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Japan's Prostitution Prevention Law: The Case of the Missing Geisha

By Tenica Peterfreund

“Remember, Chiyo, geisha are not courtesans. And we are not wives. We sell our skills, not our bodies. We create another secret world, a place only of beauty. The very word ‘geisha’ means artist and to be a geisha is to be judged as a moving work of art.” – Memoirs of a Geisha¹

I. Introduction

There are some who have called Japan a prostitution culture.² Indeed, prostitution was officially sanctioned by the Japanese government during the Tokugawa regime of 1603-1868.³ Up until the end of the feudal era, poor families sent their daughters to big cities to find work at brothels and other niches in the sex industry, having them enter into “slavish bondage” with brothel owners.⁴ Today, prostitutes come in different forms—as streetwalkers, hostesses at bars and call girls.⁵ Streetwalkers will roam the streets of mizo shobai and almost always have an understanding with police who grant prostitutes a certain degree of freedom.⁶ Hostesses who work at bar establishments provide companionship to male patrons and will then visit love hotels⁷ later in the night.⁸ Call girls, a fast-growing group, will typically meet men at love hotels after the men call a central line about where they can meet their dates.⁹ But with the variety of

¹ *Memoirs of a Geisha* (Columbia Pictures, 2005).

² Jennifer Chan-Tiberghien, *Gender and Human Rights Politics in Japan* 40 (2004).

³ *Id.* (The Tokugawa shogunate was a feudal regime which focused on military power and an isolationist foreign policy).

⁴ Andrew D. Morrison, Note, *Teen Prostitution in Japan: Regulation of Telephone Clubs*, 31 *Vand. J. Transnat'l L.* 457, 461 (1998).

⁵ Stephan M. Salzberg, *The Japanese Response to AIDS*, 9 *B.U. Int'l L.J.* 243, 262 (1991).

⁶ David H. Bayley, *Forces of Order: Policing Modern Japan* 110-111 (1991).

⁷ See Morrison, *supra* note 4, at 472. (Love hotels are analogous to hourly motels in the United States).

⁸ See Salzberg, *supra* note 5, at 261-262.

⁹ See Salzberg, *supra* note 5, at 263.

prostitutes that find their place in Japanese society, there is one group in the sex industry cloaked in mystery, that has been able to hide behind a curtain of tradition—the geisha.

Many scholars poetically view geisha as heirs to a romantic heritage.¹⁰ Their eyes are outlined in black with a face that shines white and impassive like a mask.¹¹ Their hair is “piled into gleaming black coils” reminiscent of hills and valleys on a country-side.¹² Their kimonos sparkle in shades of blue and gold.¹³ The women are well-versed in passionate stories and poems of heroes and villains, beautiful femme fatales and great lovers.¹⁴ They are not women, but walking works of art, a stylized image of ultimate femininity in Japan.¹⁵ Not only do they tell stories, they spend years studying dance and music before graduating to a fully qualified geisha.¹⁶ They live in tea houses where they entertain wealthy and powerful government men, like Prince Charles of England,¹⁷ performing and flirting, engaging in witty conversation.¹⁸

While many believe that geisha are legally recognized professionals, entertainers and performers, there are others who believe them to be a distinct part of Japan’s ever-flourishing sex industry. This distinction between prostitutes and geisha is an important one under Japan’s current Prostitution Prevention Law.¹⁹ Since geisha are not considered prostitutes under the statute, there has been a growing “geisha-isation” in Japan, where brothels and meeting places have transformed into geisha houses to escape enforcement of the law.²⁰ Because of this, the Prostitution Prevention Law has been less than effective. This paper will provide a historical

¹⁰ Lesley Downer, *The Secret History of the Geisha: Women of the Pleasure Quarters* 3 (2001).

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.* at 2.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 9.

¹⁶ *Id.* at 12.

¹⁷ Mineko Iwasaki, *Geisha, A Life* 186 (2002).

¹⁸ Michiko Aoki, *The Oxford Encyclopedia of Women in History*, <http://www.mywire.com/a/Oxford-Enc-Women-World-History/Geisha/9498261/> (Jan 1, 2008).

¹⁹ *Baishun boshi ho* [Prostitution Prevention Law], No. 118 (1956).

²⁰ Caroline Norma, *A Past Re-imagined for the Geisha: Saviour of the 1950’s Sex Industry*, http://findarticles.com/p/articles/mi_6988/is_10/ai_n31337323/ (Jan 2008).

examination of prostitutes and geisha, the geisha's place under the Prostitution Prevention law and an analysis of why they were excluded under the law based on unique societal characteristics of Japan including its social order construct and the *honne/tatemae* philosophy. In addition, this paper will provide recommendations to effect change in Japan's sex industry, namely to close loopholes in the law by including the geisha as a prostitute.

II. History of the Prostitute and the Geisha

There is a deep and complex history for both the Japanese prostitute and the Japanese geisha. Japan, unlike other countries, had few moral reservations concerning the sex industry. The history of licensed prostitution in Japan is robust and begins around the 1600s.²¹ The geisha have their own history starting in the "pleasure quarters" of the Tokugawa shogunate, commencing during the mid-18th century. Though this paper will try and separate those histories, there are times when the narratives will collide, revealing a past that ties geisha and prostitutes closer than some would like to believe.

Officially supervised prostitution has dated back to the Kamakura period (1185-1333), where the government created the office of "steward of prostitutes" (*yukun betto*).²² The shogunate of 1338-1573, known as Ashikaga, formally recognized prostitution as a trade and taxed it as a profession under its "Harlots Bureau."²³ But it was during the Tokugawa era in the 1600s that the origins of today's modern prostitution regime arose. In 1618, authorities set up the Yoshiwara quarters, licensed prostitution quarters that were meant to concentrate "scattered gangs of prostitutes."²⁴ Regulations demanded that the area be walled off, surrounded by a moat

²¹ Sheldon Garon, *Molding Japanese Minds: The State in Everyday Life* 90 (1997).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

and open only during the day.²⁵ Brothels had to be of a predetermined size, prostitutes could only work at one brothel within one licensed quarter and their patrons were only allowed to stay for a 24-hour period.²⁶ These regulations became more lenient around the 1650s.²⁷ By the end of the seventeenth century, there were 35 licensed quarters in Japan, Yoshiwara and Shimabara quarters (Kyoto) alone accounting for 2,800 prostitutes.²⁸ Even then, “innovative brothel-like establishments” emerged, like “meeting houses” or tea houses, which served as a disguise for simple brothels.²⁹

Officials in early Japan had fewer moral reservations about the profession than, for example, Christian societies in the West.³⁰ The legal system did nothing to discourage the sale of young girls into prostitution as an answer to poverty.³¹ Prostitutes were often bound by indentured relationships to brothel owners.³² These owners offered monetary advances to the girls, but more generally to the girls’ parents.³³ If a girl quit prior to the repayment of that advance, her parents were contractually indebted to the owners to pay off that obligation.³⁴ Other times, the opposite would occur, where the girl would work off her family’s debts.³⁵

However, in 1872, an event occurred which spawned a change that would affect the lives of all geisha and prostitutes and their influence on Japan.³⁶ The Peruvian ship, the *Maria Luz*,

²⁵ See Morrison, *supra* note 4, at 460.

