchange for money innately degrades the provider.¹⁹⁸ Some radical feminists argue that sex without mutual respect and desire violates the human dignity of the prostitute by allowing sex to become a form of "bodily intrusion," and the prostitute to be reduced from a human being to a "thing."¹⁹⁹ MacKinnon puts forth the radical feminist arguments that the prostitute defines all women as a gender by symbolizing the lack of value society places on women, starting with Evelina Giobbe's argument that:

"[The prostitute] is paradigmatic of women's social, sexual, and economic subordination in that her status is the basic unit by which all women's value is measured and to which all women can be reduced." As Dorchen Lediholt put it, "What other job is so deeply gendered that one's breasts, vagina and rectum constitute the working equipment?"²⁰⁰

As a result, radical feminists stress that it is an extremely common coping mechanism for prostitutes to dissociate themselves from the sexual acts which provide their livelihood.²⁰¹ Kathleen Barry explains that prostitutes distance themselves from their work in order to construct a "split-identity" between their "other" self and "that" woman who prostitutes herself for economic

196. *Id.*

197. *Id.* at 125.

198. BAER, *supra* note 5, at 279.

199. ATWELL, *supra* note 47, at 103.

200. MACKINNON, *supra* note 6, at 160.

201. Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Legal Discourse of Law Reform*, in APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN'S LIVES: SEX, VIOLENCE, WORK AND REPRODUCTION, *supra* note 25, at 261, 267.

sustenance.²⁰² Barry terms this “disengagement” from her real “self.”²⁰³ This coping strategy can also be seen in victims of incest and rape,²⁰⁴ indicating the intensity of the trauma some prostitutes endure. Margaret A. Baldwin asserts that this coping tactic is an essential component of the transaction itself.²⁰⁵ Baldwin’s assertion is supported by “[s]urvivors [who describe] the act of prostitution as ‘disgusting,’ ‘abusive,’ and ‘like rape,’ and [explain] that they learned to cope with it by disassociating themselves from their bodies or by using drugs and alcohol to numb physical and emotion [sic] pain.”²⁰⁶ Carol Pateman’s theory also supports Baldwin, arguing that when a prostitute contracts to sex she is “selling *herself* in a very real sense.”²⁰⁷ One former prostitute’s words epitomize this phenomenon:

There’s a special indignity in prostitution, as if sex were dirty and men can only enjoy it with someone low. It involves a type of contempt, a kind of disdain, and a kind of triumph over another human being. . . . You’ve got to have tremendous defenses. You’ve just gotta turn off, somehow. . . . You are selling *a lot* when you are being a whore. You’re giving up a lot. As a prostitute, you’re alienated, isolated even, not only from yourself but from the rest of society because you can’t talk to people about it. . . . When I was a prostitute it wasn’t *me* somehow.²⁰⁸

While many individuals may claim to be “bound up in their work,” only the prostitute experiences the integral connection between her sense of self and sexuality that requires her to distance herself from her occupation as a means of self-protection.²⁰⁹

Radical feminists ultimately advocate for the elimination of prostitution in all of its forms,²¹⁰ and promote policies that work toward this goal. They see two prerequisites to the abolition of prostitution. First, the male demand for prostitution needs to be eliminated, which rests on a complete transformation of male attitudes toward women.²¹¹ This first requirement also demands that myths tying masculinity to heterosexual performance (e.g. false notions that men biologically crave sex more than women,

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Giobbe, *supra* note 10, at 121.

207. Pateman, *supra* note 8, at 131.

208. Peterson-Iyer, *supra* note 7, at 34.

209. Pateman, *supra* note 8, at 131.

210. Jaggar, *supra* note 31.

211. *Id.*

that prostitution is a biological inevitability, and that women are primarily sexual objects) be eliminated.²¹² Radical feminists believe that once masculinity is not so intrinsically tied to sexual dominance over women, men will no longer demand prostitutes.²¹³ This radical feminist goal supports partial decriminalization, as this policy is most effective at deterring johns.²¹⁴ The second condition that radical feminists believe needs to exist is the “abolition of the male monopoly of economic power.”²¹⁵ Radical feminists also note that because of the male stake in continuing to keep women in prostitution, it will take efforts by women to create change.²¹⁶ Thus, it is up to the radical feminist legal advocate to fight male dominance and female oppression in hopes of transforming the current culture of prostitution.

