

# Split at the Root: Prostitution and Feminist Discourses of Law Reform

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My case is not unique.

Violette Leduc<sup>1</sup>

Today, adjustment to what is possible no longer means adjustment, it means making the possible real.

Theodor Adorno<sup>2</sup>

This article originated in some years of feminist activism, and a sustained effort to understand two sentences spoken by Evelina Giobbe, an anti-prostitution activist and educator, at a radical feminist conference in 1987. She said: "Prostitution isn't like anything else. Rather, everything else is like prostitution because it is the model for women's condition."<sup>3</sup> Since that time,

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For my family: Mother Marge, Bob, Tim, John, Scharl, Marilynne, Jim, Robert, and in memory of my father, James.

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1. VIOLETTE LEDUC, *LA BATARDE* 3 (1964).

2. THEODOR ADORNO, *Veblen's Attack on Culture*, in *PRISMS* 73, 94 (Samuel & Shierry Weber trans., 1981).

3. Evelina Giobbe, *Confronting the Liberal Lies About Prostitution*, in *THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM* 67, 76 (Dorchen Leidholdt & Janice Raymond, eds., 1990). Evelina Giobbe has written and worked in the past under the name Sarah Wynter. In 1989, she took back her birth name. This is part of what she has said about that decision:

I, quite frankly, am tired of having my name taken from me by the pimps who stole my youth or due to my fear of retaliation by the pornographers. This year I am taking my name back. I consider it as much a political act as a personal choice. I choose to give up the illusion of safety that a pseudonym gave me, understanding now that no woman is safe as long as the traffic of women and children is allowed to continue. I take this action in defiance of the pimps and pornographers who sell women's bodies

I have listened to those sentences echo in my mind, as if they wanted to teach me something I could not yet understand but needed to. I believe now that my perplexity arose, perversely, from my own commitments as a lawyer and activist in support of women in prostitution: not, it seemed, from the commitment part, but from the lawyer part. Thinking from within prevailing discourses of feminist legal theory and law reform strategies, I found myself precluded from any adequate engagement with, much less response to, Giobbe's analysis. That is something to notice. A sister suggests that you take a look at her car, as something seems to be rattling. You stand befuddled, gazing at the saw and hammer in your hands.

This paper attempts to begin a response to Giobbe's insight. The fundamental inquiry I pursue is how the relationship between "prostitutes" and "other women" is given meaning in the sexual abuse of women and girls, in the legal response to that abuse, and in feminist reform strategies. In the design of existing law, in the behavior of individual men, and in the leading strategies of feminist law reform, the relationship is cast in oppositional terms: whoever a "prostitute" is, "other women" are not. In substance, the distinction provides a handy means of identifying appropriate female objects of punishment and contempt. To be deemed a "prostitute," whether by the state, by a john, or by any other man for that matter, immediately targets a girl or woman for arrest, for sexual assault, for murder, or, at the very least, dismissive scorn. Victims of rape, of incest, of domestic battery, of sexual harassment, are quite familiar with this difficulty. Declared to be "whores" and "sluts" by the men who abuse them, women then confront a legal system which puts the same issue in the form of a question: was she in fact a "slut" who deserved it, as the perpetrator claims, or not-a-slut, deserving of some redress? (The outcome of this interrogation is commonly referred to as "justice.")

I am not alone in this analysis. Feminist legal reformers have long challenged the legal relegation of "other women" to the status of prostitutes, in rape law reform, in representation of battered women in court, and in anti-sexual harassment advocacy. However, as I further contend, these strategies have less undermined the dichotomy between "prostitutes" and "other women" than they have further entrenched it. The core assertion advanced by this work has been the claim that "other women" are not "really" prostitutes, after all, and, therefore, denied justice by evidentiary standards and uneducated inferences yielding the contrary conclusion. Abusers, judges, and legal feminists seem agreed on the proper significance of the distinction between

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and steal their souls, and the johns who think that they can turn child sexual abuse and rape into a job by throwing money at their victims. I hope that this public/private act will contribute to ending our silence, and I have one other personal reason. It's a fine name, my mother gave it to me because it was my grandmother's name. I reclaim it in memory of her struggles.

Evelina Giobbe, *From the Editors*, WHISPER 3 (Summer 1989). WHISPER is the newsletter of the prostitution activist organization of the same name. Giobbe is a founder and the executive director of the organization.

prostitutes and other women, but disagree on the finer points of identification and definition.

In the second part of this paper, I discuss where this approach leaves women who “are” prostitutes. In short, in some difficulty. In the seeming absence of other alternatives, feminist advocates for prostitutes have attempted to establish that prostitutes, too, are “other women” in the same sense in which “other women” have employed the term to distance themselves from prostitutes. Needless to say, these assimilation attempts have not proceeded smoothly. In part three, I argue that “distancing” oneself from prostitution, while representing oneself as an “other woman,” the political position adopted by all of these advocates, is both the sexual demand made of women *in* prostitution, and the political demand made of all women vis á vis the state.

Such is the map this paper seeks to draw. Such, too, is the grammar in which it speaks, the conventional procession of the “If this/Then that; Because/Therefore; Not only/But also”<sup>4</sup> rhetorics of argument and justification. As conventionally, it is here that an author seeks the generosity of her reader, beseeching or demanding or cajoling acquiescence to the limitations of the announced agenda. This appeal, to a meta-agenda of “reading rules,” often proceeds in two steps; the first humble, the second insistent. First, acknowledgment of deficiencies in the discussion to follow: of the unaddressed or insufficiently engaged or otherwise lingering issues, or the methodological or theoretical limitations of the claims asserted. Then, an analytic rescue of the importance of the work notwithstanding, by argument to the immateriality of those deficiencies to the integrity and usefulness of the overall approach. The quality of generosity sought from the reader is passive: a promise to keep still, to accept the author’s project on its own terms, to banish for the moment all concerns disruptive to the orderly unfolding of the author’s exposition.<sup>5</sup>

If my appeal is conventional, the quality of readerly sympathy I seek perhaps is not. The deficiencies which I believe most deeply mar this paper cannot be masked by vigorous defense, as they betray my intention and undermine the possibility of communicating what most needs hearing on the subject of prostitution. I mean the carnage: the scale of it, the dailiness of it, the seeming inevitability of it; the torture, the rapes, the murders, the beatings, the despair, the hollowing out of the personality, the near extinguishment of hope commonly suffered by women in prostitution. For the imperative of “If this/Then that” is the command to *move on*, from the dumb datum of “this”

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4. The phrase is Christa Wolf’s, from a discussion of poet and novelist Ingeborg Bachmann’s work. Christa Wolf, *A Letter, about Unequivocal and Ambiguous Meaning, Definiteness and Indefiniteness; about Ancient Conditions and New View-Scopes; About Objectivity*, in *CASSANDRA: A NOVEL AND FOUR ESSAYS* 272, 301 (1984) [hereinafter, *A Letter*].

5. The sexual inference is of course intended. See LAURENCE STERNE, *TRISTRAM SHANDY*, in *36 GREAT BOOKS OF THE WESTERN WORLD* 191-92 (Robert Maynard Hutchens ed., 1952) (Tristram’s mother accused of disrupting Tristram’s homuncular development when, at the crucial moment of Tristram’s conception, she interrupted the proceedings to ask if his father had remembered to wind the clocks).

to the voluble authorial “that,” to engage in the proper displays of mastery in drawing the finer distinction, executing the wittier hypothesis, solving the third riddle yielding the maiden’s hand of the conclusion.

Although I speak archly of those satisfactions here, I do so in some bad faith as they are familiar to me, and treasured. Yet, after reading about, documenting, and classifying the murders, disappearances, tortures, fast or slow suicides of women in prostitution, I have often questioned the intellectual integrity of any stance but the hortatory and confrontational: This must end. See this. This must stop. I hear the protagonist in Andrea Dworkin’s *Mercy*, after 27 years as a woman, imploring: “Stop them. They don’t stop themselves, do they?”<sup>6</sup> To render this slaughter of women a matter to be assessed by analytic argument, even “dialogue,” has at times seemed to me an act of barbarism. This work of mine, then, however beset with “thats,” is not intended solely as argument, but as a meditation upon witnessing brutality. And what I ask of you is simple, but engaged: where my logic fails, please remember these women and do better than I have done.

There is a further complication. Brutality, written about, is different from brutality, lived. Writing, especially theoretical writing, is a practice which requires and maintains a certain distance; perhaps roughly the same distance necessary for pain’s infliction. That tidy gap habitates the entire field of aesthetics, and the much defended (when not asserted as natural) distinction between literature and life. As Christa Wolf notes:

aesthetics, I say, like philosophy and science, is invented not so much to enable us to get closer to reality as for the purpose of warding it off, of protecting against it.<sup>7</sup>

Champions of pornography assert this principle with some complacency. For me the attempt to render women’s pain into words, cast to the kindness of strangers, has caused great anguish and frustration. I had been both warned of and instructed about this trouble by feminist theorists, pedagogically through the feminist legal critique of objectivity,<sup>8</sup> and more immediately by the

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6. ANDREA DWORKIN, *MERCY* 333 (1990).

7. Wolf, *A Letter*, *supra* note 4, at 300. See also ROBIN MORGAN, *THE DEMON LOVER: ON THE SEXUALITY OF TERRORISM* 51 (1989) (“If I had to name one quality as the genius of patriarchy, it would be compartmentalization, the capacity for institutionalizing disconnection.”); cf. ELAINE SCARRY, *THE BODY IN PAIN: THE MAKING AND UNMAKING OF THE WORLD* (1985) (on the linguistic unexpressability of physical pain).

8. The germinal work in law is Catharine A. MacKinnon’s pair of articles in *SIGNS*. See MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS* 515 (1982) and MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983). The arguments which are refined and elaborated in MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989). See also Ann C. Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 *YALE L. J.* 1373 (1986); Martha Minow, *Feminist Reason: Getting It and Losing It*, 38 *J. LEGAL EDUC.* 47 (1988); Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *WISC. WOM. L. J.* 81 (1987) (hereinafter, *Phenomenology*); Lynne N. Henderson, *Legality and Empathy*, 85 *MICH. L. REV.* 1574 (1987). A related discourse is the emerging jurisprudence of “legal storytelling.”

authorial examples of scholars who with brilliance have subverted or abandoned syllogistic compulsions in their own work.<sup>9</sup> More than once I read Kathleen Barry's description of her heartbreak, "an emotion men condemn as a failure of objectivity,"<sup>10</sup> while writing her landmark book on sexual slavery:

And yet I realize that it is the stifling of such emotion that creates the conditions of violence and slavery. I've come to recognize in a way I've never before known so deeply and powerfully the extent to which emotionless objectivity leads directly to objectification—the starting point of violence, particularly sexual violence.<sup>11</sup>

As is the case with all "knowing," though, I too have come to understand this critique at a new level in challenging myself to live out what I had learned. Because I am a woman, this meant long stretches of believing my floundering to be my fault, demonstrating merely my stupidity, torpor or craziness. I was too angry, insufficiently detached to traverse from "this" to "that." However trivial the insight, I finally came to understand that one cannot write objectively from the victim's point of view; she must be abandoned as one pulls chair to table. The urgent collaboration, rather, is between the author and the reader, a collaboration wherein the sufferings of the victims "are used to create something, works of art, that are thrown to the consumption of a world which destroyed them."<sup>12</sup>

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*See* Symposium, *Legal Storytelling*, 87 MICH. L. REV. 2073 (1989); Robert M. Cover, *The Supreme Court, 1982 Term-Forward: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983); Robin West, *Jurisprudence as Narrative: An Aesthetic Analysis of Modern Legal Theory*, 60 N.Y.U. L. REV. 146 (1985); Richard K. Sherwin, *A Matter of Voice and Plot: Belief and Suspicion in Legal Storytelling*, 87 MICH. L. REV. 543 (1988).