²⁶ *Id.*

²⁷ *Id.* at 461.

²⁸ See Garon, *supra* note 21, at 90.

²⁹ See Morrison, *supra* note 4, at 461.

³⁰ See Garon, *supra* note 21, at 91.

³¹ *Id.*

³² *Id.* at 93.

³³ *Id.*

³⁴ *Id.*

³⁵ Yasuzo Kitamura, *Evolution of Antitrafficking in Persons, Law and Practice in Japan: A Historical Perspective*, 14 Tul. J. Int’l. & Comp. L. 331, 335 (2006).

³⁶ Susan Tiefenbrun, *Copyright Infringement, Sex Trafficking and Defamation in the Fictional Life of a Geisha*, 10 Mich. J. Gender & L. 327, 356 (2004).

sailed into Japanese harbors for repairs, carrying 230 Chinese slaves.³⁷ The slaves were ultimately set free but not without an international uproar.³⁸ While the Japanese government officially stated that it had no policy recognizing slavery, the Peruvian government fought back claiming Japan indeed did have its own de facto system of slavery—the women in the pleasure quarters.³⁹ Because the new Meiji government⁴⁰ was attempting to convince the world of Japan’s new modernity and civility,⁴¹ the Council of the State passed the Prostitute and Geisha Emancipation Act,⁴² which decreed that all prostitutes, geishas and indentured servants be freed,⁴³ prohibiting the sale of and trade in human beings.⁴⁴ The women did not have to repay their advances because “prostitutes and geisha are those who have lost control of their bodies and thus are no different than cows and horses. It would not be reasonable to demand goods back from a cow or a horse.”⁴⁵ Because of the reference to cows, the act was also known “humorously” as the Cattle Release Act.⁴⁶ The city government acquired the right to license and register any woman working as a geisha or a prostitute.⁴⁷ A geisha who wanted to work as both a prostitute and geisha would acquire two licenses, one for entertainment (“*gei*”) and one for the sale of sex (“*iro*”).⁴⁸ Also interestingly during this time, former samurai, revered in the Japanese

³⁷ *Id.*

³⁸ *Id.*

³⁹ See Iwasaki, *supra* note 17, at 162.

⁴⁰ Marius B. Jansen, *The Cambridge History of Japan: The Nineteenth Century* 467 (1989). (Following the overthrow of the Tokugawa regime, the Meiji government pursued new goals including their assimilation of Western culture, establishing friendly relations with the West and achieving “civilization and enlightenment).

⁴¹ See Iwasaki, *supra* note 17, at 162.

⁴² Dajokan Cabinet Order No. 295 of Oct. 2, 1872, and Notification No. 22 of the Ministry of Justice dated Oct. 9, 1872, reprinted in Ministry of Justice, Japan, Materials Concerning Prostitution and Its Control in Japan 2-3 (1957).

⁴³ See Garon, *supra* note 21, at 91.

⁴⁴ See Downer, *supra* note 10, at 108.

⁴⁵ See Garon, *supra* note 21, at 91.

⁴⁶ See Downer, *supra* note 10, at 108.

⁴⁷ See Tiefenbrun, *supra* note 36, at 357.

⁴⁸ *Id.*

culture, along with the women in their families were strictly forbidden from running brothels and becoming either prostitutes or geisha.⁴⁹

As time went on, the government attempted to establish more legal constraints in prostitution. In 1901, it passed the Regulation for Control of Prostitutes, attempting to limit prostitution to only those women officially registered with the government.⁵⁰ In 1902, because prostitutes who breached a contract with a brothel owner were subject to steep penalties, the Supreme Court found forced labor contract clauses in such contracts to be null and void.⁵¹ In 1908, realizing that the Regulation for Control of Prostitutes was not eliminating unregistered prostitution, the government passed the Ministry of Home Affairs Ordinance No. 16.⁵²

During the 1900s, authorities gave police broad powers to arrest unlicensed prostitutes and geisha bar maids turned prostitutes (known as *shakufu*).⁵³ Though geisha were seen as trained entertainers and forbidden to engage in the practice of prostitution, one knowledgeable official estimated that three-fourths of geisha were prostitutes in 1929.⁵⁴

Legal constraints and the presence of police did not decrease the ugliness of the profession. While studies reveal that Japanese prostitutes during the 1920-30s only took in 1-2 customers per day, a much lighter work-load than prostitutes in other societies, their lives were still dangerous due to outbreaks of venereal diseases, violence against them, and murder by jealous clients.⁵⁵ To add to the danger of prostitution, these women were also de-humanized as evidenced by the practice of *harimise*, known as displaying women behind gratings in shop

⁴⁹ See Garon, *supra* note 21, at 91.

⁵⁰ See Tiefenbrun, *supra* note 36, at 350.

⁵¹ See Kitamura, *supra* note 35, at 339.

⁵² See Tiefenbrun, *supra* note 36, at 350.

⁵³ See Garon, *supra* note 21, at 91.

⁵⁴ *Id.*

⁵⁵ *Id.* at 96-97.

windows in big-city quarters.⁵⁶ The practice was outlawed in 1916; however, former prostitutes remembered it feeling like they were “animals in a zoo.”⁵⁷ One prostitute summed up her five years of sitting inside grating as “the greatest humiliation a woman can suffer.”⁵⁸

Even before this time though, public opinion concerning licensed prostitution was already beginning to change in 1886, when the first Japanese organization to oppose licensed prostitution was formed.⁵⁹ The Women’s Christian Temperance Union (WCTU)⁶⁰ expanded with newly founded branches throughout Japan during the late 1800s and established its first brother organization in 1900, called Purity Society.⁶¹ These “abolitionists”⁶² as they were called, attacked licensed prostitution as a fundamental denial of human rights and a “system of slavery.”⁶³ The “civil liberties” guaranteed to all Japanese citizens were being denied to prostitutes, including “the freedom to cease trade, choose one’s customers, move about at will, and communicate unhindered with the outside world.”⁶⁴ In addition, the state lent its state powers to brothel owners who in turn censored those liberties.⁶⁵ Therefore, Christian women’s organizations, women social workers and reformers allied themselves and vowed to reform prostitution,⁶⁶ attempting to bring the system in line with the sexual mores of British and

⁵⁶ *Id.* at 97.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 98.

⁶⁰ *Id.* (Japanese moral reformers were inspired by international “social purity” movements in the late nineteenth century. In 1886, middle-class Japanese women formed the Tokyo branch of the Women’s Christian Temperance Union to attack licensed prostitution but also to “modernize” the sexual mores of Japanese society. The goal was to make Japan conform to Christian norms).

⁶¹ *Id.* (The Purity Society was a group of male abolitionists that formed to protest the rebuilding of the Yoshiwara quarters after a devastating fire in 1911. They were considered the brother organization to the WCTU).

⁶² *Id.* (Though traditional American literature uses the word “abolitionist” to describe those who supported the abolition of slavery in the U.S, in this context, “abolitionist” is meant to describe those who believe in the abolition of practices and laws that harmed society. It is worth noting that the word used here is still somewhat consistent with the slavery context, because members of the WCTU believed prostitution to be a form of slavery in Japan).

⁶³ *Id.*

⁶⁴ *Id.* at 98-99.