Because it is unlikely that prostitution will be eliminated in the near future, radical feminist theory implicitly supports partial decriminalization as the most effective available legal scheme at reducing prostitution.²¹⁷ As the ultimate goal of radical feminism is to eradicate prostitution,²¹⁸ partial decriminalization is most in line with radical feminist values by inherently condemning prostitution and actively combating its continued existence through criminalizing the buyer.²¹⁹ In addition, partial decriminalization treats the prostitute as a victim by decriminalizing the selling of prostitution services, which further promotes radical feminist principles.²²⁰

Radical feminists are strictly opposed to legalization. While there is nothing inherent in radical feminism that opposes the

212. *Id.*

213. *Id.*

214. Freeman, *supra* note 25, at 246.

215. Jaggar, *supra* note 31. Some radical feminists go so far as to argue that until these two preconditions are met, “almost any significant transaction between a woman and a man must be a form of prostitution.” *Id.*

216. Giobbe, *supra* note 10, at 125.

217. See GOV'T OFFICES OF SWED., ENGLISH SUMMARY EVALUATION OF THE BAN OF PURCHASE OF SEXUAL SERVICES 35 (2010) (showing that rates of prostitution were cut in half in Sweden after the implementation of partial decriminalization); Freeman, *supra* note 25, at 246 (arguing that prostitutes should be entitled to make the best out of a bad situation, but that not all aspects of the trade should be decriminalized).

218. Jaggar, *supra* note 31.

219. KAJSA CLAUDE, TARGETING THE SEX BUYER. THE SWEDISH EXAMPLE: STOPPING PROSTITUTION AND TRAFFICKING WHERE IT ALL BEGINS 3 (2010) (describing prostitution as a “repugnant” activity which the world must combine forces to combat, and further describing the purpose of the Swedish model as aiming to end prostitution and trafficking by reducing demand).

220. Giobbe, *supra* note 10, at 123–24.

amelioration of working conditions for prostitutes, radical feminists consider suspect any policy that might work to legitimize prostitution, as they unequivocally argue that prostitution must never be equated with accepted practices of work or the legitimating ideas of consent and equality.²²¹ “Most feminists who advocate international abolition do support partial decriminalization at the level of national law. This recognizes the burdens that criminalization places on the prostitute. . . . But [radical feminists] do not translate this position into any accommodation or legitimation of the sex trade.”²²² Most fundamentally, radical feminists who support partial decriminalization do so in pursuit of the larger goal that the weight of legal condemnation will affect johns and pimps and lead to a reduction in the sex industry.²²³

IV. Critiques and Conclusions Drawn from Analyzing Both Feminist Camps

The opposing views espoused by liberal feminists and radical feminists, both endeavoring to improve the welfare of the prostitute and women at large, reflect the complicated nature of the prostitution debate. It is useful to analyze some of the principal critiques and misconceptions of radical and liberal feminism in order to better strategize how to move forward.

The radical feminist position on prostitution is extremely powerful and insightful. It speaks to some of the most profound issues of our time and calls for massive cultural and societal change. Though this position may seem fairly obvious or at least reasonable to an experienced feminist thinker, it is quite radical to the average person, and can easily be misunderstood. For instance, Ericsson, espousing a view at the far end of the liberal feminist continuum, argues it is “particularly sad” that so many feminists cannot understand that contempt for prostitutes involves an inherent contempt for the female sex.²²⁴ His statement displays a complete misunderstanding of radical feminism.²²⁵ The truth is that there is no inherent contempt for women or prostitution underlying the radical feminist stance.²²⁶ Rather, radical feminists are “sad and angry about what the demand for

221. Larson & Hernandez-Truyol, *supra* note 29, at 401.

222. *Id.*

223. *Id.* at 401–02.

224. Ericsson, *supra* note 37.

225. Pateman, *supra* note 106, at 221.

226. *Id.*

prostitution reveals of the general character of (private and public) relations between the sexes."²²⁷ This cornerstone of radical feminism marks perhaps the most important fundamental difference between the radical feminist and liberal feminist positions on prostitution.

Though the radical feminist position is admirable and ambitious, "[i]t is an admission that the world radical feminists seek remains elusive and that a policy of reform must respond to the reality of women's lives."²²⁸ Moreover, liberal feminists and prostitutes' rights groups who support the liberal feminist position would likely criticize the radical feminist approach as condescending, patronizing, and out of touch with the experiences of prostitutes.²²⁹ Many prostitutes would likely take issue with the fact that the radical feminist stance denies all autonomy to the sex worker in painting her as a victim of her environment.²³⁰ Radical feminists who place blame on male-defined sexuality and unjust power relations at the macro level do not satisfy the individual prostitute who feels that state regulation is responsible for her lack of control over her life.²³¹ The Canadian Organization for the Rights of Prostitutes expounds this very critique of radical feminism, explaining, "We want feminists to stop pimping our ass. We want them to start listening to us. We want them to stop looking at us as victims and see us as equals."²³²

