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I. Introduction

This paper takes a critical look at the five major schools of feminist thought and their views on prostitution and the law. The five schools of thought addressed by this paper are Radical, Existential, Marxist, Socialist, and Liberal feminism.¹ The ultimate goal is to address the idea of decriminalizing or legalizing prostitution in the United States, and to examine what kind of legal framework would work best, if any, from the point of view of each school of thought. The brothel system currently in place in Nevada will be used as an example of legal prostitution in the United States; Nevada can serve, in the words of Justice Brandeis, as a “state as laboratory”² example. This paper will also examine the brothel system through each of the five feminist lenses, as different groups have contrasting viewpoints on brothels as a vehicle for legalization. Finally, the analysis section of the paper will address some of the outstanding problems with each school of thought.

There will first be a brief explanation of key terms and concepts that will be used and discussed throughout the paper. Then section three will be an introduction to the Nevada brothel system, detailing its social and legal origins and evolution, as well as

¹ See generally Sarah Bromberg, *Feminist Issues in Prostitution*, 1997 INTERNATIONAL CONFERENCE ON PROSTITUTION, <http://www.feministissues.com/index.html> (last updated 1997) (last visited April 22, 2013).

² “To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, (1932) (Brandeis, J., dissenting).

describing the logistics of working in a brothel. Sections Four through Nine will introduce each school of feminist thought, and make plain each group's position on prostitution. Section Ten will be an analysis of some of the major critiques of each major school, and a final breakdown of whether or not a nationwide brothel system could placate all (or any) American feminists.

II. Basic Terms and Concepts

Female prostitutes: This paper will generally speak about prostitutes as being women, and will use female pronouns where necessary. This is not to say that there are not men and transgendered people working in the commercial sex industry. However, since this is a paper addressing feminist concerns about prostitution, and the majority of prostitutes are women, I will be speaking about prostitutes as women.

Sex Work: "Sex work" has become the preferred nomenclature for some feminists and prostitutes themselves to refer to what they do professionally, as many believe that "prostitution" has come to have a pejorative connotation. The idea is that the word "prostitution" no longer lends itself to the understanding that selling sex commercially is a valid occupation like any other profession. For the sake of continuity, however, this paper will use the word "prostitution" to refer to paid sex work of any kind.

Decriminalization versus legalization: In the discussion of the future of prostitution in the United States, there are two options for making it no longer illegal: decriminalization or legalization. It is important to understand the difference between the two. Decriminalization is the opposite of criminalization, which is what we have currently in the forty-nine of the fifty United States. Decriminalization simply means repealing all laws that restrict prostitution, including those laws that prohibit facilitating

prostitution.³ Therefore, this means no new legislation would have to be passed in reference to prostitution, “but merely leave businesses which surround prostitution subject to general civil, business, and professional codes that exist to cover all businesses”.⁴ Legalization, on the other hand, means creating a legal framework for a specific type of prostitution, instead of simply deregulating all forms of sexual commerce. Nevada brothels are an example of legal prostitution, as opposed to decriminalized prostitution. So, if the United States was to choose a brothel system as its preferred framework, street prostitution, for example, would still be illegal as an impermissible form of prostitution.

III. Nevada Brothel System

Because of its Wild West reputation and the strong libertarian leanings of its populace, Nevada was primed for the success of legal prostitution from the beginning. While the state moved away from legal, and virtually unregulated, street prostitution after World War II, smaller communities outside of the major cities like Reno and Las Vegas were, and continue to be, essential to the success of brothels. Communities express their support (or apathy, at the very least) towards brothels in many ways, including in their individual capacities as jurors in the trials of brothel owners, and in the passage of legislation that worked around state or nationwide attempts at restrictive regulation or bans.

Like many Wild West states, Nevada initially had legal street prostitution. Nevada specifically has always had a hand-in-glove relationship with vice. However, as the state

³ This includes “activities of organizations, individuals, and businesses that profit from the labor of prostitutes, for example, brothels, escort services, pimps, and massage parlors” LENORE KUO, PROSTITUTION POLICY: REVOLUTIONIZING PRACTICE THROUGH A GENDERED PERSPECTIVE 124 (2002).

⁴ Priscilla Alexander, *Prostitution: A Difficult Issue for Feminists*, in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY (Frederique Delacoste & Priscilla Alexander eds., 1987).

began to grow, state and city officials began to look for a way to regulate vice within the city limits. One of the earliest tools of regulation, which is still in use today, was zoning. Careful city planning was meant to “better order municipalities – a well-planned community was supposed to promote public health, safety, morals, and general welfare”.⁵ So, many prominent cities passed zoning laws to keep prostitution, saloons, and other such establishments relegated to certain streets. Even Las Vegas, when it was zoned in 1901, had a single vice district, known as Block 16. Over time, increasingly more laws were passed to regulate the operation of brothels, including a ban on operating a brothel within 400 yards of a church, school, or church, pandering, living off the earnings of a prostitute, or advertising. After the passage of the federal White-Slave Traffic Act (better known as the Mann Act), which prohibited the transportation of individuals across state lines for “prostitution or . . . any sexual activity,”⁶ Nevada passed a law that “prohibited an individual from placing a woman in a brothel, and men from habitually visiting a brothel”.⁷ However, the general trend was not to shut down under these pressures, but rather to move the brothel further and further from the reach of the laws, or complying with the laws in the most perfunctory ways possible.

In 1949, the Nevada Supreme Court, in an effort to shut down brothels, ruled that brothels were a public nuisance.⁸ In that case, Washoe County brought suit against

⁵ BARBARA BRENTS ET AL., *THE STATE OF SEX: TOURISM, SEX, AND SIN IN THE AMERICAN HEARTLAND* 51 (2010).

⁶ Whoever knowingly transports any individual in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 10 years, or both.

18 U.S.C.A. § 2421

⁷ BRENTS, *supra* note 5, at 53.

⁸ “The operation of said premises for the purpose of prostitution etc. annoys, injures, and endangers the safety, health and comfort of the citizens of the county and offends public decency, defined to be a public

brothel owner Mae Cunningham in an effort to enjoin her from operating her brothel, *The Willows*, in Reno. After the *Cunningham* decision, a “local option” bill that allowed counties and cities to individually license brothels quickly. Governor Vail Pittman then vetoed the bill. “In response, over the next several years, most counties passed ordinances legally stipulating that brothels were not nuisances to avoid the nuisance charges”⁹. The first zoning ordinance to specifically target brothels (as opposed to the past zoning laws which merely mentioned “vice”) was enacted in 1970, for the Mustang Ranch in Storey County. There was a subsequent rise in brothel zoning,¹⁰ due to how profitable it was for a county to have a brothel paying regular licensing fees. In 1971, a series of “compromise” bills were passed, which banned brothels in counties with populations over 400,000.¹¹ This was a legal compromise between rural counties, which want to keep legal brothels because of the financial benefit derived from the licensing fees, and big cities like Reno and Las Vegas, who were desperately fighting their prevailing image as mob-run dens of iniquity.