⁶⁵ *Id.* at 99.

⁶⁶ Cecilia Segawa Seigle, *Yoshiwara: The Glittering World of the Japanese Courtesan* 12 (1993).

American societies which touted that sex should be confined to marriage.⁶⁷ Prostitution was heralded as an attack on morality and marriage, which led to the WCTU's petition to the government to legislate and promulgate monogamy.⁶⁸ The WCTU demanded that a husband's liaisons with prostitutes, geisha and concubines be considered adultery, which at that time it was not.⁶⁹ It is worthy to note that even during this time, Japanese citizens recognized the geisha's similarity to the prostitute.

The government fought back though, stating that licensed prostitution was necessary for the regulation of public morals and public hygiene—necessary for the effective control of venereal diseases.⁷⁰ It claimed that repressing men's sexual desires would lead to increased rape and sex crimes, “capricious lusts [would] overthrow society” and government statistics showed that in almost 3 million weekly examinations of prostitutes in 1927, doctors found 2% of licensed prostitutes had a venereal disease while 32% of unlicensed prostitutes had diseases.⁷¹

But momentum for the “abolitionist” movement grew in the 1920s and as women became more educated and found other work, brothels became less preferable.⁷² Opinion was changing and the exploitation of women for the sole pleasure of men became an increasing difficult concept to justify.⁷³ In the 1930s, the League of Nations openly condemned Japan's system of licensed houses, after conducting a report on the trafficking of women and children.⁷⁴ In response to the uncomfortable spotlight, the Home Ministry announced in May 1934 that Japan would abolish licensed prostitution in the near future, however that prospect proved more

⁶⁷ See Garon, *supra* note 21, at 99.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Seigle, *supra* note 66, at 13.

⁷¹ See Garon, *supra* note 21, at 99.

⁷² *Id.* at 104.

⁷³ *Id.*

⁷⁴ *Id.* at 105.

difficult than anticipated.⁷⁵ Abolitionists had gained backing from elite bureaucrats; however, brothel owners were a powerful lobbying force.⁷⁶ They were “fine businessmen,” upstanding tax-paying citizens and many times were assemblyman or members of parliament.⁷⁷ In 1924, these brothel owners had formed the National Federation of the Brothel Trade and began making substantial donations to political parties sometimes offering bribes to the politicians who frequented their quarters.⁷⁸ Because of political pressure, the Home Ministry decided against the abolition of licensed prostitution.⁷⁹ The issue did not arise again until after World War II.⁸⁰

As seen from the history of the Japanese prostitute, there were signs that the traditional pristine view of the geisha was not necessarily universal. The geisha was frequently grouped with prostitutes throughout the years, from the time of the samurai to the time of the “abolitionist” movement. The history of the geisha only corroborates the theory that these two groups were not so different.

The origins of today’s modern geisha system began in the Tokugawa shogunate (1603-1867).⁸¹ Early geisha were performers, who entertained in licensed quarters in Kyoto, and actually—were men.⁸² They performed comic skits and entertained with drum performances.⁸³ They were called “houkan” which meant “one who enlivens a party where sake wine is served.”⁸⁴ In the 1700s, women began to perform as drum bearers, and were called “geiko,” which meant “girl of the arts.”⁸⁵ By 1780, these geisha became more noticeable,⁸⁶ outnumbering

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ See Aoki, *supra* note 18.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

male geisha, and soon the male geisha lost their status and died out.⁸⁷ Today, the word geisha references only female entertainers.⁸⁸

During the Tokugawa regime, citizens were prohibited from organizing clubs or having innocuous gatherings, thus licensed quarters became a place for merchants to hold business meetings.⁸⁹ During the 18th century, Japan had a growing educated and urban population. Japan's growing entertainment culture produced story-tellers who spun popular romantic tales of geisha and their clients.⁹⁰ Artists painted risqué prints of geisha in the pleasure quarters.⁹¹ Interest in the geisha grew and men attended licensed quarters to hear geisha sing songs, dance, recite poetry and have witty conversation.⁹² The allure was the "romance, elegance, and excitement of that one place in feudal society where money, charm, and wit made more of an impression than rigidly defined social class."⁹³ No class distinctions were made among the customers.⁹⁴ Even in a time where merchants were considered part of the lower caste system, these men were able to seek self-improvement and many times hired geisha tutors who helped them learn calligraphy, poetry and details of the tea ceremony.⁹⁵

But even amidst all this romance, the path to the geisha house was still strikingly similar to the path to the brothel house. Under the Tokugawa class system, samurai were forbidden from participating in commercial activity and were expected to live in a dignified manner.⁹⁶ However, many of these men accrued debts and gave up their daughters to geisha houses where the girl

⁸⁶ See Seigle, *supra* note 66, at 170.

⁸⁷ See Aoki, *supra* note 18.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Liza Carihfield Dalby, *Geisha* 55-56 (1983).

⁹⁴ *Id.*

⁹⁵ See Aoki, *supra* note 18.

⁹⁶ *Id.*

would work off that debt.⁹⁷ The owners of these geisha houses registered the girls as “adopted daughters,” a phenomenon that has “contributed to the infusion of the samurai ethos throughout geisha communities.”⁹⁸ The trafficking of girls into the geisha system was a longstanding practice and some scholars view those adoption contracts as a guise for debt bondage.⁹⁹ It seems it was because of the social acceptability of the geisha, fathers were more willing to sell their daughters into that system.¹⁰⁰

Indeed, the process of becoming a geisha was no easy task. While some historians focus on the geisha’s elaborate ritual of art and music lessons, others focus on the real lessons of the geisha system. *Mizuage* which means “launching” of the new girl,¹⁰¹ describes a practice where young girls interning at these geisha houses would be “auctioned” off to men as prostitutes around the age of 14.¹⁰² One case study followed a girl named Tanaka Michiko, who was trafficked into a geisha house, forced to strip and have sex with patrons and contracted syphilis.¹⁰³ The stark contrast in historical perspectives only illuminates the deep divide between the romanticized and the practical view of the geisha.

But even conservative accounts of the geisha recognized prostitution within the system. Geisha were expected to live with some dignity. Though geisha worked alongside prostitutes in licensed quarters, they were forbidden from sleeping with or sitting next to the prostitute’s customers.¹⁰⁴ However, violations occurred, some geisha never hesitating to participate in

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ See Norma, *supra* note 20, at 39.

¹⁰⁰ *Id.* at 42.

¹⁰¹ See Seigle, *supra* note 66, at 179.

¹⁰² See Norma, *supra* note 20, at 40.

¹⁰³ *Id.* at 41.