The liberal position, on the other hand, speaks directly to the daily lives of individual prostitutes. At first glance the liberal approach appears refreshingly straightforward and commendable.²³³ Once examined more closely, however, a number of faulty and questionable assumptions emerge.²³⁴ Assuming the contract between a prostitute and a john is a legitimate business contract does not take into account the social, economic, and physical circumstances that might coerce a woman into accepting any given client, thereby invalidating the contract on those grounds.²³⁵ In addition, liberal feminist notions of independence, empowerment, and ownership over female sexuality are certainly valid feminist goals, "but empowerment should always serve the larger goal of

227. *Id.*

228. Freeman, *supra* note 25, at 247.

229. *See id.* at 243.

230. *Id.* at 241.

231. *Id.* at 243.

232. Peterson-Iyer, *supra* note 7, at 27.

233. Jaggar, *supra* note 31, at 103.

234. *See id.* at 104.

235. *Id.*

creating humanizing relationships marked by mutuality and equal regard."²³⁶ Furthermore, liberal feminists advocating for the total legalization of prostitution stress the importance of the prostitute's autonomy while ironically advocating for a legal system where the government limits the sex worker's ability to control her life through imposing health and safety regulations.²³⁷ As a result, the academic theory behind liberal feminism and the resulting policy goal of legalization do not align perfectly.²³⁸ Thus, one must draw from both feminist camps in order to best address the needs of individual prostitutes as well as the broader social and economic goals necessary for the advancement of gender equality.

While the practice of prostitution may ultimately harm all women as radical feminists assert, it still may "be the 'best' option for some women in an imperfect world."²³⁹ Moreover, it is fundamentally different to defend each individual prostitute's right to do her work as opposed to defending the practice of prostitution generally in a capitalist patriarchy.²⁴⁰ This objective marks common ground that both the liberal and radical feminist should mutually support. Therefore, in order to best serve individual prostitutes, feminists must listen to prostitutes' stories and take into account their circumstances and needs.²⁴¹ In order to be truly open and receptive to the positions of individual prostitutes, feminist scholars must make a conscious effort to be mindful of our own social location.²⁴² This consciousness is the only method to ensure that we do not silence oppressed women by objectifying them as subjects rather than considering them equals in finding the best method of policy reform.²⁴³ Accordingly, it is imperative that we make special efforts to "amplify the voices of those whom our social structures effectively mute, and we must simultaneously take special pains to alert ourselves to our own class-based biases. Otherwise our analysis will be, at best, incomplete and, at worst, harmful and oppressive."²⁴⁴

However, listening to individual prostitutes is easier said than done, as there is as much disagreement among sex workers as among feminists. Current and former prostitutes and prosti-

236. Peterson-Iyer, *supra* note 7, at 40.

237. Jaggar, *supra* note 31, at 103.

238. *See id.* at 103–04.

239. Peterson-Iyer, *supra* note 7, at 43.

240. *Id.*

241. *Id.* at 36.

242. *Id.*

243. *Id.*

244. Peterson-Iyer, *supra* note 7, at 36.

tutes' rights groups alike disagree about many of the same aspects of prostitution as feminists: whether it is a legitimate occupation, whether it is a choice, whether it is oppressive, whether the prostitute is capable of consenting to sexual intercourse with any given client, whether the pursuit of economic independence trumps women's subordination, and whether practicing prostitution has adverse psychological effects on women, to name a few.²⁴⁵ As a result, current and former prostitutes are also divided between the legalization and partial decriminalization models of prostitution that international policies and feminist scholarship put forth, making it impossible to consider one uniform position of sex workers when advancing policy reform.²⁴⁶ Despite a multitude of differing views, women who have experienced the sex industry tend to agree that the current conditions prostitutes are forced to work under are intolerable and in desperate need of reform.²⁴⁷

In addition, there are many macro-level social changes that the vast majority of current and former prostitutes and feminist theorists would likely support. The draft statement from the Second World Whores Congress in 1986, written by the International Committee for Prostitutes' Rights, asserts that in order for prostitutes to ever have a true occupational choice, a number of societal reforms must first take place: women must first be paid based on their worth rather than their gender; traditionally female jobs must acquire respect and adequate pay; the sexual division of labor must be eliminated; and women must gain access to jobs traditionally occupied by men.²⁴⁸ Lynn Sharon Chancer also advocates for broader societal reforms in order to address both the individual lives of prostitutes and larger feminist goals:

For even if sex-for-sale could be freely chosen in some salvageable utopia, right now it is often the only option available to women for surviving in a sexist present. . . . [It is essential to consider] how miserable many street women's lives are made by constant threats of incarceration, onerous fines, lack of medical care, and physical fear of police in addition to johns. . . . Additionally, faulting *prostitution* rather than *prostitutes* underlines the need for broader improvements as well: guaranteed jobs and income supports for all women are key instances (including health and child care, and family allowances where applicable). If obtained, conditions could be

245. See Freeman, *supra* note 25, at 237.

246. *Id.*

247. *Id.*

248. Int'l Comm. for Prostitutes' Rights, *supra* note 6, at 136.

forged wherein women would never *have* to become sex workers out of necessity rather than interest.²⁴⁹

To address the criticisms levied against prostitution by both liberal and radical feminists, broad cultural and societal reform must take place to advance gender equality in addition to specific legislation aimed at improving the lives of prostitutes.

V. Exploring Effects and Implications of Legalization vs. Partial Decriminalization

A. Legalization

It is a popular argument among liberal feminists that because it is very unlikely that prostitution will be eradicated in the near future, it makes the most logical sense to legalize it.²⁵⁰ Even though prostitutes disagree over the appropriate policy to adopt, it is hard to ignore those former prostitutes who suffer from destructive psychological effects and women who believe that legalizing prostitution is tantamount to legalizing rape.²⁵¹ Critics allege that legalizing prostitution institutionalizes the notion that women's bodies are "collective commodities, interchangeable, disposable, state sanctioned for profiteering and mistreatment," and essentially makes the state the "superpimp."²⁵² It is essential that society is cognizant of the purpose of legislation; the law is as much about establishing common attitudes and respect for human rights as it is about regulating behavior.²⁵³ The policy a governing body adopts on prostitution is indicative of current relations between the sexes and predictive of future cultural norms.²⁵⁴

Even if prostitution continues, the law can socially condition how the public perceives it. Whether the governing body and ensuing societal norms encourage or discourage prostitution influence the number of men who seek prostitution services.²⁵⁵ This reality is reflected in studies that show the tremendous variation of how many men purchase prostitution services across

249. Lynn Sharon Chancer, *Feminist Theory, and Ambivalence: Notes from the Sociological Underground*, 37 SOC. TEXT 143, 166 (1993).

250. See Freeman, *supra* note 29, at 240. By "legalization," I mean a government-run and regulated system where neither the prostitute nor the client is criminalized. See Peterson-Iyer, *supra* note 7, at 43 n.70.

251. See former Danish prostitute, *supra* note 1.

252. Frances Patai, Letter to the Editor, *Legal Prostitution Makes the State a Superpimp*, N.Y. TIMES, Sept. 10, 1985, at A26.

253. KFUK'S SOCIALE ARBEJDE, *supra* note 2, at 12.

254. *Id.*; see also Pateman, *supra* note 106, at 221 (arguing that prostitution reveals the general character of public and private relations between the sexes).

255. KFUK'S SOCIALE ARBEJDE, *supra* note 2, at 12.

cultures: fourteen percent of Nordic men as opposed to thirty to forty percent of Italian men and seventy percent of men in Thailand.²⁵⁶ In Amsterdam (with 750,000 inhabitants), where prostitution is legal, the number of prostitutes is estimated to be between twenty thousand and thirty-five thousand.²⁵⁷ In contrast, a 2007 report found only two hundred people engaged in street prostitution in Stockholm, Sweden²⁵⁸ (population 1.3 million²⁵⁹), where the purchasing of sex is a criminal offense.²⁶⁰ “These figures [emphasize] that sexuality is culturally conditioned, and as a society we try to influence culturally conditioned conduct in all sorts of ways.”²⁶¹ Campaigns and subsequent legislation against speeding and drunk driving illustrate how cultural norms influence practice, as campaigns against these social ills would be hollow gestures if these practices were sanctioned by law.²⁶²

Furthermore, studies have shown that legalization does not always benefit sex workers in the ways liberal feminists anticipate. Reports find that once prostitution is legalized, the industry expands, creating a “prostitution culture” that normalizes and increases public acceptance of sexual violence, exploitation, and prostitution generally.²⁶³ Karen Peterson-Iyer argues that legalized prostitution disempowers prostitutes by restricting their activities, living situations, and daily movement.²⁶⁴ Because legalized prostitution is usually regulated by the government, prostitutes who do not want to or are unable to submit to government regulations are marginalized for practicing outside the legal system, facing increased amounts of control.²⁶⁵ A survey of women in Victoria, Australia, reported that “legalization leads to competition and increase[ed] demands [for] women to perform

256. *Id.*

257. CLAUDE, *supra* note 223, at 13–14.

258. GOV'T OFFICES OF SWED., *AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES* 5 (2009).

259. *Id.* at 13; *see also* CLAUDE, *supra* note 223, at 16.

260. BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.) (“A person who . . . obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months.”).

261. KFUK'S SOCIALE ARBEJDE, *supra* note 2, at 12.

262. *Id.*

263. Max Waltman, *Prohibiting Purchase of Sex in Sweden: Impact, Obstacles, Potential, and Supporting Escape* 22 (Stockholm Univ. Dep't of Political Sci., Working Paper No. 2010:3).

264. Peterson-Iyer, *supra* note 7, at 43 n.70.

265. ENGLISH COLLECTIVE OF PROSTITUTES, *CRIMINALISATION: THE PRICE WOMEN & CHILDREN PAY* 36 (2004) (responding to the British government's review of prostitution laws, presented at the Conference *No Bad Women, No Bad Children, Just Bad Laws* in London on December 4, 2004).

harmful practices and accept unwanted clients.”²⁶⁶ “[L]egalization has also been found to increase alcohol-related harms, child sexual abuse, sexual harassment, child prostitution (e.g. Netherlands becoming a pedophile-center of Europe), and tricks’ demands for ‘cheaper’ or ‘unrestricted’ sex.”²⁶⁷ Scholars additionally concur that legalization promotes trafficking,²⁶⁸ as it is easier for traffickers to conceal exploited women out in the open under the guise of legality. Findings in Victoria and Nevada suggest “that prostituted women and minors are regularly moved between legal and illegal venues by pimps for reasons appearing to be money laundering, changed demand, and avoiding law enforcement scrutiny.”²⁶⁹

Moreover, carrying the liberal feminist perspective of normalizing prostitution as an ordinary, accepted, and legally condoned profession to its logical conclusion, brothels would be allowed to post job vacancies in public forums, such as newspapers, the Internet, and public employment centers.²⁷⁰ Legal sanctioning of prostitution could even influence which women are eligible to receive unemployment benefits.²⁷¹ While in theory it appears that legalizing prostitution helps individual prostitutes, the practice would in fact be likely to hurt more women than it helps.

B. Partial Decriminalization

The leading model of partial decriminalization can be seen in the groundbreaking Swedish law passed on January 1, 1999.²⁷² Found in chapter 6, section 11, of the Swedish Penal Code, the law punishes the purchaser of sexual services with a fine or imprisonment for up to six months.²⁷³ The Swedish law treats the prostitute as the victim by only punishing the buyer. Kajsa Wahlberg, of the human trafficking unit at Sweden’s national police board, expressed the sentiment of the law, saying, “We don’t have a problem with prostitutes. We have a problem with men

266. Waltman, *supra* note 263, at 20.

267. *Id.* at 21.

268. *Id.*

269. *Id.* at 21–22.

270. KFUK’S SOCIALE ARBEJDE, *supra* note 2, at 5.

271. *Id.* For instance, women may be precluded from government aid if there are vacancies in brothels and women receiving benefits for long-term unemployment might be required to accept work as a prostitute or lose their eligibility. *Id.*

272. GOV’T OFFICES OF SWED., *supra* note 217.

273. BROTTSBALKEN [BRB] [CRIMINAL CODE] 6:11 (Swed.).

who buy sex.²⁷⁴ Based on the rules of supply and demand, the rationale behind the legislation is that once the demands for sexual services decreases, prostitution will be eradicated.²⁷⁵ Sweden's position on the law mimics much of the sentiment expressed by radical feminism and is summed up best by a statement delivered in 1999 by the Swedish Ministries of Labor, Justice, and Health Social Affairs:

Prostitution is not a desirable social phenomenon. The government considers, however, that it is not reasonable to punish the person who sells a sexual service. In the majority of cases at least, this person is a weaker partner who is exploited by those who want only to satisfy their sexual drives. It is also important to motivate prostitutes to seek help to leave their way of life. They should not run the risk of punishment because they have been active as prostitutes. By prohibiting the purchase of sexual services, prostitution and its damaging effects can be counteracted more effectively than hitherto. The government is however of the view that criminalisation can never be more than a supplementary element in the efforts to reduce prostitution and cannot be a substitute for broader social exertions.²⁷⁶

The law has made a huge international splash,²⁷⁷ eliciting mockery when first introduced,²⁷⁸ but now inspiring emulation—Norway and Iceland have both recently adopted Sweden's policy.²⁷⁹ However, reports about the effects of the law are mixed.