The final and key piece in the rise of the brothel system as it exists now in Nevada was the brothel system’s response to the AIDS crisis in the 1980s.

The AIDS crisis legitimized the legal brothel industry in Nevada in a number of ways. First, it forced the brothel industry to become more politically astute, utilizing their professional associations while simultaneously putting on a more legitimate, businesslike face. Second, it bureaucratized and rationalized oversight of the brothels in a way that quelled public fear about the spread of disease.¹²

nuisance under the provisions of section 10244” *Cunningham v. Washoe Cnty.*, 203 P.2d 611, 612 (Nev. 1949).

⁹ BRENTS, *supra* note 5, at 70.

¹⁰ Nevada currently has laws that zone brothels away from main streets, churches, and schools. NEV. REV. STAT. 201.354.

¹¹ BRENTS, *supra* note 5, at 8.

¹² *Id.* at 85.

Fear of AIDS also gave rise to many of the essential health laws that regulate the way brothels are run to this day. In 1986, the Nevada State Board of Health passed a regulation that requires a prostitute to be screened for HIV/AIDS prior to entering into a contract for brothel work. It further required monthly HIV testing for the prostitutes in order to remain employed. “HIV-positive women could not get a sheriff-issued work card” to work in a legal brothel.¹³ If they are found to be HIV positive or have certain other sexually transmitted diseases, they must immediately cease and desist from participating in sex work.¹⁴ In 1985, The Nevada Brothel Association formed in order to present a unified front in the face of AIDS-related anxieties. Finally, in 1988, mandatory condom use was passed into law.¹⁵ These health regulation measures are still in place, making brothels safer for the women who work there. As of 2002, Nevada brothel prostitutes had a lower rate of HIV than women who were prostituting illegally.¹⁶

To work in a Nevada brothel, the women are hired by specific locations as independent contractors. This means that while they are working in the brothel of a particular owner, the owner is not allowed to dictate how individual transactions between client and prostitute are conducted, only that commercial sex is being made available by that woman in that brothel at a given time. As an independent contractor, the prostitute’s wages are subject to Self-Employment Tax.¹⁷ Each independently contracted prostitute is required to have a work card, which is issued by local law enforcement. In order to

¹³ *Id.* at 82.

¹⁴ “If a test required pursuant to this section shows the presence of infectious syphilis, gonorrhea, *Chlamydia trachomatis* or infection with the human immunodeficiency virus (HIV), the person shall immediately cease and desist from employment as a sex worker.” NEV. ADMIN. CODE § 441A.80.

¹⁵ NEV. ADMIN. CODE §441A.120.

¹⁶ KUO, *supra* note 3, at 130.

¹⁷ The Internal Revenue Service, *Independent Contractor Defined*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-Defined> (last updated Jan. 10, 2013) (last visited April 22, 2013).

receive this work card, the women must pass a background check. You cannot be issued a work card if you have ever been convicted of a felony or a drug charge, and in the majority of counties, you must be over 21. Additionally, the work card requires the woman to give her legal name and pay a registration fee. Generally speaking, the process is very similar to that of applying to work at a casino. Brothel owners also must have licenses, and those licenses will not be granted if the applicant has “ever been convicted of a felony or drug charge, theft, embezzlement, or a crime involving a deadly weapon, or if [they] are judged ‘contrary to the health, welfare, or safety of the City [County] or its residents’”.¹⁸ In the eyes of state and federal tax law, brothels are treated like any other regular businesses and are subject to taxation.

Now that the reader is basically familiar with the brothel system in Nevada, the focus will shift to the five schools of feminist thought. Each section will begin with an explanation of the group’s general stance on prostitution, and will to explain how each group’s philosophy applies to the brothel system.

IV. Radical Feminism

Radical feminism is what many people think of when they think of the word “feminism.” Unfortunately for many, this term has become pejorative in part because of the hardline stance of radical feminists. Radical feminists believe that prostitution is sexual exploitation and a vehicle of oppression.¹⁹ According to this theory, men, and the male-dominated system, oppress women and prostitution is just another way of keeping women down by perpetuating a system of gender inequality where men are permissively

¹⁸ BRENTS, *supra* note 5, at 9.

¹⁹ Laurie Schrage, *Should Feminists Oppose Prostitution?*, in *THE PHILOSOPHY OF SEX* 328 (Alan Soble ed., 3d ed. 1997).

consumers of women.²⁰ Radical feminists do not believe that prostitution should be legalized in any capacity, and should absolutely be banned.

One of the greatest concerns about prostitution from a radical standpoint is the conflation of the female body with a consumable item that is for sale. This contributes to a system wherein women are regarded as objects and are therefore objectified. This same argument was raised in conjunction with the radical feminist attack on pornography in the 1970s, which led to the passage of the Dworkin-MacKinnon Ordinance in Indianapolis, a legislative effort to have pornography declared a violation of women's civil rights, although the ordinance was later struck down as being in violation of the first amendment.²¹

In her essay, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, radical feminist leader Catharine MacKinnon explores the idea of female sexuality as constructed solely via its relationship to men's sexuality: "A woman is a being who identifies and is identified as one whose sexuality exists for someone else, who is socially male".²² She goes on to speak specifically to the connection between female sexuality commodified by pornography and made available for sale in prostitution, saying, "[p]ornography becomes difficult to distinguish from art and ads once it is clear that what is degrading to women is compelling to the consumer. Prostitutes sell the unilaterality that pornography advertises."²³ The idea being, then, that men are shown what should be available to them sexually through pornography, and prostitution allows them to go out

²⁰ Sarah Bromberg, *Radical Feminism*, in *Feminist Issues in Prostitution*, *supra* note 1 at http://www.feministissues.com/radical_feminism.html.

²¹ *American Booksellers Ass'n, Inc., v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

²² Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State*, in 7:3 *SIGNS; JOURNAL OF WOMEN IN CULTURE AND SOCIETY* 533 (Barbara Charlesworth Gelpi, ed., 1982).

²³ *Id.* at 532.

and buy that commodity. On a very basic level, radical feminism conceives of female sexual roles as inherently submissive to male, perhaps because of the penetrative nature of the male sexual role in a “traditional” heterosexual encounter (i.e. penovaginal sexual intercourse). The social divide between men and women, then, is a product of this inherent inequality. MacKinnon writes:

Women and men are divided by gender, made into the sexes as we know them, by the social requirements of heterosexuality, which institutionalizes male sexual dominance and female sexual submission. If this is true, sexuality is the linchpin of gender inequality.²⁴

More crudely, but perhaps more illustrative of the radical feminist conception of heterosexual relations: “some fuck while others get fucked.”²⁵ The language itself suggests an inherent passivity on the part of the woman in the sexual encounter by having sex be something that happens to her, an act wherein she lacks any agency. It is precisely that systematic passivity, that lack of agency and submissive acceptance of the male and his penis that is so troubling for radical feminists under the patriarchy. And so, some radical feminists argue that because women automatically lack agency in the sexual sphere of society, all heterosexual sex is closely analogous to rape. “The relevant comparison, according to radical feminists, is rape because of its incorporation of the elements of objectification and coercion. Rape and prostitution alike become examples of male power and female subordination.”²⁶

This biological inequality is then exacerbated by a male-dominated society that allows, indeed encourages, sexual promiscuity and insatiable sexual appetites from its

²⁴ *Id.* at 533.