¹⁰⁴ See Tiefenbrun, *supra* note 36, at 355.

prostitution.¹⁰⁵ Disputes between prostitutes and owners of tea houses became fierce and the government stepped in in 1779 to establish an inspection agency, the *geisha aratame dokoro*.¹⁰⁶

The office granted geisha an official recognition as practitioners of a distinct profession.¹⁰⁷ If a violation occurred, their license was suspended, sometimes permanently.¹⁰⁸ Even with the geisha/prostitute professional distinction, public perception of the difference between prostitutes and geisha was considered “murky, at best.”¹⁰⁹ The inspection office which became known as *kenban* (supervisor),¹¹⁰ set forth rules to control conduct of geisha and remains as the registry for the geisha.¹¹¹ At one point, the *kenban* was required to keep records of all geisha, customers, addresses, and even how much money was spent at a particular teahouse.¹¹²

In 1842, in response to an atmosphere of “lasciviousness,” the government stepped in once again to pass a series of edicts meant to control public morality.¹¹³ Several thousand unlicensed prostitutes and geisha were rounded up and taken to the licensed quarters.¹¹⁴ In contrast to prostitutes, geisha were allowed to return to work if they only participated in dancing and singing.¹¹⁵ These edicts marked the first legal distinction between the prostitute and the geisha.¹¹⁶

During the overthrow of the Tokugawa shogunate by the Meiji government which ruled from 1867-1912, the *kenban* was in charge of tracking down political dissidents who were

¹⁰⁵ See Seigle, *supra* note 66, at 175.

¹⁰⁶ See Aoki, *supra* note 18.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ See Seigle, *supra* note 66, at 174.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See Tiefenbrun, *supra* note 36, at 355.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

known to frequent geisha houses to hold secret meetings.¹¹⁷ Geisha were frequently called upon during these meetings to keep all information secret and this became part of their unwritten code of honor.¹¹⁸ Many of these former rebels became the new leaders of Japan, and took geishas as their wives and mistresses.¹¹⁹ Geisha were privy to political intelligence and tended to support whoever was in power.¹²⁰ However as time went on, the geisha became a less formidable force, no longer the fashionable ideal in Japanese society.¹²¹ Today, the geisha population is slowly declining as the field is too traditional for the taste of modern Japanese women.¹²²

When the Prostitution Prevention Law was enacted in 1957, the prostitute and the geisha found themselves in a similar position as those who had lived through the Emancipation of 1872. Government leaders attempted to distinguish the two groups under the law, but the histories of both the geisha and the prostitute reveal that a distinction is not appropriate. In fact, geisha and prostitutes are constant companions throughout Japanese history and their similarities establish the necessity to scrutinize each group's status under the Prostitution Prevention Law.

III. Post-World War II Japan and the Prostitution Prevention Law

In August 1945, after Japan's defeat in World War II, prostitution was booming and the country moved towards the end of licensed prostitution with the help of extensive societal reform.¹²³ The occupying power, the General Headquarters of the Supreme Commander of the Allied Powers (GHQ/SCAP), issued an order to abolish licensed prostitution in January 1946.¹²⁴

The order stemmed from growing international sentiment against the trafficking of young

¹¹⁷ See Aoki, *supra* note 18.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Downer, *supra* note 10, at 109.

¹²² See Seigle, *supra* note 66, at 180.

¹²³ See Aoki, *supra* note 18.

¹²⁴ See Kitamura, *supra* note 35, at 341.

women into the sex trade.¹²⁵ General MacArthur's headquarters cited to prostitution as undemocratic, anti-humanitarian and the source of spreading disease.¹²⁶ In addition, the occupying power also issued an order granting women the right to vote that year¹²⁷—a decision that would have great repercussions on the issue of prostitution due to an increasingly powerful movement to enhance women's status in the country.¹²⁸ One year later, in 1947, Imperial Ordinance No. 9 was issued, punishing those who forced women into prostitution.¹²⁹ That law proved ineffective due to lack of enforcement and the legislative power of brothel owners.¹³⁰ Because two groups, the owners in the sex industry and soldiers in the occupation forces strongly opposed the ordinance, private prostitution was allowed however only if it was relegated to an area on the map called "Special Restaurants."¹³¹ A bill punishing prostitutes was presented to Diet (Congress) in 1948, however the strongly held belief that prostitutes were victims and should not be punished, led to its defeat.¹³²

During the occupation, from 1945-1952, Japanese society began seeing even more changes as Japan attempted to prove its "civility" and modernization.¹³³ On November 3, 1946, a new constitution was formed, and it became effective May 3, 1947.¹³⁴ The new constitution provided for more human rights, promoting equality between the sexes in politics, education, and law.¹³⁵ After the occupation ended, thanks to a new constitution and the new women voters, many female members were voted into the Diet and they announced their commitment to the end

¹²⁵ *Id.* at 340.

¹²⁶ *See* Seigle, *supra* note 66, at 12. (In January 1946, it was reported that 68% of soldiers in one battalion were found to be infected with a disease).

¹²⁷ *See* Kitamura, *supra* note 35, at 341.

¹²⁸ *Id.* at 342.

¹²⁹ *Id.* at 341.

¹³⁰ *See* Tiefenbrun, *supra* note 36, at 351.

¹³¹ *See* Kitamura, *supra* note 35, at 341.

¹³² *See* Morrison, *supra* note 4 at 467.

¹³³ *See* Kitamura, *supra* note 35, at 340-341.

¹³⁴ *Id.*

¹³⁵ *Id.*

of licensed prostitution.¹³⁶ A trend towards that end emerged with the passing of The Child Welfare Law, the Venereal Disease Prevention Law, Labor Standard Law and the Enterprises Affecting Public Morals Law—all indirectly restricting prostitution.¹³⁷

Prostitution however continued to flourish. Brothel owners wielded significant influence as many were members of local legislative bodies.¹³⁸ Police officers only weakly enforced the law.¹³⁹ The incomplete national legislation that only punished those who exploited prostitutes, allowed prostitutes themselves to escape punishment.¹⁴⁰ Female Diet members attempted to pass various anti-prostitution bills but were hampered for years.¹⁴¹ Professional prostitutes and racketeers were known to bribe male Diet members and disrupt election campaigns for female Diet candidates.¹⁴²

In May 1956, the Diet finally passed the Law on the Prevention of Prostitution, also known as the Prostitution Prevention Law and the Anti-Prostitution Law.¹⁴³ The law's purpose was to end licensed prostitution, and to forbid promoting it.¹⁴⁴ The law however did not do so by prohibiting prostitution but attempting to prevent it, through education and rehabilitation of prostitutes.¹⁴⁵ Women under the law were sent to the Women's Guidance Home, where they could gain education about improving their circumstances.¹⁴⁶ The law did not prohibit prostitution itself but punished those who profited from exploiting women in prostitution.¹⁴⁷ (It is akin to Ordinance No. 9 which also did not prohibit prostitution or punish prostitutes

¹³⁶ *Id.*

¹³⁷ *See* Morrison, *supra* note 4, at 467.

¹³⁸ *Id.* at 469.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 470.

¹⁴² *Id.*

¹⁴³ *See supra* note 19.