The Swedish government has promoted the law as an overwhelming success. The official evaluation of the law reported that street prostitution has been reduced by fifty percent since the new legislation went into effect,²⁸⁰ and there has not been an increase in indoor prostitution (massage parlors, sex clubs, hotels, etc.).²⁸¹ The report noted that a form of prostitution in which initial contact is established over the Internet is a growing phenomenon that has increased generally in Scandinavian

274. Karl Ritter, *World Takes Notice of Swedish Prostitute Laws*, INDEP. (Mar. 17, 2008), <http://www.independent.co.uk/news/world/europe/world-takes-notice-of-swedish-prostitute-laws-796793.html>.

275. GOV'T OFFICES OF SWED., *supra* note 217, at 29.

276. Day et al., *supra* note 19, at 83. The Swedish government also "implemented a \$32-million plan that helps those who are being sold for sex to obtain assistance to exit their exploitation." Perrin, *supra* note 22.

277. See Karl Ritter, *Sweden's Prostitution Law Attracting World Interest*, SEATTLE TIMES, Mar. 16, 2008, at A2 (discussing interest by British, Norwegian, and Dutch officials in the Swedish approach).

278. Ritter, *supra* note 274.

279. Perrin, *supra* note 22.

280. GOV'T OFFICES OF SWED., *supra* note 217, at 34.

281. *Id.* at 36.

countries since 1999.²⁸² However, the Swedish government found no evidence to indicate that there has been a greater increase of this type of prostitution in Sweden than in its neighboring countries of Denmark and Norway, and consequently found that the rise of Internet prostitution did not reflect the efficacy of the new legislation.²⁸³ The government report also cites surveys showing that the number of Swedish men purchasing sexual services has decreased since the law's implementation.²⁸⁴ A number of respondents in a 2008 survey reported that the ban on purchasing prostitution directly affected their choice to stop purchasing sexual services.²⁸⁵ The report shows that men are afraid to get caught, the real deterrent being potential exposure of their illicit sexual practices to family and friends, rather than the actual criminal penalties.²⁸⁶ The government also reports that the ban acts as a barrier to human traffickers.²⁸⁷ This aspect of the report is widely undisputed, as Sweden has gained a reputation as being bad business for human trafficking, effectively reducing the number of women trafficked into Sweden in relation to other countries in the European Union.²⁸⁸

While Swedish authorities have deemed the law a success, critics allege it has not reduced prostitution, but rather forced it into more isolated and dangerous environments.²⁸⁹ The Swedish government report explicitly states that when the law was originally introduced, various concerns were raised about negatively impacting the lives of prostitutes, but those concerns have proven unfounded:

These [concerns] included fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for

282. *Id.* at 35–36.

283. *Id.*

284. *Id.* at 38.

285. GOV'T OFFICES OF SWEDEN, *supra* note 217, at 38.

286. *Id.*

287. *Id.* at 37.

288. See Gunilla Ekberg, *The Swedish Law that Prohibits the Purchase of Sexual Services*, 10 VIOLENCE AGAINST WOMEN 1187, 1199 (2004) (contrasting a Swedish government estimate of four hundred to six hundred women trafficked into Sweden per year with much higher numbers for Finland and Denmark); Andre Anwar, *Criminalizing the Customers: Prostitution Ban Huge Success in Sweden*, SPIEGEL ONLINE (Nov. 8, 2007), <http://www.spiegel.de/international/europe/0,1518,516030,00.html> (“[A]n estimated 10,000 to 15,000 people a year are illegally trafficked into nearby Finland, but the figure for Sweden was 400 to 500.”).

289. Ritter, *supra* note 284.

prostitutes. As far as we can judge from the written material and the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.²⁹⁰

Data gathered from individual prostitutes, however, does not support the government's finding. A current prostitute and spokeswoman for the Sex-workers and Allies Network in Sweden (SANS) claims the law does push prostitution underground, explaining, "Our business demands that we stay away from the police because our clients have been criminalized."²⁹¹ Street prostitutes report facing more exposure to dangerous clients because safer clients are too afraid of arrest.²⁹² Moreover, because clients tend to be rushed due to fear of law enforcement, there is less time for the prostitute to make a "security assessment" of the situation, making the job more hazardous.²⁹³ One report on the law found that pimps have benefitted from the new legislation, as clients are "less willing to cooperate in bringing to light coercion, [human trafficking], and underaged persons involved in prostitution," and prostitutes have become more reliant on the resources of pimps to avoid police detection.²⁹⁴

Individual Swedish prostitutes claim that the law has damaged their livelihood, which has a plethora of negative implications.²⁹⁵ One prostitute explains, "When things are slow . . . I'm also willing to go with guys who want to get a little rough with me and don't want to use a condom. . . . I need the money."²⁹⁶ Another expresses a similar sentiment, relating, "The nice customers are afraid of being caught. . . . All that's left are the more troubled ones, those with whom you have to drive far out of the city so that they'll feel safe from police. It puts you at their mercy."²⁹⁷ Healthcare professionals relate mixed feelings about the ban, as "[c]ases of abuse and rape have increased considerably."²⁹⁸ The rate of sexually transmitted diseases among prostitutes has also increased due to the enhanced pressure to

290. GOV'T OFFICES OF SWED., *supra* note 217 at 38.

291. Paul O'Mahony & James Savage, *Swedish Prostitution: Gone or Just Hidden?*, LOCAL (Jan. 10, 2008), <http://www.thelocal.se/9621/20080110/>.