²⁵ MacKinnon, *supra* note 22, at 517.

²⁶ D. KELLY WEISBERG, *Introduction to Section on Prostitution, in APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN’S LIVES: SEX, VIOLENCE, WORK, AND REPRODUCTION*, 187, 193 (D. Kelly Weisberg ed., 1989).

men, but distains the same in women, encouraging instead chastity and committed monogamy.²⁷ It is here that radical feminism finds another foothold for its opposition to prostitution, inasmuch as prostitution reflects an institutionalized acknowledgement of men's so-called insatiable sexual desires. So insatiable, the patriarchy would have us believe, that prostitution is necessary to the functioning of society, because men *need* sex to survive, or at least for society to operate properly. Sarah Bromberg explains: "To the feminist, a man's belief that he has no choice other than to respond to his sexual urges, creates a self-validating tautology of belief predicated on the notion that his aggressive behaviors are linked to his inherited traits".²⁸ In introducing the radical feminist perspective on prostitution, editor D. Kelly Weisberg writes: "Men are socialized to have sexual desires and to feel entitled to have those desires met, whereas women are socialized to meet those desires and to internalize accepted definitions of femininity and sexual objectification."²⁹ Even in his essay defending prostitution, Eric O. Larsson speaks about one of the social benefits of prostitution being the alleviation of "sexual misery"³⁰ of men. More specifically, Larsson talks about unhappy marriages, and how prostitution gives those marriages a chance to succeed by allowing the man to get the sex he needs outside of the home. While this argument is made in a liberal feminist, pro-prostitution light, it also bespeaks the permissiveness about which MacKinnon and Weisberg are concerned.

²⁷ To say that extensive sexual experience in a woman is not prized in our society is to be guilty of indirectness and understatement. Rather, a history of sexual activity is a negative mark that is used to differentiate kinds of women. Instead of being valued for their experience in sexual matters, women are valued for their "innocence."

Shrage, *supra* note 19, at 331.

²⁸ Bromberg, *supra* note 20.

²⁹ Weisberg, *supra* note 26, at 194.

³⁰ Lars O. Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment*, *supra* note 26, at 208.

Some radical feminists have proposed ways to approach the problem of prostitution via the legal system, but most propose either widespread social change (the popular tagline being “smash the patriarchy!”) or, at the very least, a total ban on the sale of any sort of sexual service (prostitution, massage parlors, escort services, etc.). Even those who are pro-decriminalization like Ericsson advocate for fundamental social change, saying, “The ‘oppressor’ is rather those social conditions – present in practically all known social systems – which offer some individuals (both men and women) no better alternative to”³¹ prostitution. This concern about the coercive power of social inequality and poverty is echoed throughout the other four schools of thought presented here. Many, if not all, feminists advocate for social change that includes eradicating poverty as a goal central to achieving gender equality.

More conventional legal approaches from radical feminists run the gamut from legislation efforts like the previously mentioned Dworkin-MacKinnon ordinance based on civil rights of women, to more radical suggestions. As a constitutional means of eliminating prostitution, Catharine MacKinnon also proposed the constitutional challenge to prostitution as a form of slavery, and thereby unconstitutional under the 13th Amendment. This argument, however, did not succeed.

Radical feminists, it may go without saying, would never be in favor of a brothel system, regardless of how it works. As long as it involved sexual contact between women and men, let alone sex for money, radical feminists would be opposed. Radical feminist and prostitution survivor organization Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER) has specifically spoken out against the idea of brothels, especially

³¹ *Id.* at 212.

ones like those in Nevada, far from city centers. In her essay about WHISPER, Sarah Wynter writes:

We oppose current and proposed legislation (including current versions of criminalization, legalization, and decriminalization with zoning or regulatory provisions) which treat the institution of prostitution as an ‘urban blight’ or ‘eyesore’ that needs to be hidden from view yet kept available to men. These ‘solutions’ insure men’s unconditional sexual access to women without consideration for the physical and psychological consequences to individual women and the overall damage to the civil and social status of women (by defining us as genitals that can be bought, sold or traded.)³²

This is a particularly accurate and succinct summary of a radical feminist stance on the brothel system, especially as it currently exists in Nevada, where many brothels are out in the middle of the desert, relatively far away from any town.

V. Existentialist Feminism

Existential feminists believe that prostitution can provide an escape from a traditional socioeconomic dependence on male-female relationships.³³ Prostitution is empowering in that it provides a way for women to be economically free of men by offering a commodity that men want and women have. Therefore, women can be entrepreneurs capable of supporting themselves. Prostitutes also exert sexual power over men in this view because the women are in possession of the sex that men will pay to have. Existential feminists believe that prostitution should be legal, or at least allowed to continue without further legal restriction, as a tool for women to use to their socioeconomic advantage.

³² Sarah Wynter, *Whisper: Women Hurt in Systems of Prostitution Engaged in Revolt in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY*, *supra* note 4, at 269-270.

³³ Bromberg, *supra* note 1 at http://www.feministissues.com/existential_fem.html.

Simone de Beauvoir was the first theorist to popularize the existential view of feminism, and described the prostitute as the “quintessential liberated woman”.³⁴ However, in order to be the liberated woman, it is important that the prostitute not be controlled by a pimp, brothel owner, or other hierarchical “superior,” as that negates the idea of female autonomy and power in sex-as-commodity. There is a similarity between existential and Marxist/Socialist feminists in their conception of prostitutes as workers just like any other worker.³⁵ By equating the prostitute with any other laborer who sells a service, it becomes clearer how a woman can use prostitution as a tool with which to empower herself; just like any other job, a prostitute can use the money earned in prostitution to advance in society.

Existential feminists would be whole-heartedly in favor of a Nevada-type brothel system. By designating the women as independent contractors, instead of brothel employees, the Nevada system allows women to achieve exactly the economic liberty that de Beauvoir had envisioned because they are not subject to anyone’s will but their own. Obviously, this is assuming that the system works in an ideal manner, and that women are genuinely going into business for themselves, without a pimp-type figure manipulating otherwise powerless or vulnerable women. Furthermore, working within a brothel, instead of on the street would allow for a centralized location wherein women could be easily located by potential customers, and be safely together indoors. Therefore, women could be more successful in their trade by virtue of being easier to find, and could theoretically make more money, further liberating them from their economic dependence on men.