¹⁴⁴ *See* Kitamura, *supra* note 35, at 343.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

themselves).¹⁴⁸ Therefore, if a person engages in sex for money, technically it is legal.¹⁴⁹

According to National Police Agency Statistics, 923 people were arrested under the Prostitution Prevention law in 2006.¹⁵⁰ This reveals a diminishing trend of arrests under the law, down from 20,167 arrests in 1959 and 10,000 arrests per year beginning in 1969 through the mid 1980s.¹⁵¹

The law is divided into four main sections. The first describes the general provisions of the law and its purpose.¹⁵² The second establishes criminal penalties.¹⁵³ The third requires the establishment of women's guidance homes and the role of these homes.¹⁵⁴ The fourth requires local governments to institute consultation offices to protect and rehabilitate prostitutes.¹⁵⁵

First, the purpose of the law is "to suppress and prevent prostitution by punishing certain acts, such as promotion of prostitution and at the same time by taking measures for the rehabilitation of those females who are prone to prostitute themselves judging from their disposition, behavior and environments."¹⁵⁶ Prostitution is defined as "sexual intercourse with an unspecified other party for compensation or the promise of compensation."¹⁵⁷ The law mandates cautious enforcement so as not to violate a citizen's rights without due cause.¹⁵⁸ Unfortunately, this cautious enforcement clause allows a legal justification for police to weakly enforce the law.¹⁵⁹

¹⁴⁸ See Tiefenbrun, *supra* note 36, at 351.

¹⁴⁹ *Id.*

¹⁵⁰ Jim Hongo, *Law Bends Over Backwards to allow Fuzoku*. The Japan TIMES, May 27, 2008.

¹⁵¹ See Salzberg, *supra* note 5, at 234, 261.

¹⁵² See *supra* note 19.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ See Morrison, *supra* note 4, at 483.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

Second, the act of prostitution is not criminally punishable, nor is the act of purchasing a prostitute.¹⁶⁰ Instead, the law punishes acts related to prostitution, such as public solicitation, furnishing a venue for prostitution, furnishing capital and land used for prostitution, and entering into a contract requiring a person to engage in prostitution.¹⁶¹

Third, the law states that instead of issuing a criminal sentence for a woman age twenty or older, for public solicitation, a court may instead send the girl to a guidance home.¹⁶² The period of “guidance” is only six months maximum, and the home can discharge prostitutes prior to that six month period under a probation system.¹⁶³ Women in these guidance homes receive direction in terms of re-entering society, such as social education, vocational guidance, and medical care.¹⁶⁴ Women receive moral training designed to encourage conformity to Japan’s norms, and in addition they learn basic work skills and receive treatment for any sexually transmitted diseases they may have.¹⁶⁵

Fourth, the law mandates that local governments set up consultation offices throughout the country, where a director and staff provide counseling to prostitutes and provide temporary protection for these women.¹⁶⁶ Prostitutes receive medical care, psychological counseling and job training, just as they do in guidance homes.¹⁶⁷ Governments may choose to set up additional long-term housing for prostitutes.¹⁶⁸

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 484.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 485.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

Geisha however remained outside the reach of these laws, because many considered them to be “entertainers” and not a part of the sex industry.¹⁶⁹ But with the government’s tightening grip on prostitution, the sex industry had to reinvent itself.¹⁷⁰ It did so with the help of that geisha exclusion under the Prostitution Prevention Law.

Indeed, there are scholars, politicians, and writers who believe that the geisha should never have been excluded from the law. In 1958, Japan Socialist Party Founder Fujiwara Michiko criticized the geisha system as normalizing prostitution.¹⁷¹ The Director of the Women and Minors Bureau of the Department of Labour, Yamakawa Kikue, wrote in a Japanese newspaper in June 1953, that it was amusing men pretended geisha were simply artists.¹⁷² Actually, it was widely reported that during the 1950s, brothel owners scrambled to find a way to reinvent themselves in order to circumvent the new Anti-Prostitution Law.¹⁷³ Many brothel owners came to the conclusion that the geisha system would “evade attention” under current legislation and began turning their brothels into geisha houses.¹⁷⁴

One scholar described that during this time, the sex industry was being “geisha-ised” and the geisha title was “proliferating” in Japan.¹⁷⁵ Brothels were being transformed into geisha houses left and right and the change was surprisingly easy under the 1954 entertainment industry regulations.¹⁷⁶ Under these rules, women in the geisha system were only required to “primarily host guests by entertaining them with Japanese songs.”¹⁷⁷ These 1954 regulations governed non-

¹⁶⁹ See Aoki, *supra* note 18.

¹⁷⁰ See Morrison, *supra* note 4, at 475.

¹⁷¹ See Norma, *supra* note 20, at 43.

¹⁷² *Id.*

¹⁷³ *Id.* at 44.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

sex industry venues where alcohol was served.¹⁷⁸ Newspapers criticized the brothel owners who opened restaurants with women posing as geisha to pour alcoholic drinks.¹⁷⁹ Because geisha were governed under entertainment laws, they were still considered somewhat respectable, even though they were coming under some scrutiny.¹⁸⁰ Geisha were essentially saved from inclusion under the Prostitution Prevention Law, because of their inclusion in those entertainment regulations on alcohol-related business.¹⁸¹ Because of the exclusion, in 1957, a survey confirmed that a majority of women in brothels had been transferred to the geisha system.¹⁸²

Many owners accurately believed that members of the government would not include the geisha in their new law because many elite politicians would not want to disturb the geisha system.¹⁸³ In fact, in 1956 nine Liberal Democratic Party members were revealed to be owners or investors of geisha houses.¹⁸⁴ One Socialist Party member, Takada Naoko went as far as to call the Democratic party, the “red-light district party” because many sex industry businessmen registered as Democrats during a time when anti-prostitution was being heavily debated.¹⁸⁵

Scholars note that because geisha were not specifically mentioned in the Anti-Prostitution Law in 1956, the government was aiming to target legal brothels and street prostitution, while allowing entertainment regulations to protect and regulate all other forms of prostitution.¹⁸⁶ Once the geisha model was sufficiently distinguished from prostitution under the guise of entertainment, hostessing and art, it became available to others in the sex industry as a pretext for

¹⁷⁸ *Id.* at 46.

¹⁷⁹ *Id.* at 45.

¹⁸⁰ *Id.* at 47.

¹⁸¹ *Id.*

¹⁸² *Id.* at 45.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 46.

¹⁸⁶ *Id.* at 47.

morality and respectability. Therefore geisha are sometimes called the “savior of Japan’s sex industry in the 1950s.”¹⁸⁷

IV. Analysis of Prostitution in Contemporary Japan

Japan’s current problem today is rooted in the public prostitution system of the past.¹⁸⁸ Prostitution “has not been eliminated but still exists in the shadows of our present society; the system still remains but under a different name.”¹⁸⁹ The enactment of the Prostitution Prevention Law of 1956 did decrease the number of prostitutes in Japan, but only marginally.¹⁹⁰ In March 1958, immediately before enforcement of the law began, there were estimated to be 170,000 prostitutes.¹⁹¹ 34,000 were rehabilitated, while the remaining 135,000 (80%) were believed to be engaging in “disguised prostitution.”¹⁹² Tellingly, the number of geisha did not decrease; but instead, the 1960s and 1970s were considered their heyday.¹⁹³

There are two schools of feminist theory in regards to prostitution.¹⁹⁴ The first group of feminist scholars is known as neo-abolitionists. They believe that both voluntary and involuntary prostitution are unacceptable.¹⁹⁵ They believe that fundamentally prostitution can never be consensual and always reduces women to pure sex objects.¹⁹⁶ The second group recognizes a woman’s autonomy in choosing prostitution as an occupation, and condemns

¹⁸⁷ *Id.* at 48.

¹⁸⁸ Kikue Takahashi, *The State of Prostitution in Japan* 4 (1991). (Stated by a staff member of the Woman’s Christian Temperance Union).