9. *See, e.g.*, PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); West, *Phenomenology*, *supra* note 8; Ann C. Scales, *Feminists in the Field of Time*, 42 FLA. L. REV. 95 (1990); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987). Robin West argues for an anti-objectivist legal scholarship in her *Love, Rage and Legal Theory*, 1 YALE J.L. & FEMINISM 101 (1989), an article which gave me an added measure of determination in writing this introduction and for which I thank her. While West in the just-cited article speaks to the subversive possibilities of writing directly from the first person singular, other authorial approaches are similarly disruptive though they are less facially challenging. For example, although Catharine MacKinnon's style is typically deemed "difficult," the quality of that difficulty from a rhetorical standpoint is seldom squarely addressed. I think the challenge she poses to her readers is to think from a "doubled" perspective, a perspective which she theorizes substantively by writing in near-allegorical mode. Frances Olsen's work also, I think, is formally "doubled" by an incisive humor scarcely visible on a first reading, but which flourishes on the third or fourth, levitating and unbalancing her formal style of argument.

10. KATHLEEN BARRY, *FEMALE SEXUAL SLAVERY* 215 (1979).

11. *Id.*

12. Theodor Adorno, *Commitment*, in *THE ESSENTIAL FRANKFURT SCHOOL READER* 300, 312 (Andrew Arato & Eike Gebhardt eds., 1982). James Agee's famous preamble to *LET US NOW PRAISE FAMOUS MEN* invokes a similar contradiction:

It seems to me curious, not to say obscene and thoroughly terrifying, that it could occur to an association of human beings drawn together through need and chance and for profit into a company, an organ of journalism, to pry intimately into the lives of an undefended and appallingly damaged group of human beings . . . for the purpose of parading the nakedness, disadvantage and humiliation of these lives before another

In a paper about prostitution, it is difficult to avoid the inference that this collaboration shares certain features with that between pimp and john, the "prostitute" shaped by the author into a representation suitable and desirable for the anonymous reader's temporary, fleeting engagement. Again, the "prostitute" is but a species of exchange in a transaction through which her value is debated, quarreled over, but to which she remains a stranger. This dilemma, the revictimization of the sufferer in the very act of the writing that renders her visible, can perhaps only finally, securely be overcome by the eradication of the suffering such writing seeks to disclose. That will require a new form of communication among us, one which does not depend on the exchange of represented "women," in words and by commerce and as sex, for the false communion of author and reader (false because I speak to you as not-a-prostitute but as an author who objectifies "them," false because you read as a member of a general audience and not as yourself until you become yourself an author in another place).<sup>13</sup> Thus, the very themes of this essay I may describe, but I cannot yet enact. It is with sad irony, then, that I here "move on" to the first question I would like to explore; that is, the political significance of the dichotomy drawn between "prostitutes" and "other women," in life and then again in law, a dichotomy exactly founded on the

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group of human beings, in the name of science, of "honest journalism" (whatever that paradox may mean), of humanity, of social fearlessness, for money, and for a reputation for crusading and for unbiased which, when skillfully enough qualified, is exchangeable at any bank for money . . . .

JAMES AGEE & WALKER EVANS, *LET US NOW PRAISE FAMOUS MEN* 7 (1939).

An alternative aesthetic premise is poet Laurie Sheck's visionary, and feminist, definition of beauty: "How beautiful, what is not made by fear." Laurie Sheck, *Almond Flowers*, in *IO AT NIGHT* 62 (1990).

13. These problems are brilliantly explored by Susanne Kappeler in *THE PORNOGRAPHY OF REPRESENTATION* (1986). Kappeler's argument is densely layered and formally subversive, thus difficult to summarize fairly or excerpt. Her critique, like Wolf's, centers on the colonializing egoism of Kantian aesthetic apprehension, but focusses principally on the experiential benefits of that relation to the perceiver and its political consequences to the perceived:

Under his aesthetic gaze any woman, known or unknown, turns into the 'stranger,' that object of no interest except for its capacity to stimulate the subject's feeling of life . . . .

. . . .

. . . The subject-object relation is at the core of this dominant way of seeing. The individualistic perspective of our culture has insistently focused on the necessity of this pair, denying any capacity of the human individual for collectivity and intersubjectivity. It is the fundamental axiom of the justification of inequality, domination and power.

*Id.* at 61, 212. See also DEBORAH CAMERON & ELIZABETH FRAZER, *THE LUST TO KILL: A FEMINIST INVESTIGATION OF SEXUAL MURDER* 166-70 (1987) (on the identification of freedom with actual killing of "objects" of sexual desire); for related explorations of the relationship between representation and domination, see generally LAURA MULVEY, *VISUAL AND OTHER PLEASURES* (1989) (especially her now classic *Visual Pleasures and Narrative Cinema*, in *id.* at 14, 16: "It is said that analyzing pleasure, or beauty, destroys it. That is the intention of this article."); TERESA DE LAURETIS, *TECHNOLOGIES OF GENDER: ESSAYS ON THEORY, FILM AND FICTION* (1987); Rosalind Coward, *Sexual Violence and Sexuality*, in *SEXUALITY: A READER* 307 (Feminist Review ed., 1987); Dee Dee Glass *et al.*, *Feminist Film Practice and Pleasure: A Discussion*, in *FORMATIONS OF PLEASURE* 156 (Formations Editorial Collective ed., 1983). An originating text, upon which Kappeler's argument builds, is JOHN BERGER, *WAYS OF SEEING* (1972).

assumption that “prostitution isn’t like anything else.”

I begin with a story.

### I. A TWICE TOLD TALE

My activist colleague, K.C. Reed, is a strong woman. She was raped by her father and then sexually abused by her grandfather from the age of two, and prostituted for over 20 years, first at age 13.<sup>14</sup> She is now trying to remember her life as a way of beginning to live it in her own self. She needs to remember where she has lived, whether she did or did not attend a community college sometime in the 1970’s, when and where she was in prison. This is difficult work. Her life’s witnesses—family, friends, lovers, children, even the shreds of paper we rely on to remind us who we are and who we have been—number few. Many of the men are dangerous to her. Her children are far away. One of them, a daughter, is dead. K.C. believes she was murdered by a trick. Her sons are in the care of others. K.C. hopes for them but has no direct contact with them. Other family members know little. The facts have faded. The feelings were always wrapped tightly, or foregone by numbness, or dreamed in hard drugs that can make you feel a tenderness inside. Her memory is complex, kaleidoscoped, fluid. She is smart and vivid and full of devotion. She organizes on behalf of herself and other women in prostitution for support and for help in ending prostitution.

K.C. recently wrote down what happened to her during one night in prostitution when she was 15 years old. She and two other women had run away from a state hospital. They were picked up by some men and taken to a hotel room where about 25 other men had assembled. She describes how the men talked and acted, how many men penetrated her (15), in what positions, and with what objects after the penises gave out, how the men insisted that the women have sex with each other when the men wanted to watch, how the pictures were taken, how she moved to the next gang of men, the next road. She mailed her testimony to the newsletter of a feminist anti-rape organization for publication. One of the members of the board questioned whether her piece should be printed, objecting to formal deficiencies: “It just goes on and on and there’s no point to it.” The author’s response, arguing to mimetic virtuosity, was simple. “Yes, that’s right. It went on and on and there was no point to it.”<sup>15</sup>

I have just now told you a story of my own. Mine too may seem simply

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14. K.C. Reed, *There Isn’t No Easy Way* 1-2 (July 6, 1990) (unpublished pamphlet on file with author).

15. Thankfully, with the support of other board members, Reed’s piece was ultimately published. See K.C. Reed, *A Former Prostitute Speaks*, NCASA NEWS, Fall/Winter 1990, at 24. NCASA has now adopted a policy position defining prostitution as sexual violence, requiring member agencies to afford appropriate services to women in prostitution, “including services for rape, battery, and incest.” Sandi Belote, *Seven Resolutions Passed at NCASA ’90*, NCASA NEWS, Fall/Winter 1990, at 12-13. K.C. Reed was among the women who drafted, spoke in support of, and organized for this resolution.

an overlong account of a mere episode, and a needlessly pointed description of a fleeting, embarrassing moment of inadvertence and failed attention. In substance, in other words, an isolated incident. In form, however, my story occupies the status of creation myth in modern feminism: a story about a woman telling another woman a story about herself.<sup>16</sup> As “consciousness-raising,” it is feminism’s tale of origin;<sup>17</sup> as “feminist epistemology,” it is feminism’s claim to coherence;<sup>18</sup> as “woman identification,” it is the basis of our self-understanding.<sup>19</sup> In substance, our stories, our activism and our

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16. The great Blake scholar Northrop Frye defines the narrative form of myth as the “imitation of actions at or near the conceivable limits of desire.” NORTHROP FRYE, *ANATOMY OF CRITICISM* 136 (1957). I intend Frye’s understanding of myth as aspirational ideal in this context, rather than its commonplace usage as an institutionalized structure of misplaced belief.

17. Catharine A. MacKinnon explicitly theorizes consciousness-raising in these terms. See MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 83-105 (“Consciousness-raising is the process through which the contemporary radical feminist analysis of the situation of women has been shaped and shared,” *id.* at 84). Historical accounts of contemporary feminism characteristically posit the formation of consciousness-raising groups as its constitutive event. See SARAH EVANS, *PERSONAL POLITICS* 212-32 (1980); ELIZABETH FOX-GENOVESE, *FEMINISM WITHOUT ILLUSIONS: A CRITIQUE OF INDIVIDUALISM* 13-15 (1991); MARY KING, *FREEDOM SONG* (1987); Alix Kates Schulman, *Sex and Power: Sexual Bases of Radical Feminism*, in *WOMEN: SEX AND SEXUALITY* 21, 23-27 (Catherine Stimpson & Ethel Person eds., 1980). Contemporaneous texts include Pamela Allen, *Free Space*, in *RADICAL FEMINISM* 271 (Anne Koedt, Ellen Levine, & Anita Rapone eds., 1973); Kathie Sarachild, *Consciousness-Raising: A Radical Weapon in FEMINIST REVOLUTION* 144 (1979). For a retrospective account of the impact of formal consciousness-raising on the members of one group, see ANITA SHREVE, *WOMEN TOGETHER, WOMEN ALONE: THE LEGACY OF THE CONSCIOUSNESS-RAISING MOVEMENT* (1989).

18. See, e.g., MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 106-25; Nancy Hartsock, *The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism*, in *FEMINISM AND METHODOLOGY*, 157 (Sandra Harding, ed., 1987); Theresa de Lauretis, *Feminist Studies/Critical Studies: Issues, Terms and Contexts*, in *FEMINIST STUDIES/CRITICAL STUDIES* 1 (de Lauretis ed., 1986); Dorothy Smith, *Women’s Perspective as a Radical Critique of Sociology*, in *FEMINISM & METHODOLOGY* 84 (Sandra Harding ed., 1987). Catharine MacKinnon, Robin West and Christine Littleton each emphasizes the role of consciousness-raising as a standpoint for evaluating norms informing feminist legal practice, if from varying theoretical accounts of its political intention. See MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8; Christine Littleton, *Women’s Experience and the Problem of Transition: Perspectives on Male Battering of Women*, *CHIC. LEGAL FOR.* 23 (1989); West, *Phenomenology*, *supra* note 8, at 122-29.

19. As Teresa de Lauretis puts the point, at the bottom of feminist interpretive practices is the simple commitment to “reading, speaking, and listening to one another.” De Lauretis, *supra* note 18, at 8. See also TERESA DE LAURETIS, *ALICE DOESN’T: FEMINISM, SEMIOTICS, CINEMA* (1984). Catharine MacKinnon stresses the same precondition in her analysis of consciousness-raising. See MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 84-88. See also BETTINA APTHEKER, *TAPESTRIES OF LIFE: WOMEN’S WORK, WOMEN’S CONSCIOUSNESS AND THE MEANING OF DAILY EXPERIENCE* (1989); MARILYN FRYE, *To See and Be Seen: The Politics of Reality*, in *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY* 152 (1983) AUDRE LORDE, *Eye to Eye: Black Women, Hatred, and Anger*, in *SISTER OUTSIDER* 145 (1984); JANICE RAYMOND, *A PASSION FOR FRIENDS: TOWARD A PHILOSOPHY OF FEMALE AFFECTION* (1985). Paulo Friere’s model of education in liberation among oppressed people, too, posits such a shift in authority and accountability as the necessary origination moment of revolutionary perception. “The oppressed,” Friere insists, “must be their own example in the struggle for their redemption.” PAOLO FRIERE, *PEDAGOGY OF THE OPPRESSED* 39 (Myra Bergman Ramos trans., 1972).