³⁴ SIMONE DE BEAUVOIR, *THE SECOND SEX* 569 (1988).

³⁵ Weisberg, *supra* note 26, at 191.

VI. Marxist Feminism

Karl Marx himself once said, “Prostitution is only a specific expression of the general prostitution of the laborer.”³⁶ Marxist feminists believe that prostitution is oppressing the proletariat in the same way any other employment is oppressive under a capitalist regime. Capitalism is crushing the worker, and so is crushing the prostitute. Without capitalism, there would be no prostitution. So, prostitution should be eliminated along with capitalism generally.

Some of the most prominent Marxist feminists have identified classism, not sexism, as the problem with the institution that is keeping women at a disadvantage in prostitution. (“Classism rather than sexism as the fundamental cause of women’s oppression.”³⁷) In fact, Tong traces the oppression of women in a capitalist society all the way back to the shift from a hunter-gatherer lifestyle to the agrarian society of landed gentry, when it became important to pass along land and animals from father to son. Monogamy was a system that was imposed on women so that men could rest easy knowing that their sons were, in fact, their rightful heirs, and therefore worthy recipients of their property. Tong’s argument for Marxism is that proletarian marriages,³⁸ unlike bourgeois marriages, lack the imperative to pass along private possessions because there is no private ownership; furthermore, proletarian women are encouraged to work. Both of these Marxist priorities help to elevate and liberate women. Specifically on the practice of prostitution:

³⁶ Bromberg, *supra* note 1, at <http://www.feministissues.com/marxist.html> (quoting Marx).

³⁷ ROSEMARIE TONG, *FEMINIST THOUGHT: A MORE COMPREHENSIVE INTRODUCTION* 162 (3^d ed. 2009).

³⁸ Tong is essentially explaining the theories put forward by Frederick Engels in his book *The Origin of the Family, Private Property, and the State*, wherein bourgeois marriages will always be formed with inheritance in mind, to a greater or lesser degree. Engels, and Tong by extension, are arguing that the proletariat marriage, which is free of the social encumbrances of property and wealth, help to empower women and foster voluntary love-sex relationships. *Id.* at 106.

[W]orkers gradually convince themselves that even though their money is very hard earned, there is nothing inherently wrong with the specific exchange relationships into which they have entered, because life, in all its dimensions, is simply one colossal system of exchange relations... .The liberal ideologies clam that women become prostitutes and surrogate mothers because they prefer these jobs over other available jobs. But, as Marxist and socialist feminists see it, when a poor, illiterate, unskilled woman chooses to sell her sexual or reproductive services, chances are her choice is more coerced than free. After all, if one has little else of value to sell besides one's body, one's leverage in the marketplace is quite limited.³⁹

Marxist feminists believe that by making women, and female sexuality, into a commodity to be consumed in the capitalist marketplace, prostitution prevents women from becoming fully actualized individuals in society. A similar analogy is made between women-as-commodity in the form of prostitutes, and women-as-commodity in the form of wives.⁴⁰ Weisberg's introduction to Marxist feminism explains: "The difference between a prostitute and a married woman is one of degree marriage constitutes the exchange of sexual and other tangible and intangible services, which a woman provides her husband in exchange for economic support."⁴¹ This idea of female dependence on men is precisely what the Existential feminists hope prostitution will free women from.

Much like radical feminism, many of the solutions offered by Marxist feminists to the problems of prostitution are not based in the law as it exists now, but rather in grass-roots social change. By eliminating the inherently unequal Capitalist system, women will no longer be forced into prostitution by economic necessity.⁴² Capitalism is the social ill

³⁹ *Id.* at 99.

⁴⁰ For both [the wife and the prostitute] the sexual act is a service; the one is hired for life by one man; the other has several clients who pay her by the piece. The one is protected by one male against all the others; the other is defended by all against the exclusive tyranny of each.

DE BEAUVOIR, *supra* note 34, at 519.

⁴¹ Weisberg, *supra* note 26, at 191.

⁴² Bromberg, *supra* note 36.

to be cured for Marxist feminists, unlike the problem of patriarchy for liberal feminists. Indeed, men are not specifically the enemy of women in their struggle for equality. Women and men within the same class are oppressed equally under capitalism, and therefore should come together as allies to fight for social equality, and freedom from classism. By the same token, all women are not social equals, as they can belong to distinct classes.⁴³ Tong elaborates on classism and unified revolution, saying, “All women, simply by virtue of being women, aren’t the same class. Therefore, oppressed men and women must rise up against their bourgeois oppressors.”⁴⁴ If no women need to work as prostitutes because of classist oppression, then the supply will diminish and therefore eliminate the demand. So, many Marxist feminists advocate for a cultural revolution as a means of eliminating the ills of prostitution.

VII. Socialist Feminism

Socialist feminism is, in some respects, quite similar to Marxist feminism. However, where Marxist feminism is based on economic determinism, Socialist feminists focus more on the social and psychological roots of women’s oppression. Reflecting on the failures of a purely Marxist model to address the nuances of prostitution, Ericsson writes, “the classical Marxist analysis is bound to fail for the simple and obvious reason that the sex drive – which constitutes a necessary condition for the demand of prostitutes – is neither an economic phenomenon nor a phenomenon less basic (it is in fact more basic) than any economic factor.”⁴⁵ This divergent analysis of Marxist versus Socialist feminism is particularly compelling when Socialist feminists examine the on-going

⁴³ TONG, *supra* note 37, at 107.

⁴⁴ *Id.*

⁴⁵ Weisberg, *supra* note 26, at 193 (quoting Ericsson).

oppression of women in societies that have abolished capitalism.⁴⁶ Socialist feminists believe that the gendered division of labor, even outside the traditional work environment (i.e. in the home or in the bedroom) creates inequality between the sexes. This is especially true as regards child bearing and child rearing, as women are traditionally regarded as being responsible for these unpaid tasks, at the exclusion of men. Prostitution is a reflection of this profound inequality in work opportunities available to women versus those opportunities available to men. Socialist feminists believe that prostitution should be illegal, and that other professional avenues should be available to women that are comparable to those available to men.⁴⁷

In the chapter titled “What’s Wrong with Prostitution?” Carole Pateman identifies prostitution as “integral part of patriarchal capitalism”.⁴⁸ She addresses the myriad ways in which women’s bodies are made available for sale on every level.⁴⁹ Her book, however, addresses the idea of the sexual contract, wherein women are capable of making their own decisions about how to use their bodies, including participating in prostitution. So, Pateman argues, at the confluence of contract theory and the Socialist feminist perspective, “there is nothing wrong with prostitution that is not also wrong with other forms of work”.⁵⁰ Pateman then connects the problem of prostitution not to simple economics, as Marxists do, but rather to deeper social ills that are pervasive in capitalist systems. The problem is not simply that capitalism encourages consumption, but rather that men in a capitalist society are encouraged to consume women as commodities; “The

⁴⁶ *Id.*

⁴⁷ Bromberg, *supra* note 1, at <http://www.feministissues.com/chart.pdf>.