¹⁸⁹ *Id.*

¹⁹⁰ Mamoru Iga, *Sociocultural Factors in Japanese Prostitution and the “Prostitution Prevention Law*, 4 *The Journal of Sex Research* 127, 128 (1968).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ See Tiefenbrun, *supra* note 36, at 368.

¹⁹⁴ *Id.* at 367.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

prostitution when it is involuntary.¹⁹⁷ Indeed, there has always been a fierce debate as to whether prostitution is a chosen occupation or sheer exploitation.¹⁹⁸ It is a constant dichotomy, whether the prostitute is to be considered an active participant or a victim.¹⁹⁹

Feminist groups in Japan tend to sway towards the first group, and have argued vehemently for a law to prohibit prostitution, as prostitutes epitomize low morality.²⁰⁰ While the debate in the 1950s raged between a prevention or a prohibition law, Diet finally settled on a prevention law much to the dismay of Japanese feminists.²⁰¹ Prostitutes themselves would not be criminally punished, and the definition of prostitution would exclude the geisha. Neither is altogether surprising when looking at Japan's societal views on sex.

In Japan, sex is viewed as a natural part of life and has its own place within society.²⁰² Because sexual expression is difficult for married and unmarried couples in tiny homes in Japan where many live with their parents, love hotels were formed to fill this void.²⁰³ Love hotels, like hourly motels in the United States allow people to engage in sexual activities but other hotels provide for a fantasy world, where sexual desires can run wild.²⁰⁴ There is a strict restraint not on sex in Japan, but in where sex is expressed, hence the brothel's popularity.²⁰⁵

Unlike Americans, the Japanese do not consider prostitution to be a moral issue.²⁰⁶ Japanese attitudes toward prostitution are liberal and those attitudes are frequently revealed in

¹⁹⁷ *Id.* at 368.

¹⁹⁸ Tsubasa Wakabayashi, *Enjokosai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law*, 13 UCLA Women's L.J. 143,145 (2003).

¹⁹⁹ *Id.* at 182.

²⁰⁰ Fujime Yuki, *Japanese Feminism and Commercialized Sex: The Union of Militarism and Prohibitionism*, 9 Social Science Japan Journal 33, 42 (2006).

²⁰¹ *Id.*

²⁰² See Morrison, *supra* note 4, at 472.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ See Iga, *supra* note 190, at 129.

²⁰⁶ See Morrison, *supra* note 4, at 472.

literature.²⁰⁷ One writer in *Bungei Shunju*, a literary magazine for educated readers, wrote in 1961 about journalists who frequented brothels.²⁰⁸ It was titled “Great Men in Sex,” and was written in a quite approving tone.²⁰⁹ One story spoke of a journalist who experimented with how many prostitutes at different brothels he could have intercourse with.²¹⁰ He went from one house to the next, until the contest ended at his 13th brothel.²¹¹ Another story lauded a journalist who had tried more than 1,000 prostitutes at more than 150 brothels in 8 years.²¹² Yet another spoke about a journalist who spent his wedding night with a prostitute, while his new bride waited at home.²¹³ The fact that stories like this are published in respectable magazines offers a glimpse into the condoning attitude of Japanese society towards brothel prostitution.²¹⁴

Importantly, sex expression that facilitates or does not endanger the existing social order and “familism”²¹⁵ is acceptable in Japan.²¹⁶ Brothel supporters argue that prostitution helps the existing social order, by contributing to the circulation of money in the economy and assisting poor families through publicly protected prostitution.²¹⁷ Prostitution satisfies the sexual needs of those who cannot marry young, prevents sex crimes and increases cooperation with police in crime control.²¹⁸ In addition, it offers self-support to women who cannot support themselves through ordinary means.²¹⁹ Therefore it is suggested that the Japanese concern is not with prostitution or brothels per se but their effect on social order and familism, since pro and con

²⁰⁷ See Iga, *supra* note 190, at 131.

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Merriam-Webster Online Dictionary*, 2010. <http://www.merriam-webster.com> (last visited 13 May, 2010). (Defined as a social pattern in which the family assumes a position of ascendancy over individual interests).

²¹⁶ See Iga, *supra* note 190, at 129.

²¹⁷ *Id.* at 130.

²¹⁸ *Id.*

²¹⁹ *Id.*

arguments for prostitution revolve around those two concepts.²²⁰ Those who initiated the Prostitution Prevention Law indeed argued that prostitution disturbed social order, spread disease, weakened morality, promoted crime and destroyed family life.²²¹

Even with a general acceptance of sex in Japanese society, there is a double standard between men and women.²²² Men are allowed to engage in premarital sex openly, while females must do so discreetly if at all.²²³ This philosophy remains even in marriage, where women must remain faithful to their husbands, while the men are free to have extramarital relations (many of these relations being with prostitutes and geisha).²²⁴ A recent example of the geisha's notoriety occurred in 1989 when prime minister Sosuke Uno was revealed to be having an affair with geisha, Mitsuko Nakanishi.²²⁵ The prime minister was outed by the *Sunday Mainichi* tabloid and the *Washington Post*.²²⁶ Uno faced little criticism concerning his infidelity.²²⁷

This philosophy actually has a name and is called the *honne* (true situation) and *tatemae* (front) phenomenon.²²⁸ The *honne* is that prostitution exists in the country, while the *tatemae* is that prostitution is illegal and does not exist.²²⁹ The government and police enforcement are able to claim prostitution is no longer a problem in Japan, while patrons know they can still frequent prostitutes freely.²³⁰

Given this analysis of prostitution in Japan, the geisha's exclusion under the Prostitution Prevention Law makes sense. The collective investment in social order and familism along with

²²⁰ *Id.*

²²¹ *Id.*

²²² See Morrison, *supra* note 4, at 473.

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Mark D. West, *Secrets, Sex and Spectacle* 1 (2006).

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ See Morrison, *supra* note 4, at 473.

²²⁹ *Id.* at 475.

²³⁰ *Id.*

the *honne/tatemae* philosophy combine to keep the geisha's role conceptually separate from the sex industry. Japanese social order demands that there are good women and bad women, housewives and whores.²³¹ Bad women are necessary to preserve good women. Prostitutes are generally poor, uneducated and lack decent morals, but they serve the function of availability to husbands who need a sexual outlet so that good women, the traditional and respectable housewives, can serve as child bearers and keepers of the house.²³² The geisha fits somewhere in between this dichotomy, this social order. She is a good woman, doting and symbolic of Japanese tradition. Perhaps she is even better than the average housewife considering she is also well-versed in interesting conversation and able to engage in art, music and dance—a true artist with integrity. But she is a prostitute, a bad woman as well. This ambiguity in the social order creates a loophole, which combined with the *honne/tatemae* philosophy creates the current status of the geisha.

Under the *honne/tatemae* philosophy, the true situation is that geisha are prostitutes and have had connections with the prostitution industry for centuries. They are constantly mentioned in conjunction with prostitutes throughout Japanese history. Yet the front remains that they are “works of art,” traditional relics of a glorious old-world Japan. They are able to utilize Japanese social order, allowed to play the role of the “good woman” to the world, while continuing to be the “bad woman” to their clients.