The implications for both theory construction and practical politics of feminism’s epistemological and ethical commitments of women *to each other* is often suppressed in feminist discussion. It is my fear that this ellipsis is in part a consequence of old-fashioned lesbophobia and fear of acknowledging the experiential significance of woman-identification explicitly before audiences which include men. I hope that we will begin to investigate the explanatory possibilities of this perspective with more attention in our work. For example, in debates on the transformative value of “empathy” in constructing norms and practices of community-building in the public sphere, and in the political consequences to women’s status of elevating the civic value of women’s capacity for empathy, much discussion revolves around the question whether women “really are” more empathic than men, and, if so, the significance of women’s oppressed political

theoretical interventions are grounded principally in women's struggles for representational authority, in both senses of the term "representational": for the authorial power over the meaning of our experience, and for the political strength to make those meanings count for something reliably real.<sup>20</sup>

Compared to the typical arsenals of masculine political firepower, these may seem diminished pursuits indeed. As a political movement, feminism has not so far sought to mobilize territorial disputes for land, or for economic markets, or for a political system *per se* properly spectacularized by military force.<sup>21</sup> Perhaps we are too intimately aware of the consequences of these

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condition to that ontological outcome. See, e.g., Symposium, *Feminist Discourse, Moral Values and the Law—A Conversation*, 34 BUFF. L. REV. 11 (1985); Toni M. Massaro, *Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?*, 87 MICH. L. REV. 2099 (1989); Deborah L. Rhode, *The Woman's Point of View*, 30 J. LEGAL EDUC. 39 (1988); Joan M. Shaughnessy, *Gilligan's Travels*, 7 LAW & INEQ. 1 (1988). Rarely addressed in these discussions is the significance of women's choice of beneficiary of that empathy, a choice which under conditions of male dominance has been channelled toward everyone and everything but other women.

I would hypothesize that the disruptive, rather than dutiful and defensive, practices of empathy and care-giving responsibility emerging from feminism do so as consequence of perceiving other women as deserving of our loving attention, and as entitled to survival, as men, children, pets, and the planet. The backbone of feminist activism is women's willingness to enact devotion to their sisters and what constitutes its distinctive "voice." Ruthann Robson's project of materializing a lesbian jurisprudence may provide further visibility to this issue. See Ruthann Robson, *Lesbian Jurisprudence?*, 8 LAW & INEQ. 443 (1990). See also Nancy Fraser, *What's Critical About Critical Theory? The Case of Habermas and Gender*, in FEMINISM AS CRITIQUE 31, 54 (Seyla Benhabib & Drucilla Cornell eds., 1987) (stressing the significance of an autonomous women's community in generating reinterpretations of women's experience). In concrete terms, the visibility and endurance of radical rape crisis services, battered women's shelters, and feminist abortion clinics, all philosophically separatist organizations, have been the most reliable, safe and militant presences of the feminist movement in the social landscape and constitute its essential institutional base. They exist because women need them, and need them this way. As these institutions come under continued political attack and struggle with economic erosion, it behooves us to develop a strong theoretical voice in their support.

20. Feminism thus tends to fuse and confound the conventional liberal democratic dichotomy between the protection of individual rights and the fostering of majoritarian representation. In liberal thought, these interests are typically conceived both as distinct and antagonistic, the former to be barricaded from the overreaching of the latter. Women's political situation, in contrast, presents the un contemplated conjunction of the representational "silencing" of individual women as part and parcel of the political subordination of a numerical demographic majority. Thus, Justice Scalia's confusion as to whether abortion is an "individual" right fastidiously to be protected by the courts, or a "political" issue to be debated through the franchise. See *Webster v. Reproductive Health Service*, 492 U.S. 490, 502 (1989) (Scalia, J., dissenting). A similar raggedness is also expressed in the embarrassment I hear articulated by liberal professors on the applicability of the *Carolene Products* heightened scrutiny test to women, see *United States v. Carolene Products Co.*, 304 U.S. 144, 152 n.4 (1938). The phrase "discrete and insular minority" scarcely seems readily descriptive of a majority seemingly wholly dispersed socially among men. *Id.*

21. An important exception is the struggle of Native American women for tribal sovereignty, conducted simultaneously with work for sex equality within tribal communities. See PAULA GUNN ALLEN, *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS* 189-193 (1986) (struggle for tribal survival continuous with and inextricable from combatting violence against Indian women by Indian men); MARY CROW DOG & RICHARD ERDOES, *LAKOTA WOMAN* 242-60 (1990) (describing Leonard Crow Dog's affirmation of women's spiritual participation in the Lakota tradition as a result of Mary Crow Dog's intervention); Kate Shanley, *Thoughts on Indian Feminism*, in A GATHERING OF SPIRIT: A COLLECTION BY NORTH AMERICAN INDIAN WOMEN 213, 215 (Beth Brant ed., 1988) (discussing the significance of tribal sovereignty to feminism for Indian women). The development of strategies for the empowerment of Indian women in fashioning the terms of tribal sovereignty seems the urgent task for feminism. This thesis seems to me to be the import of Catharine MacKinnon's essay on the subject. See CATHARINE A. MACKINNON, *Whose Culture? A Case Note on Martinez v. Santa Clara Pueblo*, in FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 63 (1987).

Thus, while I am grateful for Robert A. Williams Jr.'s recent article on the necessity of situating

displays of bravado on women and children and other politically dependent people, who never seem to emerge substantially empowered upon the successful *coup d'état*. As Michele Wallace puts the point, this is no accident; "it comes automatically to nationalist struggles to devalue the contributions of women, as well as gays or anybody else who doesn't fit the profile of the noble warrior or the elder statesman."<sup>22</sup> Perhaps too, we suffer from a failure of expectation. Women's structural homelessness does not readily yield a felt entitlement to territory. We have little money, much less markets to preserve or control. We have no army, or police force, or guerrilla squads to act in our behalf.<sup>23</sup> For better or worse, feminism's consistent strategy has been to seek to *explain* ourselves; our primary goal to be *understood* as deserving of a respected human life, whatever "human" comes to mean once women are considered instances of the species.<sup>24</sup>

Yet, despite these shared commitments, K.C. Reed told a story that another woman, a feminist, could not hear. She heard words, "on and on," but not a proper "story." She heard some representational version of nagging, incoherencies within the conceptual grid, the linguistic equivalent of insanity. These are the charges we conventionally associate with the suppression of women's voices within masculinist systems of meaning: less that we do not or cannot *talk* (although women's occupation of verbal space remains a controversial entitlement), than that we do not make *sense* (a conclusion further weakening our claim to verbal space).<sup>25</sup> If there exists a diagnostic consensus

analyses of Indian sexual politics within their originating cultural contexts, it is not clear to me how his approach concretely empowers Indian women to speak or act for themselves with respect to tribal sovereignty, or otherwise. Robert A. Williams, Jr., *Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context*, 24 GA. L. REV. 1019 (1990). Perhaps that issue was simply beyond the scope of his essay as he envisioned his immediate project, differentiating the expressive conventions of Indian gender relations from those characteristic of colonial white patriarchy. I am sure he is aware that such arguments, standing alone, tend to merge in theme with a whole history of cultural defenses, advanced by men, to silence feminist objections to culturally specific misogynist practices from *suttee* to clitoridectomy to marital rape. I hope, in short, that he will ultimately address the question how the cultural specificity of Indian misogyny can inform the specificity of an Indian feminism, and along the way address the problematics of his "speaking for" Indian women. In that endeavor, he may benefit from a rereading of MacKinnon's essay cited above, which takes these latter issues as central. William's dismissal of MacKinnon's essay as "ultimately crippled," seems to turn on his own failure to take these questions seriously. See Williams, *id.*, at 1023 n.9, quoting Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 594 (1990); see also e. christi cunningham, *Unmaddening: A Response to Angela Harris*, 4 YALE J.L. & FEMINISM 155, 161-63 (1991).

22. MICHELE WALLACE, *Introduction: How I Saw It Then, How I See It Now*, in BLACK MACHO AND THE MYTH OF THE SUPERWOMAN XX (1990 ed., ).

23. Even *Thelma and Louise* is, after all, only a movie, right?

24. My language here echoes Richard Rorty's on the import of Catharine MacKinnon's analysis of the status of women under male dominance: "MacKinnon's central point, as I read her, is that 'a woman' is not yet the name of a way of being human—not yet the name of a moral identity, but, at most, the name of a disability." Richard Rorty, *Feminism and Pragmatism*, 30 MICH. Q. REV. 231, 234 (1991).

25. Mary Daly put the point early, and succinctly, in these terms: "[I]t is necessary to grasp the fundamental fact that women have had the power of naming stolen from us." MARY DALY, *BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN'S LIBERATION* 8 (1974). See also Ruth Ginzberg, *Uncovering Gynocentric Science*, 2 HYPATIA 89 (1987); DOROTHY SMITH, *THE CONCEPTUAL PRACTICES OF POWER* (1990); Beverly Thiele, *Vanishing Acts in Social and Political Thought: Tricks of the Trade*, in FEMINIST CHALLENGES: SOCIAL AND POLITICAL THEORY 30 (Carole Pateman & Elizabeth Gross eds.,

point among feminist theorists on any issue, I would suggest this is the one, for it bridges gaps as wide as those among Carol Gilligan, whose argument with Kohlberg is this one,<sup>26</sup> Catharine MacKinnon, whose argument with masculinist epistemology is this one,<sup>27</sup> and Wendy Williams, whose argument with stereotypes of women as “irrational” is this one.<sup>28</sup> The editor is a fine woman, clear-headed, smart, dedicated; she is neither cruel nor insensitive. But what K.C. had to say about one night of prostitution didn't yield meaning to her on its own terms.

I am compelled by this story, and wanted to tell it to you, for a number of reasons in addition to witnessing to the anguish of my friend. I am haunted by the fear that this story is less anecdote than synecdoche, characteristic of a profound incomprehensibility of prostitution to feminism. Certainly I need search neither long nor hard to discover myself in K.C.'s editor. For a long time in my life, not one woman ever talked to me about being prostituted. That was a deafening silence, given that during the same period many women spoke to me about rapes, incest, abuse-related substance dependency, and beatings, and given that, as Catharine MacKinnon reports, some 20% of women engage in prostitution at some time in their lives.<sup>29</sup> Then, a 20% estimate would have seemed impossibly high. Now, it seems low.<sup>30</sup> It seems plain to me now that, however trustworthy I seemed as I listened respectfully to what women had to say about other violence and shame and fear in their lives, they did not feel safe talking about prostitution.<sup>31</sup> This is especially curious since a few of the women in my life at the time *were* prostituted. We just never talked about “that.”

Seven or eight years ago, after I had worked visibly with Catharine MacKinnon, Andrea Dworkin, and many other non-conforming women on the Minneapolis anti-pornography ordinance, something shifted. Some women with whom I worked closely and whom I love told me of their histories in prostitution, carefully and from a distance. Sometimes in writing, sometimes

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1986); and sources cited *supra* note 18. No summary of the conclusions of these investigations surpasses Andrea Dworkin's: “This power of naming enables men to define experience, to articulate boundaries and values, to designate each thing its realm and qualities, to determine what can and cannot be expressed, to control perception itself.” ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 17 (1983).

26. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982) (arguing that conventional measures of ethical development render incoherent forms of moral reasoning characteristic of girls).

27. See MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 106-25 (analyzing the impact of objectivist knowledge claims on women, rendering women “known” but never “knowing”).