⁴⁸ CAROLE PATEMAN, *THE SEXUAL CONTRACT* 189 (1988)

⁴⁹ “Prostitutes are readily available to all levels of the market for any man who can afford one and they are frequently provided as part of business, political and diplomatic transactions.” *Id.*

⁵⁰ *Id.* at 191.

problem of prostitution then becomes encapsulated in the question why men demand that women's bodies are sold as commodities in the capitalist market . . . prostitution is part of the exercise of the law of male sex-right".⁵¹ By "male sex-right", Pateman is discussing the same idea of men's perceived right to sexual access to women that troubles radical feminists. So, we see illustrated here the difference between a purely Marxist (i.e. economic determinism) feminist analysis of prostitution and the Socialist feminist analysis, which addresses not only capitalism, but the deeper social and psychological issues that motivate male capitalist behaviors towards women.

The two schools come together in their suggestions for solutions to the problem of prostitution. Like Marxist and Radical feminists, Socialist feminists suggest not legal reform, but broader social reform. Prostitution should not be legalized or decriminalized, but rather the society that drives women into prostitution should be restructured.⁵²

VIII. Liberal Feminism

Generally speaking, liberal feminists believe that prostitution should be legalized, and very loosely regulated. They believe that women who go into prostitution (or "sex work") do so freely and of their own will. For liberal feminists, prostitution is seen as a business, and like one's right to work, prostitution is consequentially viewed as a civil right.⁵³ Therefore, prostitution should at least be legal and ideally should be decriminalized.⁵⁴ The liberal feminists are perhaps the only group of the five discussed here who are actively using the legal system to fight for the advancement of their prostitution agenda.

⁵¹ *Id.* at 194.

⁵² Bromberg, *supra* note 1, at <http://www.feministissues.com/socialist-feminism.html>.

⁵³ Bromberg, *supra* note 1, at http://www.feministissues.com/liberal_feminism.html.

⁵⁴ Bromberg, *supra* note 47.

The American Civil Liberties Union (ACLU) has long been in support of liberal feminist views on prostitution, and to this day is fighting to support pro-prostitution groups and positions. At the time of this writing, the ACLU has written an amicus brief in a pending Supreme Court case, *Alliance for Open Society International, Inc. v. USAID*,⁵⁵ which has as its central issue what is being called an “Anti-Prostitution Pledge.”⁵⁶ The ACLU, along with the named plaintiffs in the case, argues that requiring an organization to have an explicit policy opposing the legalization of prostitution is unconstitutional. Among other things, the ACLU and the organization-plaintiffs claim that by requiring groups to adopt this policy, the US government is further stigmatizing people in prostitution.⁵⁷ This is not the first legal challenge brought by the ACLU in favor of prostitution in the United States. In years past, “The ACLU argued that laws prohibiting prostitution were unconstitutional as violations of equal protection (by punishing only women prostitutes, not male customers) and of due process (by using loitering as a category for punishment, despite problems of vagueness and arbitrary enforcement.”⁵⁸ So, as this paper is being written in 2013, the fight in favor of prostitution is being played out in the highest court of our nation.

Liberal feminists believe that the two central areas of conflict regarding prostitution are the commodification of sex and the role of coercion. “Liberal feminists note that, in the absence of coercion, prostitution is a legitimate form of employment for

⁵⁵ 133 S.Ct. 928, (2013).

⁵⁶ The pledge (also known as the Policy Requirement) requires that organizations who receive money under the United States Leadership Against HIV/AIDS, Malaria, and Tuberculosis Act of 2003 have “a policy explicitly opposing prostitution” 22 U.S.C. §7631(f).

⁵⁷ See generally Brief of the American Civil Liberties Union and New York Civil Liberties Union as Amici Curiae in Support of Respondents in *AOSI, Inc. v. USAID*, 2013 WL 1399369.

⁵⁸ Weisberg, *supra* note 26, at 190.

women.”⁵⁹ Ariela Ruth Dubler’s work with the liberal feminist organization COYOTE (Call Off Your Old Tired Ethics) is instructive in analyzing these two issues. As an undergraduate at Harvard (then Radcliffe College), Professor Dubler wrote her honors thesis on COYOTE. She then went on to become full faculty member at Columbia Law School, specializing in Family Law, Constitutional Law, and Feminist Theory.⁶⁰ The work cited here is drawn from her thesis, for which she traveled to San Francisco in the early 1990s to work directly with (i.e. interview) members of COYOTE. To this day, COYOTE is a prominent pro-sex work, liberal feminist group and sex workers union based in California. Similar groups have emerged around the country, including SWOP (Sex Workers Outreach Project) and SWANK (Sex Workers Action New York), based in New York City. However, COYOTE is the most well-established and longest running of these organizations. This paper will use COYOTE as an example of an ideal liberal feminist model for decriminalized prostitution in the United States.

The mission statement of the group is: “a unison of people who believe and are willing to support their belief that the decriminalization of prostitution is another step towards greater personal freedom for all people.”⁶¹ One of the building blocks of COYOTE’s, and liberal feminism’s, arguments is that selling sex is not selling oneself or one’s body as if in slavery, but rather selling a service like any other valuable service. This goes to the first issue of commodification of sex. COYOTE and Dubler maintain that said commodification is a good thing. By having sex as a service for sale, women

⁵⁹ *Id.*

⁶⁰ *Columbia Law School Faculty*, LAW.COLUMBIA.EDU, http://www.law.columbia.edu/fac/Ariela_Dubler (last visited April 26, 2013).

⁶¹ Ariela Ruth Dubler, *Women at Work: Prostitution and the Tools of Feminist Jurisprudence* 74 (March 1994) (unpublished honors B.A. thesis, Radcliffe College) (on file with Seton Hall University School of Law).

have the power to profit from the commodification of something that they are traditionally expected to give away for free. “You use your body for a variety of things,” said COYOTE founder Margo St. James, “like typing or writing, but if you use it for a stigmatized action and take money for it, you’re illegal.”⁶² Eric Larsson also addresses the argument of women as merchandise, as put forward by radical feminists, as being reductionist,⁶³ reducing the woman down to being solely the services she offers professionally. Larsson argues that in no other profession is the individual person equated with the thing that they sell, and so prostitution should not be any different. He poses the question: “Since when does the fact that we, when visiting a professional, are not interested in him or her as a person, but only in his or her professional performance, constitute a ground for saying that the professional is dehumanized, turned into an object?”⁶⁴ People do not, for example, necessarily pick their medical doctors on their interest in the doctor as a person, but rather for the quality of services they offer. We do not argue, however, that this selection process dehumanizes doctors.