The Prostitution Prevention Law is yet another instance of *honne/tatemae* in the culture. Japanese society claims that prostitution is illegal yet people frequent prostitution without worry of any legal consequences. Geisha are able to escape scrutiny from anti-prostitution laws, yet in reality, they are the new face of the sex industry. Indeed, one woman who was left with

²³¹ Kumiko Fujimura-Fanselow, *Japanese Women: New Feminist Perspectives on the Past, Present and Future* 315 (1995).

²³² *Id.*

staggering medical bills after the death of her family gave up on being a construction worker and decided to go into prostitution.²³³ She regained security for her husband, and when she found out about the congresswomen who wanted to deprive her of her occupation, she felt intense hostility and asked “When geisha and concubines are allowed to sell their sex, why can’t I do it? I will fight for my right even if I have to hide . . .”²³⁴

As for patrons of prostitutes, in Japan, studies reveal that in 1951-1953, nearly 62% of Japanese people who patronized prostitutes were found to be married.²³⁵ Geisha, 85% of whom were regarded as prostitutes, were patronized mainly (96%) by married men.²³⁶ Many men cite lack of sexual satisfaction at home, while a minority claims they frequent prostitutes for entertainment.²³⁷ Japanese males often show a strong sense of inadequacy based on societal conditioning and in Japan, there is an imposition of self-control and a stress on competition.²³⁸ But there is also a desire for liberation away from a social structure characterized by rigidity, which leads men towards prostitutes.²³⁹ In a world where social regulations often become a tool “for the superior’s manipulation of inferiors in [an] authoritarian society,” the result is frustration for the inferior and a wish for liberation.²⁴⁰ The prostitute boosts the ego of the Japanese man.²⁴¹

While the wife’s principal function consists of housekeeping, childrearing and taking care of her in-laws, the husband looks for an escape.²⁴² Prostitutes understand that one of their most important roles is to “let the patron enjoy a pseudo-love relationship.”²⁴³ Her room should be

²³³ See Iga, *supra* note 190, at 136.

²³⁴ *Id.*

²³⁵ *Id.* at 141.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.* at 142.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.* at 143.

²⁴³ *Id.*

cozy and romantic and she must be like an actress, playing the role of an adoring lover.²⁴⁴ The room, the décor and the girl seemingly “carried away with passion” all add to the romanticism of the experience.²⁴⁵ The prostitute has to rely on the ability to “maintain a fiction that she love[s] her clients, to lull them into pleasant self-deception with the art of sweet talk and sworn statements of devotion.”²⁴⁶ In fact, at one time there were instruction books with suggestions for perfecting the “art of duplicity” for example, “it is most inconvenient is you cannot shed tears.”²⁴⁷ Therefore, one must think intensely about the past and future, sad details.²⁴⁸ If this is too difficult, pull out one or two eyelashes.²⁴⁹ “If you gaze upon something very small without blinking or moving your eyeballs, your eyes will burn and tears will seep out.”²⁵⁰

Once again, the geisha’s role under this analysis of patrons of prostitution reveals insight into the geisha’s exclusion from the 1956 Prostitution Prevention Law. In a strict society, where marriage is simply practical and fidelity is not expected, the Diet undoubtedly knew it had to place subtle limitations under the 1956 law. Male Diet members who owned and frequented geisha houses were probably well-aware that Japanese men needed some form of sexual freedom even amidst growing international criticism of Japan’s prostitution system. While the prostitute would no longer be legal, the geisha would act as a substitute, providing the escape for Japanese men. She would not instill the same hostility from other countries because of her history and tradition. After all, she is a geisha—once again the product of *honne/tatemaie*, the physical embodiment of truth and front. She offers a front of respectability to a profession increasingly under attack, while truly being no different than a prostitute.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ See Seigle, *supra* note 66, at 189.

²⁴⁷ *Id.* at 190.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

Some suggest that the geisha standard protected Japan's sex industry through a concept known as the "*Playboy standard*" devised by feminist Catherine MacKinnon in 1987.²⁵¹ The concept essentially states that the "respectability" of *Playboy* magazine is extended to all pornography when there are attempts to curb distribution and production.²⁵² *Playboy* publishes serious articles alongside pictures of naked women in its magazine, which "legitimizes" what the pictures do to women.²⁵³ Attempts to stop pornography are limited because of their effect on legitimate commercial operations like *Playboy*.²⁵⁴

It is suggested by Caroline Norma that the geisha standard has worked in a similar way to the *Playboy* standard in protecting the sex industry when there were attempts to curb prostitution.²⁵⁵ *Playboy* established a "minimum acceptable standard of treatment of women in pornography" just as the geisha system offered a legitimate model for prostitution.²⁵⁶ That model was simply women acting as hostesses at venues where alcohol was served.²⁵⁷ The geisha system offered legitimacy to a form of prostitution by tying in the romantic elements of art and culture.²⁵⁸ Therefore, it is no surprise that the sex industry still flourishes in Japan, especially to those who could foresee the geisha's exclusion from the law as a loophole for the sex industry.²⁵⁹

Thus, Japan's unique views on sexual expression and marriage and also MacKinnon's view on respectability reveal why the geisha was not included as a prostitute under the Prostitution Prevention Law. The geisha not only lends an air of legitimacy to prostitution

²⁵¹ Catharine MacKinnon, *Feminism Unmodified* 138 (1987).

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ See Norma, *supra* note 20, at 50.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.* at 51.

against those who attack Japan's prostitution system, she provides a front for those who believe that prostitution and "bad women" are a necessary part of Japanese culture.

V. Recommendations

There are two opposing theories about how to approach the problem of prostitution. Some classic liberal moral philosophers such as David A.J. Richards argue that autonomy is fundamental to human beings and people's choices should be given equal amounts of respect, including the choice of prostitution.²⁶⁰ Criminalization is ineffective and only leads to disguised forms of prostitution.²⁶¹ They argue that the notion of "stamping out" prostitution is naïve and doomed to fail therefore, prostitution should be viewed as simply a nuisance.²⁶² But others believe acceptance of prostitution cannot be tolerated due to its moral consequences on honored concepts like marriage, monogamy and equality of the sexes.²⁶³ In addition, the health and welfare of the community is susceptible to attack by the proliferation of prostitution.²⁶⁴

There are those who believe prostitution can be a legitimate choice. These scholars cite to studies that state only 15% of prostitutes are coerced into it by third parties.²⁶⁵ COYOTE, a well-known organization in the campaign for prostitutes' rights, asserts that most prostitutes make a conscious choice to enter the profession and weigh alternatives before doing so.²⁶⁶ The manifesto of the International Committee on Prostitutes' Rights states that it "affirms the right of

²⁶⁰ David A.J. Richards, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 U. Pa. L. Rev. 1195 (1979).

²⁶¹ See Iga, *supra* note 190, at 144.

²⁶² Herbert L. Packer, *The Limits of the Criminal Sanction* 328-31 (1968).