28. See Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts and Feminism*, 7 *WOMEN'S RTS. L. REP.* 175 (1982) (women's categorical exclusion from participation in public life commonly justified by our “tribalist,” non-disinterested commitments within a universalized public order).

29. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 143.

30. Robin West and Lucinda Finley similarly describe the statistical bewilderment gap between men and women in the measure of credence given to sexual assault prevalence rates. See West, *Phenomenology*, *supra* note 8, at 96; Lucinda Finley, *The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified*, 82 *NW. U.L. REV.* 352, 358-359 (1988).

31. One possible explanation is that the women with histories in prostitution were off talking with all the lesbians I didn't meet for a while, either. But I doubt it.

by unexpected announcement in a public place, sometimes as if they had already told me and nothing more needed to be said. Even approached this obliquely, I had to force myself to listen; they knew it and I knew it. It was a brutal time, much more for them than for me. I was part of the brutality. I didn't know how to hear, and I resisted learning. My friends, usually composed and compressed in expression, seemed disoriented, too. Uncertain, it appeared, of what to say, how to say it, why, even, to continue to speak. "On and on." Usually, the first conversation was about the johns, about the men. Tucked behind a corner, in the next conversation perhaps, a slightly different theme: how she betrayed another woman as a way to get out, or to placate a pimp, or to keep a john quiet. Sometimes, too, a resolve not to give over her own daughter to be prostituted as she had been.

Now I believe I hear better. More women talk to me. I work on issues of prostitution in the feminist movement. Women call. I feel, perhaps wrongly, that when the woman begins to speak I already know some of it: about the tricks, the drugs, the cops, the welfare, how things come to be after 3 weeks, after 3 months, after 3 years, after 30 years. In these conversations I hear a quality of uncontained contempt for men, for johns in particular, that is new to me in its conviction. Sometimes I think to ask about the other women, the renounced women, if she seems to want to talk about it. There is great grief there. I wonder if *she* is the other woman, to me: the one I will renounce. I pray that it isn't true, but know it has been. "There is no point to it."

I begin, too, to wonder if these women are telling me something about all the *other* "other" women, the women who haven't been prostituted, and the stories we tell. These days, we more readily recount to each other all kinds of stories about how we have lived our women's lives. Those stories, too, now seem familiar, yet they are shapelier than the prostitution stories, more formally precise, more modulated, tuned to the finer Aristotelian graces of beginning, middle and end. I wonder where the ease comes from, where the "form" comes from. I wonder if it comes from omission, elliding pieces that fall tangentially, pointlessly, out of the story, or which did not feel like "experiences" which could be given shape. I wonder if the missing pieces are *about* prostitution, somehow. Could we be suppressing stories about johns, or about contempt, or about money? Are we suppressing the stories in which we renounce a woman more vulnerable than ourselves, in our own defense? Do our stories *participate* in prostitution, operating as rehearsals for telling men the stories they want to hear from us, so that we can use them as best we can while we renounce prostitutes as part of the bargain? I am not sure, any more, about many tales I believed in once. What is the point to *them*?

One of feminism's stories, entrenched deeply in the history and political landscape of the contemporary movement, is that prostitution is indeed not "like anything else." The theme was often sounded in the early movement that prostitution is *only* a story, a representational overlay masking and justifying

real abuse and sex-based inequality suffered by (other?) women. "Prostitution" was conceived as a symbol, a groundless stereotype, a cancerous, run-amok ideological construct; "the prostitute" was the embodied cultural sign representing the sum of deprivations suffered by "all women" (real women?). For Jackie MacMillian, "[p]rostitution is an important issue for feminists because prostitutes [sic] most clearly express the cultural valuation and image of women as primarily sexual beings;"<sup>32</sup> for Susan Brownmiller, prostitution represents a "concept," a component of a "psychology," contributing to and rendering invisible male violence against women, especially rape.<sup>33</sup> As Deborah Rhode has recently pointed out, these accounts share less a concern with the pervasiveness of prostitution, or with its effect on or meaning to women involved directly in the practice, than with its "ideological significance;" specifically, the significance of our "cultural understandings about the sale of sexuality."<sup>34</sup> Patricia Hill Collins emphasizes the same theme in her analysis of the import of prostitution for Black women. With Angela Davis, Collins argues that "the myth of the Black prostitute" constitutes an ideological vehicle and justification for the social control of Black women, legitimizing rape and other sexual violence against Black women.<sup>35</sup>

The problem of prostitution to feminist reform, in consequence, comes to be posed as the problem the *idea* of prostitution poses for women's authority to tell our own, authentic stories of our own experiences. This form of analysis similarly inspires Margaret Radin's treatment of prostitution in her analysis proposing a pragmatic approach to sexual commodification. She concedes that prostitution likely entails a hard and dangerous life for women, yet for many women provides their only realistic means of survival.<sup>36</sup> In her view, women in prostitution thus confront a profound double-bind, for they are placed at serious risk by engaging in prostitution, while materially powerless to leave it. She argues that neither "pro-commodification" legal philosophies, nor "anti-

32. Jackie MacMillian, *Prostitution as Sexual Politics*, 4 QUEST (No. 1, 1977) at 41.

33. Brownmiller elaborates:

[M]y horror at the idea of legalized prostitution is not that it institutionalizes a female service that should not be denied the civilized male. Perpetuation of the concept that the "powerful male impulse" must be satisfied with immediacy by a co-operative class of women, set aside and licensed for the purpose, is part and parcel of the mass psychology of rape.

SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 392 (1975). Exceptions to this approach include TI-GRACE ATKINSON, *AMAZON ODYSSEY* 117-130 (1974); BARRY, *supra* note 10; INTERNATIONAL FEMINISM: NETWORKING AGAINST SEXUAL SLAVERY (Kathleen Barry, Charlotte Bunch, & Shirley Castley eds., 1979); KATE MILLETT, *THE PROSTITUTION PAPERS* (1974); Ellen Strong, *The Hooker*, in *SISTERHOOD IS POWERFUL: AN ANTHOLOGY OF WRITINGS FROM THE WOMEN'S LIBERATION MOVEMENT* 289 (Robin Morgan ed., 1970). Robin Morgan, in her smart and poorly read 1974 essay, challenged the distinction between "other women" and prostitutes by arguing to the "whorification" of all women in the practice of pornographic sexuality. ROBIN MORGAN, *Theory and Practice: Pornography and Rape*, in *GOING TOO FAR: THE PERSONAL CHRONICLE OF A FEMINIST* 163, 167-68 (1978).

34. DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 257 (1989).

35. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 177 (1991); *see also* ANGELA DAVIS, *WOMEN, RACE AND CLASS* (1981).

36. Margaret J. Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849, 1856, 1921-25 (1987).

commodification” positions adequately address this difficulty. The former ignore the violence; the latter, the need. Ultimately, however, Professor Radin counsels us to ignore both, so long as the “cultural discourse” of the problem of sexual commodification remains confined to prostitution.<sup>37</sup> Concluding that that ideology is unlikely to “trickle up” over its present discursive sea wall and contagiously threaten the comfort of other women, Professor Radin leaves prostitutes to fend as best they can, with all sympathy and good wishes for the future.

At least for women who are not publicly identified as “prostitutes,” this understanding of prostitution as a false and dangerous idea nevertheless seems well enough supported in the experience of many women, despite Professor Radin’s confidence in its effective containment. Especially on occasions of sexually exploitative and violent episodes, the characterization of women as “sluts” by assaultive men runs like a sturdy thread through women’s accounts of sexual victimization. The epithet is apparently intended to humiliate, to eroticize, and to satisfy an urge for self-justification. In contemporary empirical research, the apparent irrationality of the charge threatens to render its content invisible, abstracted away in subsuming conclusions. The empirical preference too, it seems, is to perceive the allegation as “just a story,” not a concrete explanatory or descriptive datum. Yet the charge is near-universally to be found, in the particular, if untheorized, event.

For example, investigators of wife beating commonly recite “jealousy” as an asserted motivation for men to beat and torture women with whom they are intimate.<sup>38</sup> Submerged in this conclusion are the allegations of prostitution which repeatedly emerge as the stated origin of that jealousy. In one collection of thirty-three women’s accounts of their experience of being battered, nearly one third had been accused of prostitution or labelled as “whores” during the course of beatings and rapes. Exemplary are the following:

After my mom died we went East for the funeral . . . At the funeral home everyone was hugging and kissing. Gerry went off mad and came back drunk, saying, “You want your uncle’s in you.” He grabs me and calls me a slut. “I’m going to tell your uncles you’re out here waiting with your legs wide open.”<sup>39</sup>

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37. *Id.* at 1922-23 (analyzing whether the “domino effect” of commodified sexuality “might make the ideal of nonmonetized sharing impossible”).

38. *See, e.g.*, LENORE WALKER, *THE BATTERED WOMAN* 114-15 (1979) (“Sexual jealousy is almost universally present in the battering relationship.”); DEL MARTIN, *BATTERED WIVES* 58-61 (1976); ERIN PIZZEY, *SCREAM QUIETLY OR THE NEIGHBORS WILL HEAR* 85 (1974).

39. GINA NICARTHY, *THE ONES WHO GOT AWAY: WOMEN WHO LEFT ABUSIVE PARTNERS* 290 (1987). Where prostitution is not explicitly alluded to by batterers, these accounts universally recite accusations of promiscuity and secret affairs as reasons given for the battery. Two battered mothers report that their husbands beat them, doubting the children were theirs. *Id.* at 79 (“Lou became pregnant and Barry threatened to ‘beat it out of her’ insisting the baby wasn’t his.”), 96 (“You dirty whore, why don’t you go drag men in off the street? Jay probably isn’t even my son.”).

He also humiliated her by telling her that other men thought she was a prostitute, and occasionally they did make that assumption and offered Matthew money for her sexual services . . . “Slowly,” she says, “everything edged away from me.”<sup>40</sup>

Similar recitations figure obsessively in prosecutions for men’s murders of wives and girlfriends. As one defendant put the point, the victim was “just a slut” and he “had to kill her.”<sup>41</sup> The same theme arises repeatedly in divorce actions, commonly where the husband beat and tortured his wife during the course of the marriage, and explains his behavior by reference to her whorish behavior.<sup>42</sup>

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40. *Id.* at 120. These accounts corroborate Andrea Dworkin’s conclusion that:

[T]he reality is that you can do everything in the world to be a good woman in this society, but when you are in the private house with the private husband whom you’ve attracted through your conformity to being what is on the surface a good woman, when that man starts hitting you, he hits you because you are bad.

Andrea Dworkin, *Woman-Hating Right and Left*, in *THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM* *supra* note 3, at 28, 33 (1990). Margo St. James, the founder of COYOTE, a pro-prostitution organization, on this point uncharacteristically agrees with Dworkin. “[W]hen a man slugs his wife, he precedes the abuse with, ‘You slut! You whore!’” Margo St. James, (*Comment*) *From the Floor*, in *GOOD GIRLS/BAD GIRLS: FEMINISM AND SEX TRADE WORKERS FACE TO FACE* 114, 130 (Laurie Bell ed., 1987).