Coercion is the second major issue when talking about prostitution. While the women of COYOTE do not deny that coercion is a problem for some, they maintain that it is not as big a problem as other feminists might believe. One of the most pervasive coercive forces when it comes to prostitution is poverty, and many argue that most women enter into prostitution because they need the money, and do not have any other options available to them. While COYOTE does not deny that the coercive power of poverty is at work in some places, they maintain that most women choose sex work like

⁶² *Id.* at 80.

⁶³ “The individual hooker is not for sale, but her sexual services are. One could therefore with equal lack of propriety say of any person whose job it is to sell a certain service that he, as a result thereof, is reduced to a piece of merchandise.” Ericsson, *supra* note 30, at 211.

⁶⁴ *Id.*

they would choose any other work. “The women in COYOTE do deny, however, that economic advantage is tantamount to coercion. As [one interviewee] points out, economics ‘are the primary motivation for entering into most types of work’”.⁶⁵ Another woman interviewed by Dubler, when asked about the role of poverty and lack of options in sex work, goes so far as to say,

...the truth of the matter is that there is an entire large population underground who you don’t know about. You don’t see them on the streets. These women have got PhD’s, they’ve got MA’s, they’ve got BA’s, they’re highly educated, highly skilled, highly trained, highly capable, they could do anything they want in the whole wide world and they chose sex work because – now the ‘because’ depends on the woman.⁶⁶

Liberal feminists, unlike most of the groups discussed previously, believe that there is a solution to the prostitution problem available via the legal system. This is in part because they believe that the law, not society more generally, is the root of the current problems. So, they advocate for decriminalization, saying, “the prostitute is an entrepreneur contracting out her labor as is her right.”⁶⁷ As such, most liberal feminists would be in favor of the brothel system. It allows for women to work freely, as independent contractors and not employees, and to work in a legitimized work environment. However, some liberal feminists make take issue with the restrictions and regulations of sex work in the brothel system, arguing:

legalization... would only shift that element of external control ‘because we’ll still have more men in charge of it, telling women what to do with their bodies.’ ‘The trouble with regulation,’ [an interviewee] explains, ‘is that it’s used to perpetuate the shame of prostitution. It’s used to perpetuate the idea that women’s sexuality is a dangerous force that needs to be contained.’”⁶⁸

⁶⁵ Dubler, *supra* note 61, at 79.

⁶⁶ *Id.* at 82.

⁶⁷ Bromberg, *supra* note 47.

⁶⁸ Dubler, *supra* note 61, at 83.

So, by keeping prostitutes limited to brothel work, liberal feminists would argue that this is just perpetuating the stigma around commercial sex work that we should be looking to eliminate from society. Surprisingly, there is some overlap here with the previously quoted section from Sarah Wynter's essay about WHISPER: prostitutes should not be kept "out of sight and out of mind" tucked away in remote brothels.⁶⁹ For liberal feminists, it is important for wider society to be able to see and accept prostitution, as it exists in our communities. The book *Sex Work*, by Priscilla Alexander, is an excellent example of this philosophy.

Ms. Alexander is another respected voice on prostitution in the liberal feminist movement and is a prominent prostitutes' rights advocate. In the late 1980s, she and her colleague Frederique Delacoste compiled a book as a way of letting the voices of individual prostitutes be heard, in an effort to diminish the stigma and stereotypes surrounding prostitution. The portion of the book written by Alexander herself outlines the difference between decriminalization and legalization, with an eye toward how legalization would hurt individual prostitutes. "In 1949, the United Nations called for the decriminalization of the specific transaction between prostitute and customer that is prostitution, while it recommended keeping all related activities a crime."⁷⁰ An example of the implementation of that recommendation can be found in the case of *Terri Jean Bedford, et al v. Attorney General of Canada*. The case describes quite well the fundamental flaws in the decriminalization model proposed by the United Nations. Canada had legal prostitution, but many of the surrounding circumstances like pandering, or running a bawdy house were illegal, so Bedford and two other women brought suit

⁶⁹ Wynter, *supra* note 32.

⁷⁰ Alexander, *supra* note 4, at 208.

against the federal government of Canada. All three of the plaintiffs in the case were prostitutes or had been at one time. They claimed that the provisions of the Canadian law that prohibited “living on the avails of prostitution, keeping a common bawdy-house and communicating in a public place for the purpose of engaging in prostitution”⁷¹ were unconstitutional violations of personal liberty, and prevented prostitutes from doing their legal work in a safe environment. Ultimately, the court found for the plaintiffs and ruled that to the given provisions of the criminal code contravened the Canadian constitution. It is because of legal difficulties like the ones in *Bedford* that advocates like Alexander call for decriminalization instead of legalization. This is especially true when the legalization would only make the prostitute-customer transaction legal, while keeping many of the attendant circumstances punishable under the criminal law.

Alexander takes aim at the ills of legalization in her book, saying that legalization is simply “a system of control of the *prostitute*”.⁷² Legalization would allow the government to tax, regulate, and otherwise control the prostitute in a particular, accepted form of prostitution without any concern for what is best for her as an individual worker. Alexander specifically cites, and subsequently criticizes, the Nevada brothel system in her analysis of legalized prostitution. Alexander openly disdains the way the Nevada brothel system is run, but many of the ills she cites have changed since her book was written in 1987.⁷³

IX. Conditional liberal feminism

Conditional liberal feminism believes that prostitution has the potential to be a

⁷¹ *Bedford v. Canada*, (2010) 2010 ONSC 4264 5 (Can. Ont. Sup. Ct. J.).

⁷² Alexander, *supra* note 54, at 210.

⁷³ Specifically, Alexander claims that brothel prostitutes “have not been allowed to protect themselves from sexually transmitted diseases by using condoms.” Because of Nevada’s mandatory condom use law, this is no longer the case. Alexander, *supra* note 4, at 210.

powerful force for women, and some (but by no means all) women do choose sex work freely, and enjoy it. However, conditional liberal feminism acknowledges that there are negative forces at work that result in many women being prostitutes against their will, such as human trafficking and crippling poverty. This model advocates for education (especially comprehensive sex education), regulation, and close examination of other coercive factors that funnel women into prostitution. Many conditional liberal feminists argue that prostitution cannot be legalized until poverty, one of the greatest coercive forces, is eradicated.

Ericsson's essay *Charges Against Prostitution: An Attempt at a Philosophical Assessment* is an exceptional example of conditional liberal feminism.⁷⁴ Ericsson presents a liberal approach to female sexuality that acknowledges that a significant amount of stigma surrounding sex work stems from negative ideas about women as sexually autonomous beings. Like Socialist feminists, he links that stigma to underlying social conditions, saying "contempt for whores and contempt for women are closely related. The devaluation of the female sex is a permanent part of the Western tradition of ideas, reinforced by the Christian so-called culture".⁷⁵ However, Ericsson acknowledges the inherent disparities in society that may lead women into prostitution under bad conditions, which is a key component when making an argument for decriminalization of prostitution. The realities of prostitution must be addressed, and hard-line liberal feminism ignores those realities (the impact of race, poverty, selectively enforced laws, etc). The combination of some or all of these factors contribute to a woman's social

⁷⁴ Ericsson, *supra* note 30.