292. Anwar, *supra* note 288.

293. Ritter, *supra* note 274.

294. MINISTRY OF JUSTICE & THE POLICE, PURCHASING SEXUAL SERVICES IN SWEDEN AND THE NETHERLANDS: LEGAL REGULATION AND EXPERIENCES 52-53 (2004).

295. Anwar, *supra* note 288.

296. *Id.*

297. *Id.*

298. *Id.*

participate in unprotected sex.²⁹⁹ However, healthcare professionals recognize that there are more social services in place to actively help prostitutes leave the sex industry, including treatment centers for drug abuse.³⁰⁰

Feminist author Petra Östergre expresses skepticism over the Swedish government's claims of a drop in prostitution.³⁰¹ She asserts that there is no data that can definitively demonstrate that prostitution overall has decreased, and a report by the Swedish National Board of Health and Welfare admits that it is impossible to show any causal links between legislation and changes in Swedish prostitution trends.³⁰² Other critics express concern with the way the law has been enforced, with less than five hundred convictions from 1999–2008.³⁰³ Supporters, however, emphasize the effect the law has had on the culture in Sweden; with the social stigma of buying sex being reinforced and institutionalized by the law, it creates a society where it is socially unacceptable for men to buy sex, effectively decreasing the demand for prostitutes—perhaps the law's primary goal.³⁰⁴ Gunilla Ekberg claims that groups organized by former prostitutes, as well as current prostitutes attempting to leave the sex industry, support the law, maintaining the law has “provided an incentive for women wanting to escape prostitution to seek the assistance that they need.”³⁰⁵ Louise Eek, a former prostitute within the Swedish sex industry, supports the 1999 law, believing it will eventually result in a cultural shift, influencing future generations.³⁰⁶ If nothing else, the law is seen as a symbol of equality in Sweden,³⁰⁷ which certainly indicates positive cultural changes in the future,

299. *Id.*

300. *Id.*

301. O'Mahony & Savage, *supra* note 291.

302. *Id.*

303. *Id.*

304. See Ekberg, *supra* note 288, at 1209 (arguing that the main purpose of the law is normative, so the number of convictions do not speak to the efficacy of the law); O'Mahony & Savage, *supra* note 291.

If we were to base the effectiveness of laws on the number of convictions in relation to the number of crimes committed, then rape laws, laws against other forms of male violence against women, and laws addressing financial crimes would have to be discarded as mostly ineffectual in stopping the flow of criminals and such crimes.

Ekberg, *supra* note 288, at 1209.

305. Ekberg, *supra* note 288, at 1204.

306. Alison Marie Fenton, *How Sweden Tackles Prostitution*, BBC NEWS (Feb. 8, 2007), http://news.bbc.co.uk/2/hi/uk_news/6343325.stm.

307. Tom Sullivan, *Sweden Revisits Prostitution Law*, CHRISTIAN SCI. MONITOR, June 30, 2009, at 12.

just as Eek predicts. It often takes a number of years after any given law is enacted until the norm expressed in that law is firmly inscribed in society.³⁰⁸

VI. Conclusion and Policy Recommendations

Before strategizing a policy approach, policymakers must be mindful of differing cultural and government contexts. The type of government (democracy, theocracy, dictatorship, etc.) in power affects the potential for success of any particular approach.³⁰⁹ In addition, the specific history and culture of a country also influences the type of policies that might be well received and endorsed by the public.³¹⁰ Economic systems further have the capacity to influence the efficacy of prostitution policies, as capitalism, socialism, and the various hybrids produce very different societies. For instance, when considering the adoption of Sweden's innovative partial decriminalization approach, it is important to take notice that Sweden is considered "the leader in development in the welfare state,"³¹¹ and, as such, is able to provide many more government benefits than most other countries.