41. *People v. Carroll*, 180 Cal. Rptr. 327 (Cal. Ct. App. 1983). *See also* *People v. District Court*, 595 P.2d 1945 (Colo. 1979) (defendant, who lived with pregnant victim, commented during an argument with her that he was going to “smash her face in.” He shouted at her, calling her a “bitch, whore, and a slut,” while he beat her to death); *People v. Bennett*, 129 Cal. Rptr. 679, 682 (Cal. Ct. App. 1976) (defendant convicted of first-degree murder of his wife; he had told psychiatrist that he hated her; that she shouldn’t live, “that she was a bad housekeeper, a slut, and an immoral woman;” that such “a terrible person ought not to live” and “ought not to be allowed to raise his child;” that his wife and child would be better off if his wife were dead); *People v. Cooley*, 27 Cal. Rptr. 543 (Cal. Ct. App. 1963) (defendant convicted of first-degree murder in the beating and torture death of his wife. Over 15 years of marriage, defendant had inflicted numerous severe beatings on her, resulting in many broken bones, choked her, threatened to kill her and the children, accused her of having extramarital affairs with two homosexual men, burned her nipples with cigarettes while she was semi-conscious, ripped out clumps of her hair, told his daughter that her mother was a “whore” and a “slut”, and kicked her mother in the stomach, saying to the daughter, “See, she only cries when you hit her, she doesn’t care what’s happening”); *People v. Hulsing*, 825 P.2d 1027, 1032 (Colo. App. 1991) (husband convicted of murdering his wife had complained to a coworker beforehand that “she was screwing around on him,” and that “she’s a slut, a fucking slut”); *State v. Pruitt*, 506 N.E.2d 696 (Ill. App. 1987) (defendant convicted of murder after finding wife in partial state of undress in parked car with the victim; wife testified defendant “grabbed me by the hair of the head and threw me on the ground . . . calling me all kinds of names like slut and whore”); *State v. Underwood*, 1988 WL 37058 (Ohio App.) (estranged husband convicted of murdering his wife; he testified that he was jealous and angry at the thought of her seeing other men, and after arrest had told police, “I surely am a manly son of a bitch doing what I did . . . that slut just ruined my life, didn’t she?”); *State v. Smith*, 791 P.2d 836 (Or. 1990) (defendant convicted of aggravated felony-murder of his wife; court found that throughout his ten-year marriage to the victim, defendant beat her, tortured her, and threatened to kill her, referring to her as a “whore” and a “slut,” and repeatedly promised to tie her up and leave her somewhere to die); *State v. Unsworth*, 402 P.2d 507 (Or. 1965) (defendant convicted of second-degree murder in the shooting death of a friend; a deputy testified that while he was at defendant’s cabin, defendant called his wife a “dirty son of a bitch and a slut,” and said, “You’re the one that I intended to kill anyway”). On and on.

42. *Parker v. Parker*, 519 So.2d 1232 (Miss. 1988) (husband had a vision in which the Lord told him that if his wife went out on a certain weekend, her face “would not be fit to be seen anymore on the earth . . . ,” and that when he saw her dancing with another man at a birthday party, he shoved her into their car, bruising her leg in the process, calling her a “sorry low-down slut”); *In re the Marriage of Ruby Elizabeth Walls*, 743 S.W.2d 137 (Mo. Ct. App. 1988) (wife testified that defendant struck and kicked

These claims of punitive entitlement may extend beyond the situational to the structural. As women gain increased economic importance within families, it appears to at least one sociological researcher that the dynamics of battery increasingly mirror the familiar violence and economic exploitation typical of pimping. Ann Jones explains:

[I] meet more and more battered women—severely battered women and women who have struck back—who were not being supported by the men who were their abusers. Rather, the economic arrangement is often the other way around: the man lives off the woman, off her wages or her welfare check or off the proceeds of her prostitution. He dominates and exploits her economically, just as he does physically and sexually. The parties may be husband and wife or a cohabiting couple, but the arrangement is the classic one of pimp and prostitute.<sup>43</sup>

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her on numerous occasions, called her a “fuckin’ slut” and a whore, and threatened to “. . . just tell your mother you’re sick and I’ll tie you up in the basement and just kill you a little each day”); Rollyson v. Rollyson, 294 S.E.2d 131 (W. Va. 1982) (wife testified that her husband had struck her on several occasions during their marriage, frequently called her a slut and a whore, accused her of “slutting around,” and threatened her on several occasions, saying if he “caught her down on the street slutting around with those sluts and whores that they would be picking her up off the street, dead;” husband corroborated this testimony); Stillwell v. Stillwell, 357 So.2d 355 (Ala. Civ. App. 1978) (wife testified as to frequent screaming battles where he called her such names as “whore,” “slut,” “bitch,” “motherfucker,” “stupid, dumb-assed woman;” on several occasions searching for her around town with a gun); Ross v. Ross, 235 S.E.2d 405 (N.C. Ct. App. 1977) (defendant frequently assaulted and beat, kicked, and punched wife while in violent rages, cursing her calling her a “whore,” “slut,” and a “bitch”); Mezzoff v. Mezzoff, 307 N.E.2d 857 (Mass. Ct. App. 1974) (husband called petitioner a “dirty rotten slut” in front of their children, threw an object at her, and told her to go live in a slum); Deahl v. Deahl, 300 N.E.2d 497 (Ill. App. Ct. 1973) (wife testified that husband beat her up; that he regularly called her a bitch and a slut in front of others; that on one occasion he asked her if she had made any money, and when she replied she hadn’t, said, “You could have went and sold yourself and made some money that way; that’s all you’re good for;” and with all the children present, told her that he didn’t think the kids were his and that she was a slut like her mother); D.J.H. v. J.D.S., 481 S.W.2d 539 (Mo. Ct. App. 1972) (man threatened to kill himself and his daughters, tried to burn down the house with the daughters in it, and told his ex-wife’s present father-in-law, “I’m going to kill them damn kids to get even with that slut”); Carpenter v. Carpenter, 262 A.2d 564 (Md. Ct. App. 1970) (husband beat wife “many times” and raped her; he suggested she have sexual relations with “some of the important people” so that he could “get a promotion;” he asked her to be a prostitute and he called her a “slut” and a “pig”).

43. Ann Jones, *Family Matters*, in *THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM*, *supra* note 3, at 61, 63.

Evelina Giobbe explains how some of the sexual dynamics of prostitution are extended within marriage:

The line between wife and prostitute—madonna and whore—has become increasingly blurred . . . With the invasion of the home by pornographic cable programs and video cassettes, the “good wife” has become equated with the “good whore,” as more and more women are pressured into emulating the scenes in pornography. In this context, the wife is pressured, seduced, and/or forced into the role of prostitute while her husband adopts the role of the “john.” Contests promoted by pornographers, like Hustler’s “Beaver Hunt” and pornographic computer bulletin boards like High Society’s “Sex-Tex,” have resulted in a proliferation of homemade pornography. In this situation the wife is compelled to assume the role of “porn queen” when her husband adopts the role of the pornographer. The growth of “swingers’ magazines” and “wife-swapping clubs” have allowed men to assume simultaneously the role of john and pimp, paying for the use of another man’s partner by making his wife available in exchange. The last barrier separating the roles of wife and prostitute is smashed when men engineer sexual encounters which include their wives.

Since, at the same time, contemporary analyses of pimping practices frequently discern parallels between those arrangements and those characteristic of the traditional family, it becomes increasingly difficult to discern who is mimicking whom.<sup>44</sup>

Nor is the charge of prostitution limited to errant wives. While again little accounted for theoretically, it is by now a sad therapeutic commonplace that female victims of incest tend to identify as "prostitutes" as adult women, and to feel irrevocably separated from other, "normal" women.<sup>45</sup> In her comprehensive study of father-daughter incest, Judith Herman details the quality of that self-perceived difference: "Many women felt that what set them apart from others was their own evilness. With depressing regularity, these women referred to themselves as bitches, witches and whores."<sup>46</sup> Child sexual abuse researchers David Finkelhor and Angela Browne's analysis of the "traumatic sexualization" consequent to childhood sexual abuse suggests a social dynamic underlying this self-identification. "Traumatic sexualization . . . occurs through the exchange of affection, attention, privileges, and gifts for sexual behavior, so that a child learns sexual behavior as a strategy for manipulating [sic] others to get his or her other developmentally appropriate needs met."<sup>47</sup> Abusers may directly label their victims as "sluts" to enforce the girls' silence, to explain their compliance, and to reinforce their sense of complicity.<sup>48</sup> Those who learn of the abuse may make similar predictions,

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Giobbe, *supra* note 3, at 67, 76-77. Giobbe explains that "Sex-Tex" is a computer service of HIGH SOCIETY magazine which "provides an unregulated market through which pornographic material can be distributed." *Id.* at 77. "Beaver Hunt" is a regular feature in HUSTLER magazine which elicits and publishes full genitalia photographs of women purported to be a reader's girlfriend or wife. Giobbe further quotes a survivor of prostitution describing such experiences in detail:

A lot of men enjoyed bringing me in as third party with their wives. Usually what would end up happening is we'd watch some pornographic film, say, and then he'd say, "All right, I want you to do that to my wife." Now, in these instances, I felt the wife was the victim, and I was there to hurt the wife. I felt there was a real power play there, where the man was obviously saying to the wife, "If you don't do this, I'm going to leave you." I mean there were great overtones of manipulation and coercion.

*Id.* at 77.

44. The most thorough of these analyses is Kim Romanesko & Eleanor Miller, *The Second Step in Double Jeopardy: Appropriating the Labor of Female Street Hustlers*, 35 CRIME & DELINQUENCY 109 (1989). See also Hanna Olsen, *The Women, The Love, and The Power*, in INTERNATIONAL FEMINISM, *supra* note 33, at 73 (analyzing the parallels between the power dynamics of "seasoning" a woman for prostitution and those common to ordinary romantic seduction).

45. JUDITH HERMAN, FATHER-DAUGHTER INCEST 96-98 (1981); DIANA RUSSELL, THE SECRET TRAUMA: INCEST IN THE LIVES OF GIRLS AND WOMEN 167-170 (1986). David Finkelhor and Angela Browne's conceptual model of the distinctive trauma of childhood sexual abuse, entailing simultaneous infliction of traumatic sexualization, stigmatization, betrayal, and enforcement of the child's belief in her own powerlessness, has been influential in providing a framework for understanding these symptoms. See David Finkelhor & Angela Browne, *Initial and Long-Term Effects: A Conceptual Framework*, in A SOURCEBOOK ON CHILD SEXUAL ABUSE 180 (David Finkelhor ed., 1986). See also David Finkelhor, *Early and Long-Term Effects of Child Sexual Abuse: An Update*, 21 PROF. PSYCH. RES. & PRAC. 325 (1990).

46. HERMAN, *supra* note 45, at 97. Herman quotes one survivor describing herself as "nothing but a dressed up little whore." *Id.* Some girls are prostituted by their own families. See *infra* note 128 and accompanying text.

47. Finkelhor & Browne, *supra* note 45, at 181.

48. See *Lazarowicz v. State*, 561 So.2d 392 (Fla. 3d Dist. Ct. App. 1990) (new trial ordered for

excusing the father's behavior and furnishing justification for further punishment of the girl.<sup>49</sup> Girls may engage in bargains with their fathers for food, clothing, or some regulation of their father's sexual access to them.<sup>50</sup> Certainly a girl's self-understanding as a "prostitute" converges with that of the juvenile justice system, should she become enmeshed with that institution as a consequence of engaging in non-conforming behavior. As Meda Chesney-Lind has pointed out, "delinquency" in girls is commonly concluded to originate in "sexual deviance," seamlessly assimilated to a diagnosis of prostitution or prostitution-prone behavior.<sup>51</sup>

Similar patterns are discernible in less intimate relationships such as sexual harassment and rape. In substance, as Catharine A. MacKinnon points out, "a great many instances of sexual harassment in essence amount to solicitation for prostitution."<sup>52</sup> Some years later the Eighth Circuit Court of Appeal made

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defendant convicted of sexual battery of his seventeen-year-old daughter. In court, the daughter testified that her father forced her to engage in sexual intercourse and fellatio with him in 1985. When he began to suspect that she was having sexual relations with her boyfriend, he "punched me, knocked my head into the wall, threw me around the room, took me into the bedroom and laid me on the bed and punched me in the face, kicked me, and gave me a black eye, put bruises over other eye," called her a "slut" and a "whore," and every time he walked by her he would punch her in the face); *Commonwealth v. LaSota*, 557 N.E.2d 34 (Mass. App. Ct. 1990) (defendant denied allegations by his sixteen-year-old daughter that he had sexually abused her continuously since she was in kindergarten, and claimed that when he discovered pornographic photographs of her in her closet, he slapped her and called her a "slut"); *State v. Moore*, 690 S.W.2d 453 (Mo. Ct. App. 1985) (defendant acquitted on incest charge but convicted of rape of his daughter, when she was thirteen and fourteen years old. Victim testified that defendant warned her not to tell anyone, or she would be called a "slut"); *In re B.B., Juvenile*, 584 A.2d 1126 (Vt. 1990) (twelve-year-old child, who was sent to live with her aunt because of escalated family tension, and who subsequently refused to return home, told SRS caseworker that her father "had mentally and physically abused her . . . [h]e's called her a slut, he's called her a lazy fucking bitch . . . he's kicked her"); *Janke v. State*, 692 P.2d 911 (Wy. 1984) (where defendant was convicted of aiding and abetting voluntary manslaughter of her abusive father, the record clearly showed history of abuse and humiliation by father including sexual assaults, severe beatings twice a week beginning at age four, and calling her a slut); *Reed*, *supra* note 14 (after being raped by her stepfather, at age nine, "He ordered me to take a shower and keep my mouth shut. Laughing, he said no one would believe a whore anyway.").