⁷⁵ *Id.* at 214.

status, which is an essential component in the discussion of conditional liberal feminism's view of prostitution.

Conditional liberal feminism acknowledges that social status can not only lead women into prostitution, but can also serve to keep them there. As addressed previously, many women enter into prostitution out of poverty-induced desperation. Perhaps they are socially marginalized in some other way, because of their race or lack of education, and see prostitution as their only means of gainful employment.⁷⁶ These are examples of diminished social status that leads to prostitution. However, it is important to recognize that, as the status of prostitution exists now, many women who enter into it find it difficult to leave. Many women who work in prostitution are then demonized for having done so, regardless of the motivation. Ericsson explains:

In a culture where both the female sex and sexuality are devalued it is only 'logical' to place the prostitute – an individual who is not only a female but also earns her living by means of her female sex by selling sexual services – at the bottom of the scale of social approval.⁷⁷

Author Laurie Schrage links this lack of social approval to the radical feminist idea that women are inherently oppressed or tainted by heterosexual sex. In her discussion of the jargon of heterosexual sex (much like Dworkin's fuck/get fucked dichotomy), she explains that "[a]s the public vehicles for 'screwing,' 'penetration,' 'invasion,' prostitutes are reduced to the status of animals or things – mere instruments for human ends."⁷⁸

⁷⁶ Sarah Bromberg identifies nine types of women who become prostitutes. The second category are "women born poor into families with a long history of poverty and a lack of education." Bromberg, *supra* note 1.

⁷⁷ Ericsson, *supra* note 30, at 214.

⁷⁸ Schrage, *supra* note 19, at 331.

So, while conditional liberal feminists advocate for the power of prostitution, they choose to focus their energy on addressing the social ills that prevent women from freely taking advantage of the empowering tool that prostitution has the potential to be. Prostitution itself would have to change, making the argument between abolition, decriminalization, and legalization irrelevant.⁷⁹ It is important that all women who work as prostitutes do so free of economic, racial, or social coercion that leaves them no other choice. In advocating for prostitution, Ericsson qualifies his endorsement by saying that only sound prostitution is admirable, and “[s]ound prostitution is ... a prostitution of voluntary, not compulsive, hustlers.”⁸⁰

X. Analysis

As a feminist and a scholar, it is important engage critically with one’s own work and the work being done in your field. In each of the five schools of feminist thought introduced above, there are things to like and dislike. What follows here is a piecemeal analysis of some of the most compelling or most contentious points.

Until very recently, I considered myself to be pro-prostitution, my stance very much in line with that of the liberal feminists. Like many people who want to legalize things that are currently illegal, like drugs or prostitution, my arguments were all rather boilerplate: closer regulation would mean more consistent condom use and safer sex among prostitutes; legalization means taxable income for something people are paying for anyway. But over the course of writing this paper, many of those ideas challenged have changed. I have had the opportunity to immerse myself in the dialogue going on

⁷⁹ “In sum, the political alternatives of reformation or abolition are not mutually exclusive: if prostitution were sufficiently transformed to make it completely nonoppressive to women, thought commercial transactions involving sex might still exist, prostitution as we know it would not”. *Id.* at 334.

⁸⁰ Ericsson, *supra* note 30, at 215.

surrounding prostitution,⁸¹ and have had the chance to reformulate my own position.

It is amazing how many seemingly basic arguments I had not even begun to consider when considering legal prostitution, the most important of which is the pervasive, coercive effect of poverty. One of the rallying cries of those who would decriminalize or legalize prostitution is that there would be more consistent condom use.

However, the incredibly persuasive point has been made that someone will always offer to pay more not to use a condom. Lenore Kuo identifies this as happening specifically in legal American brothels, saying, “In Nevada as in other jurisdictions, there is a common tendency for many men to offer prostitutes bribes not to use condoms”.⁸² This is directly tied to social position as it relates to bargaining power. If there are still women who enter into prostitution out of stark economic necessity, then there will always be a subset of the prostitute population who does not have the economic wherewithal, the social bargaining power, to say no when a John offers her more money to forego a condom, even if it is required by law. Simple realities like this one are what is most prominently missing from the discussion of prostitution from the liberal feminist camp. Condom use is simply one example of how poverty can be exploited to the detriment of women in prostitution, even in a legal setting.

Until the coercive power of poverty is no longer an element in the calculus of prostitution, someone will always need that money more than they need to be assured of their physical and sexual safety. Factors like poverty need to be removed from the

⁸¹ Specifically, I have had the privilege of working with prominent women’s rights group Equality Now in New York City. They have been closely involved with the two cases that caused the circuit split on the issue of the “Anti-Prostitution Pledge.” One of those cases, *Alliance for Open Society International, Inc. v. USAID*, 651 F.3d 218, was just heard by the Supreme Court on April 22, 2013. Through reading all the briefs filed in that case for work, I have had the opportunity to really think critically about my own stance on prostitution. (S. Ct. 2013).

⁸² KUO, *supra* note 3, at 130.

calculus before any of the boilerplate arguments for legalization can hold up. If there is better access to jobs, education, etc., which in turn will result in better and more diverse professional opportunities for traditionally poor women, then perhaps it will be possible to say that yes, prostitution is a freely made, professional choice.

One of the most pervasive arguments in favor of prostitution, which can be found in existential and liberal feminism, is that it is empowering for women, especially women who were previously powerless economically, socially, or politically. Sex can be empowering, but most prostitution, especially street prostitution the way it exists now, is not. Perhaps the women of COYOTE are the closest to sex as an empowering tool, but current statistics about them are lacking. In the past, the group has been criticized for not representing the concerns of women of color and low-income women working in prostitution. COYOTE founder Margo St. James is a white woman who was married to a prominent San Francisco journalist. The current director of the Los Angeles office of COYOTE was a policewoman before becoming an escort. Without discounting the experiences of these women, who have indeed been empowered by their experiences, the argument that all sex work is empowering is off base. Certainly, the women of COYOTE are the liberal feminist ideal prostitutes, as they are women who had myriad professional avenues open to them, but freely chose to become prostitutes.