²⁶³ Sylvia A. Law, *Commercial Sex: Beyond Decriminalization*, 73 S. Cal. L. Rev. 523,534 (2000).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ *Id.*

all women to determine their own sexual behavior, including commercial exchange, without stigmatization or punishment.”²⁶⁷

These feminists believe that it makes little sense to make criminals out of prostitutes.²⁶⁸ Anti-prostitution laws deprive poor families and women of their last economic resource without providing a welfare program.²⁶⁹ Thus, one major solution to prostitution problems could be welfare programs, providing food, shelter, health and education to the people.²⁷⁰ By criminalizing prostitutes, these women are further estranged from their communities, leading to low self-esteem which increases the possibility of drug and alcohol usage.²⁷¹ With criminalization, prostitutes are more likely to become dependent on their pimps, who will post bail, arrange child care and obtain lawyers when these women get arrested.²⁷²

However, many others still believe that the allowance of prostitution is at odds with a just society and is damaging to women, and they advocate that prostitution must be prohibited outright.²⁷³ In essence, prostitution stands inapposite to the “vision of women, their sexuality and the role of marriage.”²⁷⁴ In 1908, the U.S. Supreme Court wrote that prostitutes were hostile to “the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization, the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.”²⁷⁵ Some scholars believe that even if criminalization is not practically successful in lessening the practice, society still must take a

²⁶⁷ *Id.* at 541.

²⁶⁸ *Id.* at 542.

²⁶⁹ See Iga, *supra* note 190, at 144.

²⁷⁰ *Id.*

²⁷¹ Lenore Kuo, *Prostitution Policy: Revolutionizing Practice through a Gendered Perspective* 125 (2000).

²⁷² *Id.*

²⁷³ See Law, *supra* note 263, at 534.

²⁷⁴ *Id.* at 542.

²⁷⁵ *United States v. Bitty*, 208 U.S. 393, 401 (1908) (quoting *Murphy v. Ramsey*, 114 U.S. 15, 45 (1885)).

public stance on prostitution's immorality.²⁷⁶ They maintain that the social acceptance of the treatment of women as sex objects is unsettling.²⁷⁷

But aside from moral ideas, many argue that public health concerns are undoubtedly one of the more important reasons for criminalizing prostitution.²⁷⁸ Some scholars maintain prostitutes have traditionally been viewed as a “source of disease,”²⁷⁹ a view that was solidified by the swift spread of AIDS in the 1980s.²⁸⁰ One California court stated that prostitutes were analogous to the “chronic typhoid carrier—a sort of clearing house for the very worst forms of disease.”²⁸¹ Though not all scholars are so harsh, many do insist that “having sex with someone who is as sexually active as a successful prostitute obviously increases the risk of infection.”²⁸²

In addition, scholars note that where prostitution is prevalent, “family-oriented” businesses do not survive.²⁸³ Prostitution increases other criminal activity in the neighborhood and decreases the overall maintenance of the impacted area.²⁸⁴

Applying these arguments to Japan's Prostitution Prevention Law is not easy given there are valid points on both sides. While the point is well-taken that criminalizing prostitution does not come close to eradicating it, unfortunately attempting to “prevent” it under the 1956 law has not made much of an impact on prostitution in Japan. One of the major problems with criminalizing prostitution is the lack of alternatives provided to women in poverty. But if Japan were to create a stronger welfare program to help those looking for options outside of prostitution, this problem may be substantially contained. Even given the importance of

²⁷⁶ See Kuo, *supra* note 271, at 125.

²⁷⁷ *Id.*

²⁷⁸ See Law, *supra* note 263, at 545.

²⁷⁹ See generally Allan M. Brandt, *No Magic Bullet: A Social History of Venereal Disease in the United States Since 1880* (1985).

²⁸⁰ See Law, *supra* note 263, at 545.

²⁸¹ Ex parte *Carey*, 57 Cal.App. P. 271, 274 (1922).

²⁸² See Kuo, *supra* note 271, at 124.

²⁸³ *Id.* at 125.

²⁸⁴ *Id.*

autonomy in our society, still social acceptance of women as sex objects should not be an option if there are other alternatives. In this instance, harsh national legislation plus a welfare system can offer a new framework for Japan to decrease commercialized sex.

The main criticism of the current legal framework is that prostitutes are treated as mere victims rather than as willing participants.²⁸⁵ The Anti-Prostitution Law indeed has been ineffective because of its inadequacies.²⁸⁶ For example, the definition of prostitution is narrowly limited to sexual intercourse.²⁸⁷ In addition, the failure to criminally punish both the prostitute and the client add to the law's ineffectiveness.²⁸⁸ Therefore, in order to substantially decrease prostitution in Japan, lawmakers need to make certain changes to the Anti-Prostitution Law.

First, the definition of prostitution must be broadened to include all sexual behavior that includes genital contact.²⁸⁹ Currently, because prostitution only includes sexual intercourse, which is defined as penal/vaginal penetration, any other sex act is currently legal.²⁹⁰ Next, the act of prostitution and the act of buying a prostitute must be made criminally punishable.²⁹¹ Prostitutes, along with patrons and those who help encourage prostitution must all be punished in order to give the law its full effect. Finally, and most importantly for the purposes of this paper, the geisha should be specifically noted under the Prostitution Prevention Law. The law has a chance at being more effective if the Diet ensures that prostitution will be punished and sanctions will apply to all the disguised forms of prostitution in the sex industry.

But in addition to changes in the law, it is important for Japan also to develop a more established welfare system that could help counteract the necessity to turn to prostitution, in

²⁸⁵ See Morrison, *supra* note 4, at 492.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.* at 495.

²⁹⁰ See Hongo, *supra* note 150.

²⁹¹ *Id.*

instances such as poverty. The details of this welfare program are beyond the scope of this paper but it is nonetheless essential for Japan to provide citizens with basic necessities like food and shelter, so prostitution does not offer the only method to combat poverty. This new framework accounts for the concerns of those who fear criminalization removes a poor woman's last option for survival by offering a welfare alternative, but it also accounts for the legitimate argument that society cannot brazenly encourage the idea of women as sex objects. With a combination of both a harsher anti-prostitution law, which must include the geisha this time and a suitable welfare system, substantially decreasing prostitution becomes a much more plausible goal.

VI. Conclusion

While the geisha is indeed a treasured part of Japanese history, the reality is that she has a past inextricably intertwined with that of the prostitute—a past which also binds their future. Japan may be known as a prostitution culture, but Japan's sex industry has been able to reinvent itself throughout history to circumvent the word "prostitute." The prostitution business has evolved from streetwalkers to legalized brothels and now, geisha houses. The exclusion of the geisha from the Prostitution Prevention Law provides a gaping loophole in Japan's attempt to prevent prostitution in its cities. While it is understandable why the geisha was excluded in 1956 given Japan's societal views on sex and marriage, its *honne/tatemae* theory on truth and front, as well as the geisha's legitimization of the prostitution business, the geisha holds an undeniable stake in the prostitution industry and thus, should be included under the law like all others. With the geisha's inclusion under the law, in addition to some stricter provisions and perhaps a welfare program that helps combat poverty, real changes in Japan's sex industry may be possible.

*She paints her face to hide her face. Her eyes are deep water. It is not for Geisha to want. It is not for geisha to feel. Geisha is an artist of the floating world. She dances, she sings. She entertains you, whatever you want. The rest is shadows, the rest is secret. – Memoirs of a Geisha*²⁹²

²⁹² See *supra* note 1.