49. Herman reports that among the punitive responses of mothers to daughters' reports of abuse by fathers is sending their daughters away from home. One woman reported: "[My mother] was afraid I would become a lesbian or a whore. So she put me in a mental hospital. It was a good excuse to get rid of me." HERMAN, *supra* note 45, at 90. A woman who was the victim of attempted rape by her stepsister's husband was told that her stepmother "predicted she would be a prostitute." Her stepmother believed that the attempted rape was instead evidence of an "affair" between them. NICARTHY, *supra* note 39, at 267. *See also id.* at 75 ("My mother would keep track of my periods in a notebook . . . [E]ach time I went forty days or so she would think I was pregnant and would say things like 'you slut, who did you sleep with?'").

50. *See, e.g., LOUISE ARMSTRONG, KISS DADDY GOODNIGHT* 74, 75 (1978) (father agreed that he wouldn't touch her anymore, providing she went along with any decisions he made whenever she asked for anything; daughter could stay out until 8:30 at the Homecoming Parade if she had sex with father); KATHLEEN BRADY, *FATHER'S DAYS* 87 (1979) (among many examples of "bargaining" between father and daughter, Brady reports that when she wanted to get a job at age 16, her father agreed to sign her application form, but only if she would "be nicer" to him, threatening to make her quit if she didn't "keep her end").

51. *See* Meda Chesney-Lind, *Girl's Crime and Women's Place: Toward a Feminist Model of Female Delinquency*, 35 *CRIME & DELINQ.* 5 (1989); Meda Chesney-Lind, *Judicial Enforcement of the Female Sex Role: The Family Court and the Female Delinquent*, 8 *ISSUES IN CRIMINOLOGY* 51 (1973); Meda Chesney-Lind, *Rediscovering Lilith: Misogyny and the "New" Female Criminal*, in *THE FEMALE OFFENDER* 117-21 (Curt Griffiths & Margit Nance eds., 1980).

52. CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 159 (1979); *see also* Dierdre Silverman, *Sexual Harassment: Working Women's Dilemma*, 3 *QUEST* 15, 15-17 (no. 3, 1976/77) (links sexual harassment with prostitution, based on her "contention

the same connection, observing that “[a] woman invited to trade herself for a job is in effect being asked to become a prostitute.”<sup>53</sup> In hostile work environment claims, the presumption of a working woman’s ardent sexual availability to her co-workers, inferred either from her presence in the “wrong” workplace (that is, in male dominated trades and professions, where she can make a living wage), or from the assumption that sexual availability *is* her work (that is, in female dominated jobs, where she cannot), echoes throughout the reported cases.<sup>54</sup> The same presumption of a woman’s exploitative “sluttish” sexual enticement of a rapist, summed up neatly by one defendant’s view that “all women were whores and sluts and they all deserved what [the victim] was getting,”<sup>55</sup> persists *ad nauseum*.<sup>56</sup> In discussing this

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that the paradigm for interaction between men and women in our society is that of the prostitute and her customer.” *Id.* at 15); LYNN FARLEY, *SEXUAL SHAKEDOWN* (1978) (detailing social consequence of sexual harassment as prostitution in nineteenth and early twentieth century America); Mary Bularzik, *Sexual Harassment at the Workplace: Historical Notes*, 12 *RADICAL AM.* 25 (1978) (common condition of working women in nineteenth century America included both prostitution and sexual harassment).

53. *Lucas v. Brown & Root, Inc.*, 736 F.2d 1202 (8th Cir. 1984) (sexual harassment violates public policy against prostitution, abrogating the “at will” employment doctrine as a defense to the discharge of a woman who refused sex with her foreman); *see also* Kim Vance, *Wrongful Discharge—Sexual Harassment Equated With Prostitution to Find Public Policy Exception*, 8 *U. ARK. LITTLE ROCK L.J.* 49 (1985/86).

54. *See, e.g.*, *Waltman v. International Paper Co.*, 875 F. 2d 468 (5th Cir. 1989) (pornographic graffiti on walls; “Sue is a whore” written on elevators; one employee told plaintiff he would cut her breast off and shove it down her throat, then suspended her over a stairwell more than thirty feet from the floor); *Hansel v. Public Service Co. of Colorado*, 778 F. Supp. 1126 (D. Colo. 1991) (harrasment included graffiti like “VH sucks all cocks,” rape, co-worker facing her with a hangman’s noose and suggesting she commit suicide; court believed conduct designed to drive her out to preserve an all-male plant); *Jew v. Univ. of Iowa*, 749 F. Supp. 946 (S.D. Iowa 1990) (woman professor called “slut” and “whore” by another faculty member in front of students; another faculty member referred to her as a “chink”; on-going rumors that she “slept her way to the top”); *Zabkowicz v. West Bend Co.*, 589 F. Supp. 780 (E.D. Wisc. 1984) (woman warehouse worker called, among other names, “slut”; pornographic pictures posted with her initials written on them); *Travi-Care Corp. v. Hospital and Institutional Worker’s Union*, 211 Cal. Rptr. 550 (Cal. Ct. App. 1985) (union appealed provision of preliminary injunction prohibiting picketers from intimidating other workers and visitors into staying away from the hospital; picketers shouted terms such as “bitch,” “cocksucker,” “cunt,” “whore” at female employees attempting to enter the hospital, and yelled obscene accusations at one female employee, including allusions to sexual acts between the employee and her daughter, her supervisor, and the security guards); *Continental Can Co. v. State*, 297 N.W.2d 241 (Minn. 1980) (court found employer had failed to take action in response to complainant’s allegations of sexual harassment including repeated verbal sexual advances and sexually derogatory remarks made to complainant by male co-workers, a male co-worker’s comment that he wished slavery days would return so that he could sexually train her and she would be his bitch; two male co-workers informing her that women who worked at factories were tramps); *United States Fire Insurance Co. v. St. Paul Fire and Marine Insurance Co.*, 511 N.E.2d 127 (Ohio App. 1986) (two female plaintiffs in sexual harassment suit alleged damage to their reputations by manger’s false and defamatory remarks, including such statements that one plaintiff was “a whore and a slut,” the other a “fucking jew broad”); *Hussa v. Employment Security Dept.*, 664 P.2d 1286 (Wash. Ct. App. 1983) (claimant filed suit against employer after being subjected to sexual harassment by male co-workers, such as male employee patting her buttocks and grabbing another women’s breast; being addressed as “bitch” by a co-worker who told her he felt women should not be employed as millworkers; and male co-workers routinely referring to female workers as “slut,” “bitch,” and “cunt”).

This account has recently been inverted by two sociological investigators, who have “discovered” new types of *prostitution* in office environments in behavior readily identifiable as sexual harassment. *See* Craig J. Forsyth & Lee Fournet, *A Typology of Office Harlots: Mistresses, Party Girls and Career Climbers*, 8 *DEVIANT BEH.* 319 (1987).

55. *Fuget v. State*, 522 A.2d 1371 (Md. App. 1987) (victim testified that after she and defendant drove to wooded area, defendant struck her jaw with his fist and said that if she refused to perform fellatio on him, he would kill her; after informing her of his opinion, quoted above, he raped and sodomized her).

56. Diana Scully reports that, among her sample of 114 convicted rapists, 69% of those who denied

paper with women around the country, I have been told repeatedly that rapists threw \$20, or \$50, at them after the attack, conduct which at the time confused them. Is the ploy now, like the old rape consent rule, that a woman can be made a whore "before or after the act"?

Given the enormous prevalence rates of each of these forms of sexual violence, it may be the rare woman who has not encountered a charge of prostitution or heard a justification for abusive behavior couched in related terms. As an ascriptive matter, the terms "prostitute" and "prostitution" seem to expand boundlessly, applied whenever we are punished for sexual behavior, fantasized or real, or for simply occupying the body of a woman, for which the punishment takes the form of sexualized terrorism. At least where a victim is designated "not a prostitute," the problem of prostitution seems to abide in the falsity of the man's belief about her, and in the over-pervasiveness generally of the "whore" stigma: a "specifically female gender stigma which can be defined as a mark of shame or disease on an unchaste woman."<sup>57</sup> As a prescriptive matter, on this view of the problem feminists might thus see fit to devote some cultural attention to educational campaigns deepening men's sensitivities to the distinction, as in: "This is a prostitute. This is *not*." Legal reform campaigns might be committed to the same ends. Aggressive strategies against overinclusion could be pursued, perhaps with the aid of identifying tattoos.

I *am* being facetious. Yet much feminist legal reform work against sexual violence has explicitly or implicitly advanced similar strategies of lawyerly separation, distinguishing with great delicacy and equal urgency between

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having committed a "real" rape justified their behavior "by claiming that the victim was known to be a prostitute, or a 'loose' woman, or to have had a lot of affairs, or to have had a child out of wedlock." DIANA SCULLY, UNDERSTANDING SEXUAL VIOLENCE: A STUDY OF CONVICTED RAPISTS 108 (1990). See also Justice v. State, 1986 WL 1505 (Ark. App.) (defendant convicted of raping an eight-year-old girl claimed she tried to seduce him on many occasions, characterizing her as a "wanton libertine"; prosecuting attorney responded by stating in closing argument that defendant was trying to "make out the victim . . . to be a slut"); State v. Girardier, 801 S.W.2d 793 (Mo. Ct. App. 1991) (after victim testified at preliminary hearing that defendant stole cash and jewelry from her apartment, defendant followed her outside the courtroom calling her a "slut" and a "fat whore"); State v. Koonce, 731 S.W.2d 431 (Mo. Ct. App. 1987) (rape victim testified that the defendant, a college classmate, drove her to his mother's house, where he vaginally raped her several times, then attempted fellatio and anal intercourse while calling her a "slut and a tramp"); State v. Macon, 173 S.E.2d 286 (N.C. 1970) (defendant convicted of second-degree murder in the shooting death of a woman with whom he had engaged in an extramarital affair; defendant told police investigator that he did not see why he had to suffer for her death because she was a slut "and led him on and that she was not worth a tinker's damn"); State v. Wright, 470 N.W.2d 594 (N.D. 1991) (complainant testified that Wright, an acquaintance, grabbed, shook, and threw [her] to the floor . . . pounced on top of her, grabbed her by the throat/neck, hit her with his fists, and "banged" her forehead on the floor. While on top of her, he "socked" her in the face and said: "You women are all bitches and sluts and you all deserve what's comin' to you. And you all deserve to be raped."); State v. Clary, 1991 WL 54187, (Ohio App.) (victim testified that she was introduced by her boyfriend to defendant, who later became upset when he saw her dancing with a stranger, calling her a "slut," then later raping her and demanding fellatio while holding a knife at her throat, threatening to kill her); Bunch v. Commonwealth, 304 S.E.2d (Va. 1983) (defendant convicted of murder made statement to police investigator that he killed the victim because "she was a slut and she reminded him too much of his wife and wanted her money").

57. Gail Pheterson, *The Social Consequences of Unchastity*, in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY 215 (Frederique Delacoste & Priscilla Alexander eds., 1987).