It is hard to believe that the majority of sex workers internationally would recognize the worldview put forward by the women of COYOTE, or other liberal feminist thinkers. The qualifier put forward by Weisberg in her introduction to liberal feminism talks about prostitution “in the absence of coercion.”⁸³ The large majority of women who are prostitutes do not live lives free of at least one type of coercion, be it

⁸³ Weisberg, *supra* note 26, at 192.

race, poverty, or a more traditional type of coercion exerted on the prostituted woman by a third party. In some of the COYOTE interviews, the women talk about some people choosing to be doctors or lawyers and equate that choice with choosing sex work. It is in this comparison that the flaws in liberal feminism's arguments in favor of prostitution to shine most brightly. COYOTE seems to be comprised of, or at least lead by, comparably wealthy white women who realistically could have chosen to be doctors or lawyers. They are truly free of the coercive forces that are often at work in prostitution. However, to say that all women are similarly free is to ignore a significant part of the population of sex workers who are not so free to choose their work.

A more contemporary analog would be the women featured on HBO's *Cathouse*.⁸⁴ The show is reality TV-type programming, filmed in a Nevada brothel, the Moonlite Bunny Ranch. The cited episode, *Cat Call*, features vignettes of the women currently working at the brothel. Almost all of them are Caucasian, and each talks at length about having left a "vanilla" job to become a prostitute because they "love sex" and will make more money being a prostitute than they made at their other jobs.⁸⁵ Again, while this is the liberal feminist ideal, this is not representative of the large majority of women who enter into prostitution, and entirely excludes many women from the equation. It is, however, beneficial to see women who are open and enthusiastic about their sexuality, which relates to my primary difficulty with the radical feminist approach to prostitution.

I identify as a sex-positive feminist, and the lack of sex positivity is troublingly absent from the radical feminist purview. Radical feminism does not allow for

⁸⁴ *Cathouse, Cat Call* (HBO television broadcast, 2011).

⁸⁵ For example, one woman (the lone African American) talks about having left her job as a dental hygienist in Seattle in order to become a prostitute in Nevada. *Id.*

heterosexual female sexuality, and that is profoundly problematic. It is problematic to assume that penetrative sex is inherently hierarchical, and simply by being the penetrated partner that women are at the bottom of that hierarchy. Carole Pateman addresses precisely complaint, saying, “Feminists who argue that the prostitute epitomizes women’s subjection to men, can now also be told that such a view is a reflection of outmoded attitudes to sex, fostered by men’s propaganda and the old world of women’s subordination.”⁸⁶

Where the radical feminist model is helpful, however, is in addressing the idea of what I (and many other young feminists) will call rape culture in the United States. Rape culture refers to the idea that we currently live in a society that forgives men who commit rape (often under a rubric of “boys will be boys”) and encourages women to live in constant fear of rape. Radical feminism’s idea about the social permission men are given to be sexually aggressive is exceptionally accurate when applied to the rationales for rape culture, and many times, prostitutes find themselves at the mercy of that aggression. However, the two are not necessarily related. Radical feminism is placing the blame for some bad actors on men in general. This becomes particularly difficult when looking for a workable answer and perhaps legal reform, as “Smash the Patriarchy” is not a viable answer. Feminists will need allies, and by calling every man the enemy, they are precluding help from some potentially helpful and valuable friends.

The primary difficulty with the Marxist view of feminism is that prostitution will always be a capitalist exchange. If the equation is not sex in exchange for money (or other valuable goods), then it is just sex. This also gets into the murky waters about whether or not sex is always a commercial exchange, whether one party is paying for

⁸⁶PATEMAN, *supra* note 48, at 191.

dinner or leaving the money on the nightstand, which I do not have time to address here. The only way that prostitution could be a viable part of an ideal Marxist world order is if it were to be considered a necessary part of a functioning society. If that is the case, then again we butt up against the problem of whether or not sexual access is a social imperative, and whether or not men and women have an equal right to that sexual access. Certainly, it would not be acceptable if only heterosexual men's needs were provided for via prostitution in the "production for use" system under Marxism.

XI. Conclusion

Ultimately, there is an entire world of feminist scholarship out there, and it would be impossible to present a complete analysis of the prostitution debate. However, the most accurate evaluation may also be the least satisfying: no theoretical, scholarly position on prostitution can get it entirely right because there is too much interference from the real world. No woman in prostitution will ever be any feminist theorist's ideal. A recent article⁸⁷ by career prostitute Charlotte Shane is particularly illuminating, because she talks about sex work as precisely that: *work*. Rare is the person who can honestly say that they enjoy every moment of every day at work.

So, Ms. Shane is not the liberal feminist ideal. She is not the model theoretical woman who is thrilled to have sex with every client because she's so liberated and sexually autonomous. In fact, her article specifically talks about the lack of "enthusiastic consent" with some (indeed, most) clients. However, she is a professional, and sometimes struggles with whether or not that enthusiastic consent is required of her as part of her job: "Because it's my profession, I think about it professionally and seriously, as a

⁸⁷ Charlotte Shane, "Getting Away" with Hating It: Consent in the Context of Sex Work, TITS AND SASS (March 21, 2013), <http://titsandsass.com/getting-away-with-hating-it-consent-in-the-context-of-sex-work>.

business person. It's during these performance reviews that I might chastise myself for making my unhappiness with the physical interaction transparent, if/when I struggle to hide it."⁸⁸ And, like anyone who has held a job for any amount of time, that struggle is inevitable. So, Ms. Shane cannot uphold the banner of liberal feminism wherein she revels in every sexual act as a liberated woman.

Neither is she the inherently oppressed victim, as the radical feminists would have her be. In a different article about personal experience with sexual violence, Ms. Shane says, "In my eight years as a sex worker, I've been sexually mistreated a relatively small number of times....Then I mostly forgot about it. I didn't quit my job. I didn't stop enjoying sex."⁸⁹ She is a prostitute by profession and by choice. Again, the reality of any job is that it is not going to be the best all the time, and Ms. Shane acknowledges that if it were the worst all the time, she would leave, but instead, it's a relatively good job which pays well and has its ups and downs.⁹⁰

Ms. Shane is simply an example for a broader category of real flesh-and-blood prostitutes working in the 21st Century, and she is an ideal one at that. She is well educated enough to write compelling articles about her experiences, and is in a socioeconomic position to conduct her trade safely and with relative ease. However, even she recognizes that prostitution is a job like any other job, with pros and cons, and that is the conclusion one must realistically draw from this paper. No group of feminists will

⁸⁸ *Id.*

⁸⁹ Charlotte Shane, *Live Through This*, THE NEW INQUIRY (July 26, 2012) <http://thenewinquiry.com/essays/live-through-this/>.

⁹⁰ [P]rostitution is my profession and I'm comfortable with that. I've *engineered* that. My various privileges mean I operate in a way that is about as low-risk and comfy as one can get: I screen extensively, I am my own boss, I request a very high hourly rate, and I don't see people who are violent or rude.
Shane, *supra* note 87.

ever be entirely satisfied with legal prostitution, let alone the Nevada brothel system specifically, because intellectual theory never translates perfectly into real life. Sex work is not always about pleasure, or freedom, or oppression, or economics; sometimes, it's just about work.