In addition, Sweden is more progressive than most other countries regarding the culture of relations between the sexes, which likely contributes to the effect of the recent prostitution legislation. Sweden placed fourth worldwide for sex equality according to the 2010 Global Gender Gap Index,³¹² which measures the scope of gender-based disparities across nations based on economic, political, educational, and health disparities, allowing for cultural comparisons across regions and over time.³¹³ Iceland and Norway came in first and second respectively in the 2010 Global Gender Gap Index,³¹⁴ which might help explain why those countries were the first to adopt Sweden's progressive prostitution law.

308. Ekberg, *supra* note 288, at 1209.

309. See David M. Mednicoff, *Can Legalism Be Exported? U.S. Rule of Law Work in Arab Societies and Authoritarian Politics*, 11 INT'L L. STUDENTS ASS'N. J. INT'L & COMP. L. 343, 352 (2005).

310. *Id.* at 344.

311. Martha N. Ozawa, *Social Welfare Spending on Family Benefits in the United States and Sweden: A Comparative Study*, 53 FAM. REL. 301, 301 (2004).

312. WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 8 (2010). In comparison, the United States placed nineteenth, the Netherlands placed seventeenth, and Yemen came in last at number 134. *Id.* at 8–9.

313. *Id.* at 3.

314. *Id.* at 8.

Furthermore, because prostitution policy inevitably intersects with international human trafficking, it is important to be mindful of the interrelationship of policies across regions and the effects laws might have on bordering countries. Research has shown that since the adoption of the Swedish law in 1999, “traffickers are choosing other destination countries where their business is more profitable and not hampered by similar laws,”³¹⁵ such as Denmark, Germany, the Netherlands, and Spain. Thus, it appears that the success of the Swedish law in acting as a deterrent to traffickers has led to the adverse effect of increasing trafficking in neighboring countries, suggesting that prostitutes may benefit from transnational collaboration on prostitution policy, at least among neighboring countries. The aforementioned complexities contribute greatly to whether or not any given policy approach might be successful, and must be considered when strategizing policy in order to ensure that the governing body’s approach takes into account the unique characteristics and challenges of each jurisdiction.

In assessing whether to champion the legalization or partial decriminalization of prostitution, it appears partial decriminalization, despite its flaws, is a superior policy. Legalization might be better for reaching short-term goals of improving the lives of prostitutes, but it lacks the positive long-term impact that will likely be seen in Sweden.³¹⁶ In addition, legalization suffers from many flaws that hurt prostitutes, and only serves to exacerbate and perpetuate a culture of prostitution where women are dehumanized and commodified.³¹⁷ In stark contrast, partial decriminalization advances the norms that lead to a more just world.³¹⁸

Unfortunately, as a case study of Sweden indicates, the Swedish model will take time, and likely one or more generational shifts, before the progressive norms it promotes are widely endorsed and its flaws resolved.³¹⁹ It seems clear that whatever policy approach any given governing body currently adopts, the sex industry attracts troubled women, violence, and other criminal activities. Until cultural norms shift to the point that women no longer need to “choose” prostitution, it is essential that specific

315. Ekberg, *supra* note 267, at 1201.

316. Fenton, *supra* note 306.

317. KFUK’S SOCIALE ARBEJDE, *supra* note 2, at 4, 10.

318. Day et al., *supra* note 19, at 83.

319. Anwar, *supra* note 288.

government reforms and policies target the sex industry in an attempt to improve the daily lives of prostitutes.

Prostitutes need resources and services to help those women who have no choice but to sell sex for a living, particularly women of color as the most vulnerable subset of the population. Government-sanctioned services should help women struggling with problems of abuse, psychological problems, drugs, violence, and the many other societal ills faced by the average prostitute.³²⁰ Furthermore, regardless of which policy approach is implemented, it is essential that societal norms are reformed in order to foster gender equality and oppose male patriarchal oppression. This needs to happen on the macro level, increasing the number of jobs available to women and enforcing equal pay legislation. State-sponsored childcare would also help assuage the problems faced by impoverished mothers who feel they have no other choice but to practice prostitution.³²¹

In conclusion, analyzing contrasting feminist positions as well as leading policy approaches to prostitution reveals the magnitude of the complicated issues inherent in the prostitution debate. Perhaps the most complex obstacle is that prostitutes themselves do not express a uniform view. In addition, although I have argued that the Swedish model of partial decriminalization is superior to the legalization of prostitution, it is still in its infancy and only time will tell if its flaws are curable. However, fundamental lessons remain to be learned, which can be conceded across differing feminist camps. Uniting opposing feminist thinkers might have the capacity to reveal an innovative and superior policy approach to prostitution. I charge all feminist legal advocates to collaborate with women of conflicting viewpoints in pursuit of policy reform that will better meet the needs of feminists and prostitutes alike.

320. *See supra* Part I.B.

321. *See* Giobbe, *supra* note 9.