“prostitutes” and “other women.” The political rescue of “real womanhood” from conditions of prostitution, within the spheres of life believed occupied by “normal women,” has been the mainstream feminist tactic advanced within many of our campaigns. These reform strategies have sought to displace these false beliefs by persuasion to counter-representations of our own devising, for example, “sexual harassment,” “pornography victims,” and “battered women.”<sup>58</sup> Each of these counter-stories constitutes an appeal to “more speech,” the valid representation driving out the false. Each also promotes a predictable theme about prostitution: emphatically, that we are *not* prostitutes. A mistake has been made—a grievous failure to contour the proper distinctions between the prostitution with which we are charged and our own conduct, and a consequent failure to treat us with justice. This analysis initially notes the analogic relationship conventionally drawn between a woman’s behavior and prostitution, usually to punish her, and proceeds, as a predicate for reform proposals, to criticize the appropriateness of the comparison.

The success of these distancing strategies relies in the first instance on a threshold agreement among all concerned that we know who a prostitute *is*, “truly,” permitting a tidy boundary to be drawn between ourselves and those others, with some hope of agreement on the distinction. In this pursuit, we have been uncharacteristically assisted by the contributions of existing law, which has rendered a conveniently unambiguous definition of the type. Among statutory definitions, the New York law is typical, defining a woman as culpable of prostitution if she “engages or agrees or offers to engage in sexual conduct with another person in return for a fee.”<sup>59</sup> A comforting assurance of definitional fixity accompanies this legal catalogue; constitutional vagueness challenges have proven overwhelmingly unsuccessful in challenging the legal validity of solicitation and prostitution laws.<sup>60</sup> A “prostitute,” as “everyone”

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58. Thus, “[a] major contribution of feminist social action around sexual violence has been to provide and create new words with which to describe and name our experience. For example, the terms *battered woman* and *sexual harassment* did not exist 20 years ago.” Liz Kelly, *How Women Define Their Experience of Violence*, in *FEMINIST PERSPECTIVES ON WIFE ABUSE* 115 (Kersti Yllo & Michelle Bograd eds., 1988). For the originating feminist treatment of sexual harassment, see MACKINNON, *supra* note 52. As MacKinnon points out, prior to feminist intervention, “[s]exual harassment was a nonissue, even a nonexperience. . . .” MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 8, at 112. On the victimization of women by pornography, see *Ordinance to Add Pornography as Discrimination Against Women: Hearings Before the Gov’t Operations Committee of the Minneapolis City Council*, 2d Session (1983); LINDA LOVELACE (with Mike McGrady), *ORDEAL* (1975); TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY (Laura Lederer ed., 1980); Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R. — C.L.L.REV. 1 (1985); Dworkin, *supra* note 25. On the battered women’s movement, see *infra* notes 74-93 and accompanying text.

59. N.Y. PEN. LAW § 230.00 (McKinney’s 1991); See also TEX. PENAL CODE ANN. §43.02(a)(1) (West 1984) (same language); N.M. STAT. ANN. §30-9-2 (Michie 1989) (“engaging in or offering to engage in a sexual act for hire”); N.H. REV. STAT. ANN. §645:2(1)(a) (1985) (“solicits or engages in sexual penetration . . . in return for consideration”); NEB. REV. STAT. §28-801(1) (1989) (“performs, offers or agrees to perform any act of sexual penetration . . . in exchange for money or other thing of value”).

60. Modern opinions rejecting vagueness challenges include *Morgan v. City of Detroit*, 389 F. Supp. 922, 929 (E.D. Mass. 1975) (The terms “prostitution” and “fornication” are “on their face precise and give fair notice of what conduct is forbidden”); *City of Seattle v. James*, 488 P. 2d 750 (1970) (facial language of statute clear and unambiguous); *Commonwealth v. King*, 372 N.E. 2d 196 (Mass. 1977)

knows, is a woman who has sex with many men, who are strangers to her, who pay her for it (or who promise to pay, and if not her, someone). Lingering confusions, especially regarding form of payment, have been dispelled by legally explicit or implied marital exemptions to the scope of anti-prostitution laws.<sup>61</sup> Feminist legal reformers have concurred, enthusiastically if implicitly, in these definitional judgments. Each of our counter-representations, our "true" stories, seeks to disidentify any particular sexual violence victim from the status of "prostitute" by distinguishing her behavior from at least one of the legal elements of prostitution.

In rape law reform, for example, feminist lawyers have long labored to establish a victim's "discriminateness," both in articulating the injury rape entails and in the representation of the victim at trial. Our most significant work focuses on the habilitation of a woman's "no" as probative of her lack of consent. This commitment in turn locates the injury of rape in the disregard of a woman's sexual selectiveness.<sup>62</sup> The enforcement of rape shield evidentiary rules and the articulation of women's injury through testimony of rape trauma syndrome continue this theme. Rape shield rules limit the admissibility of a woman's prior sexual history for the purpose of proving consent, at least when the defendant has not had sex with her before.<sup>63</sup> This

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("[C]onduct known as prostitution has existed since time immemorial, . . . traditionally [including] both performance of sexual acts as a business and public solicitation for such business."); *McCarty v. State*, 616 S.W. 2d 194 (Tex. Crim. App. 1981); *U.S. v. Herrera*, 584 F. 2d 1137 (2d Cir. 1978); *People v. Costello*, 395 N.Y.S. 2d 139 (1977); *People v. Block*, 337 N.Y.S. 2d 153 (1972); *State v. Parker*, 690 P. 2d 1353 (Kan. 1984); *People v. Mason*, 642 P. 2d 8 (Colo. 1982); *Profit v. City of Tulsa*, 574 P. 2d 1073 (Okla. 1973); *Glenn v. State*, 749 P. 2d 121 (Okla. Crim. App. 1988); *Eissa v. U.S.*, 485 A. 2d 610 (App. D.C. 1984); *State v. Forrest*, 439 So. 2d 404 (La. 1983); *People v. Johnson*, 376 N.E. 2d 381 (Ill. App. 1978); *Commonwealth v. Potts*, 460 A. 2d 1127, 1134 (Pa. Super. 1983) ("It cannot be gainsaid that 'prostitution' has persisted since biblical times, and, as such, has acquired a traditional meaning."); *State v. Olson*, 297 N.W. 2d 297 (Minn. 1980) ("[P]rostitution" is a word with a commonly understood objective meaning about which intelligent people do not differ.). An uncommon exception is *State v. Lopez*, 570 P. 2d 259, 267 (Idaho 1977) (upholding vagueness challenge to state prostitution law).

In a related vein, my research has disclosed not one reported case in which a woman's conviction for a prostitution-related offense was vacated on a challenge based on a claim of insufficient evidence. *See, e.g.*, *King, supra* (upholding conviction against sufficiency challenge). An exception, in dissent, is Justice Shirley Abramson's opinion in *City of Milwaukee v. Wilson*, 96 Wis. 2d 11 (1980), in which she questions the sufficiency of the evidence to support a woman's conviction for solicitation where the arresting officers "were not able to testify that it was the defendant who 'repeatedly beckoned' the men, rather than vice versa."

61. *See, e.g.*, MICH. STAT. ANN §750.449(a) (Callaghan 1930) ("Any male person who engages or offers to engage the services of a female person, *not his wife*, for the purposes of prostitution, lewdness, or assignation, by the payment in money or other forms of consideration, is guilty of a misdemeanor.") (emphasis added); ILL. ANN. STAT. CH. 38, PARA 11-18 (Smith-Hood 1990); NEB. REV. STAT. § 28-801 (1977); *see also* *Cherry v. Koch*, 491 N.Y.S. 2d 934 (1985); *Profit v. City of Tulsa*, 574 P. 2d 1053 (Okla. 1978); *Tisdale v. State*, 640 S.W. 2d 409 (Tex. App. 1982). If you can't buy your wife, who can you buy?

62. *See, e.g.*, SUSAN ESTRICH, REAL RAPE 102 (1987) ("'Consent' should be defined so that no means no."); Kristin Bumiller, *Rape as a Legal Symbol: An Essay on Sexual Violence and Racism*, 42 U. OF MIAMI L. REV. 75, 76-77 (1987) (emphasis in feminist rape reform is on taking a woman "for her word"). *See generally* Carolyn Shafer & Marilyn Frye, *Rape and Respect*, in WOMEN AND VALUES: READINGS IN RECENT FEMINIST PHILOSOPHY 188, 190-94 (M. Pearsall ed., 1986) (regard for "personhood" fundamental to sexual integrity); Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387 (1984) (women's autonomy fundamental value to be promoted by regulation of sexual conduct).

63. For a fine discussion of the rationale and statutory variations among state and federal rape shield rules, see Harriet Galvin, *Shielding Rape Victims in the State and Federal Courts: A Proposal for the*

representational spin control seeks to sever in a jury's mind the inferential connection it might otherwise draw between a woman's sexual "promiscuity" and her conduct on a particular occasion.<sup>64</sup> Less politely, these rules of exclusion are designed to defeat the whore status her prior activity would ascribe to her.<sup>65</sup> The admissibility of evidence of rape trauma syndrome, cataloging the physical, psychological, and behavioral symptoms commonly consequent to sexual assault,<sup>66</sup> has also been advocated by feminist reformers both to corroborate a woman's testimony that she did not consent to the act, and to dispel juror misunderstanding that women "ask for it," by rendering plain the profound, complex, and enduring suffering that unwanted sex causes.<sup>67</sup>

Prostitutes, of course, say "yes" a great deal. Our threshold commitment to the dismissal of woman's "no" as the talismanic violation of rape both renders prostitution beyond the pale of our rape reforms and, praise be, prostitutes as the women we are not.<sup>68</sup> The courts have also apparently aptly understood the intended limits of these reforms, consistently holding that the fictionalizing protections of rape shield rules should give way to the "plain

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*Second Decade*, 70 MINN. L. REV. 763 (1983).

64. *Id.* See also sources cited *infra* note 63.

65. The point is put bluntly in the Florida case law predating the enactment of the Florida shield statute. In that jurisdiction, evidence of prior sexual history was admissible to prove "promiscuous intercourse with men, or common prostitution." *Rice v. State*, 17 So. 286, 287 (Fla. 1895); See also *Huffman v. State*, 301 So. 2d 815, 816 (Fla. Dist. Ct. App. 1974). Insofar as the Florida shield rule now deems admissible testimony of specific instances of prior sexual conduct when probative of a pattern of behavior by the victim, see FLA. STAT. ANN. § 794.022(2) (West 1990), at least one commentator has argued that the reform provision is in fact regressive, permitting at least in theory any woman to be proven in effect "a common prostitute." See Note, *Florida's Sexual Battery Statute: Significant Reform But Bias Against the Victim Still Prevails*, 30 U. FLA. L. REV. 419, 438 (1978). See also Leigh Bienen, *Rape III: National Developments in Rape Reform Legislation*, 6 WOMEN'S. RTS. L. REP. 170, 202 (1980) (commenting on this critique).

66. The term, and the symptomology it substantiates, was first developed by Ann Burgess and Lynda Holstrom in 1974, based on their study of 146 women who entered the emergency room of Boston City Hospital alleging they had been raped. See Ann Burgess & Lynda Holstrom, *Rape Trauma Syndrome*, 131 AM. J. PSYCHIATRY 981 (1974); see also Ann Burgess & Lynda Holstrom, *Assessing Trauma in the Rape Victim*, in *THE RAPE VICTIM* 112 (D. Nass ed., 1977).

67. On the rationales for admissibility, see Patricia Frazier & Eugene Borgida, *Juror Common Understanding and the Admissibility of Rape Trauma Syndrome Evidence in Court*, 12 LAW & HUM. BEHAV. 101 (1988); Toni M. Massaro, *Experts, Psychology, Credibility and Rape: The Rape Trauma Syndrome Issue and Its Implications for Expert Psychological Testimony*, 69 MINN. L. REV. 395 (1985). On the effects of rape on women victims, see Burgess & Holstrom, *supra* note 66; C. Nadelson, et al., *A Follow-up Study of Rape Victims*, 139 AM. J. PSYCHIATRY 1266 (1982); J. Norns & S. Feldman-Summers, *Factors Related to the Psychological Impact of Rape on the Victim*, 90 J. ABNORMAL PSYCH. 562 (1981); L. Ruch & S. Chandler, *The Crisis Impact of Sexual Assault on Three Victim Groups: Adult Rape Victims, Child Rape Victims, and Incest Victims*, 5 J. SOC. SERVICES RES. 83 (1982); L. Ruch & S. Chandler, *Sexual Assault Trauma During the Acute Phase: An Exploratory Model and Multivariate Analysis*, 24 J. HEALTH & SOC. BEHAV. 174 (1983). On the impact of attempted rape, see Kim Scheppele & Pauline Bart, *Through Women's Eyes: Defining Danger in the Wake of Sexual Assault*, 39 J. SOC. ISSUES 63 (1983).

68. In the theoretical literature, this distinction in the intended beneficiaries of feminist rape law reform is most starkly put in Martha Chamallas' article on the transformation of sexual norms animating reform of legal regulation of sexual behavior. She raises prostitution as a problem of sexual imposition only to dismiss it as an inappropriate subject matter for her theory. See Martha Chamallas, *Consent, Equality, and the Legal Control of Sexual Conduct*, 61 S. CAL. L. REV. 777, 826-30 (1988).

truth” when the defendant can prove that the victim “really was” a prostitute or that financial arrangements were involved in the contested act.<sup>69</sup> This conclusion is echoed in the avoidance of the question of whether prostitutes might likely endure some form, perhaps extreme, of rape trauma syndrome.<sup>70</sup> It may seem to some the better part of discretion not to cheapen the significance of a woman’s “no” by the potentially embarrassing display of women engaging in otherwise nonconsensual sex for twenty dollars, accepting what amounts to a pittance in liquidated damages for rape, while “other women” assert the deep and lasting trauma that difference twenty dollars makes. Our strategy of differentiating prostitutes from ourselves, begun by categorically distinguishing between “yes or no” sex, here seems elevated to an ontological divide between nice women who are hurt and not so nice women presumptively calloused or insensible to selling themselves for the equivalent of a parking fine.

Nor have we questioned deeply the exclusion of “non-stranger” assailants from the reach of the shield rules,<sup>71</sup> even as we urge the prosecution of “voluntary social companions,” husband-rapists, and incestuous fathers for sexual assault. An exception in the theoretical literature is Steven Katz’s advocacy for the expansion of shield rules to non-stranger cases.<sup>72</sup> Katz locates the academic hesitation to challenge the existing limitation in a vestigial intuition that prior sexual acts with the defendant are probative of a general willingness on the victim’s part to engage in similar acts again, in particular on the contested occasion.<sup>73</sup> The more compelling explanation for this acquiescence, because it is more closely linked with the perspectives of feminist activists (who, after all, identified the *injuries* of marital and date rape in the first place) lies in the proximity, both experientially and conceptually,

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69. See, e.g., *People v. Varona*, 143 Cal. App. 2d 566 (1983) (abuse of discretion to exclude evidence that the complaining witness was a prostitute); *People v. Randle*, 130 Cal. App. 3d 286 (1982) (exclusion of evidence that complaining witness had solicited public sex for money, drugs and alcohol reversible error even though there was evidence of physical injury to the woman). Cf., *Commonwealth v. Joyce*, 415 N.E. 2d 181, 187 (Mass. 1981); *People v. Williams*, 330 N.W. 2d 823 (Mich. 1982) (evidence of reputation for prostitution inadmissible, where there were no financial arrangements involved in the instance); *People v. Slovinski*, 420 N.W. 2d 145 (Mich. Ct. App. 1988); *State v. Gardner*, 391 N.E. 2d 337, 340-41 (Ohio Sup. Ct. 1979) (same).

70. None of the empirical literature cited at notes 67-68, *supra*, discusses the impact of prostitution on women involved in the practice.

71. As of 1989, 46 states and the federal courts deem evidence of a woman’s sexual history with the defendant admissible on a “minimal showing” that its probativeness outweighs its prejudicial effect. Steven Katz, *Desire and Expectation in the Law of Forcible Rape*, 26 SAN DIEGO L. REV. 21, 38 (1989).

72. See Katz, *supra* note 71, at 37-43.

73. Vivian Berger, *Man’s Trial, Woman’s Tribulation: Rape Cases in the Courtroom*, 77 COLUM. L. REV., 58-59 (1977) (distinguishing use of prior sexual history to hypothesize the “kind of woman” the victim is, from its use in non-stranger cases to comprehend an actual relationship); Katz, *supra* note 71, citing Galvin, *supra* note 63, at 624 (endorsing non-stranger exception); Leon Lefwin, *Unchaste Character, Ideology, and the California Rape Evidence Laws*, 54 S. CAL. L. REV. 35, 72 (1980) (history of sexual relationship bears heavily on victim’s probable conduct and her motives for accusing the defendant on this occasion); Kenneth Ordovery, *Admissibility of Patterns of Similar Sexual Conduct: The Unlamented Death of Character for Chastity*, 63 CORNELL L. REV. 90, 113 (1977) (admissibility justified as probative of a pattern of conduct).

of non-stranger sexual assault to the paradigm of domestic battery. As a tactical matter, argument for the expansion of the shield rules to exclude evidence of the sexual history of a relationship between victim and assailant runs head on into the principal strategy feminists have elaborated in behalf of battered women: the representation of battered women via battered women's syndrome testimony. Rather than placing restrictions in the factual context available to juries, we have in that domain sought the *expansion* of the representational frame to include the emotional history of the relationship, the psychological consequences of serial battery to victims, and the default in social recognition, support, and material alternatives women battered by cohabitant men commonly confront.<sup>74</sup> The contrast in the scope of these explanations, with the freeze-frame, miniaturist portrait of the rape victim constructed under the shield rules, could not be more acute.

This strategic distinction in representational preference perhaps can be explained by the difference in the questions courts and juries typically have in mind for stranger rape victims and domestic battery victims. The question addressed to the stranger rape victim is some version of the "why were you *there*?" question (dressed as you were/drinking as you were/knowing what you did). The question the battery victim confronts is some version of the "why did you *stay*?" question (if you are telling the truth/if you didn't get something out of it). The presumption against the stranger rape victim is that she assumed the risk, against the domestic battery victim that she failed to exhaust her self-help remedies through separation or divorce. In the latter case, if the persistence of the relationship is the problem perceived by the law and by juries, we will explain it. The inference to be overcome is that she remained for her own motives, including a taste for pain or luxury, or that she was properly disciplined for real lapses in wifely devotion or fidelity.<sup>75</sup>

Feminist explanations of "why she stayed" have been of two orders. The first describes women's *responses* to battery, detailing a woman's

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74. The classic and fundamental accounts of the dynamics of domestic battery are Lenore Walker's. See WALKER, *supra* note 38; LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1990). Her work has been criticized, especially for some of its implications in legal practice, by women as devoted as she to feminist change. See, e.g., Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1 (1991); Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195 (1986); Phyllis L. Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 HARV. WOMEN'S L.J. 121 (1985). Although each of these critiques, in my view, is trenchant and wise, it is hard to imagine *any* of this discussion without the contribution of Walker's important work.

75. As Julie Blackman states the "masochism" rendition, "[i]f she stays, she must like it. She must do something to provoke it." JULIE BLACKMAN, *INTIMATE VIOLENCE* 42 (1989); see also *State v. Anaya*, 438 A. 2d 892, 894 (Me. 1981) (injuries argued to be part of a "love game" between husband and wife); *People v. Powell*, 83 A.D. 2d 719, 720 (N.Y. App. Div. 1981) (woman characterized as willing partner in abuse). A husband's right of conjugal discipline for a wife's "infractions" is deeply embedded in the law of battery. See Elizabeth M. Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C.R.-C.L. L. REV. 623, 627-29 (1980). As entrenched is the belief that "good wives" adapt their behavior to suit their husbands' will, is the fact of his desire to "discipline" her *res ipsa* on the question of her spousal default. See WALKER, *supra* note 38, at 20.

“socialization” by the relationship to hope for the man’s eventual change, within a downward spiral of collapsing self-esteem extinguishing her feeling that she is entitled to better treatment. This emphasis stresses the complexities of love, intimacy, and commitment to a man over time as the crucial explanatory lens for comprehending women’s decisions to remain in abusive relationships. Thus, Lenore Walker’s “cycle of violence” theory revolves around a woman’s restored hope for the future of the relationship, founded in the man’s “loving contrition” in the aftermath of a violent attack.<sup>76</sup> She stays as her love for him, and her sense of effectiveness *in* the relationship, is shored up by his protestations of love for her and his promises for reform. Christine Littleton expands Walker’s psychological explanation to one founded on broader normative commitments commonly held by women favoring the maintenance of ongoing relationships, independent of the measures of pain *or* pleasure the relationship yields. Women battered by men may “stay,” on Littleton’s account, regardless of whether any promised changes are likely to ensue, “because they are trying to rescue something beyond themselves”—the relationship itself.<sup>77</sup> In origin, these values are asserted by numerous social science researchers to emerge in consequence of women’s sex role socialization, orienting women toward a value system endorsing that “their expected role is to be the wife and mother and that keeping the family together is their responsibility and obligation,”<sup>78</sup> the passing of love and its spectacularized publicity in divorce the most bitter of diminishment.<sup>79</sup>

On each of these accounts, the woman’s “problem,” if she has one, abides in an overcommitment to monogamous fidelity, even at the risk of her own life.

Self-defense strategies urge a similar framework for comprehending the

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76. See WALKER, *supra* note 38, at 55-70 (outlining the three stages of the cycle of violence, rotating from “tension-building” to violent attack to “loving . . . contrite behavior”). See also Lenore E. Walker, et al., *Beyond the Juror’s Ken: Battered Women*, 7 VT. L. REV. 1, 9 (1982). State appellate opinions recognizing the “cycle of violence” theory include *State v. Kelly*, 478 A. 2d 364, 373 (N.J. 1984); *Commonwealth v. Stonehouse*, 555 A. 2d 772, 783 (Pa. 1983); *People v. Emick*, 103 A.D. 2d 643, 654 (N.Y. App. Div. 1984); *People v. Torres*, 488 N.Y.S. 2d 358, 361 (Crim. Ct. 1985); *People v. Aris*, 215 Cal. App. 3d 1178 (1989). See generally Schneider, *supra* note 74, at 197 n.10 (collecting cases, as of 1985, admitting battered women’s syndrome testimony in homicide prosecutions).

77. See Littleton, *supra* note 18, at 46.

78. Lynne Bravo Rosewater, *The Clinical and Courtroom Application of Battered Women’s Personality Assessments*, in DOMESTIC VIOLENCE ON TRIAL: PSYCHOLOGICAL AND LEGAL DIMENSIONS OF FAMILY VIOLENCE 86, 91 (Daniel Jay Sonkin ed., 1987).

79. Phyllis Crocker summarizes this view as follows: “A battered woman who does not leave her husband, seek help, or fight back is behaving according to societal expectations: the cultural perception of marriage as a lifelong bond and commitment instructs a woman to stay and work to improve—not abandon the marriage.” Crocker, *supra* note 74, at 135. See also MARTIN, *supra* note 38, at 81-83; WALKER, *supra* note 38, at 31, 32-34 (1979); Moore [sic], *Editor’s Introduction: An Overview of the Problem*, in BATTERED WOMEN (D. Moore ed., 1979); Mildred Pagelow, *Sex Roles, Power and Woman Battering*, in WOMEN AND CRIME IN AMERICA (Lee Bowker ed., 1981); Natalie Shainess, *Psychological Aspects of Wife Battering*, in BATTERED WOMEN: A PSYCHOSOCIOLOGICAL STUDY OF DOMESTIC VIOLENCE (M. Roy ed., 1977); but see Lenore E. Walker, *The Battered Woman Syndrome Study*, in THE DARK SIDE OF FAMILIES 31, 33 (David Finkelhor et al. eds., 1983) (battered woman as a group indicated self-perception as “more liberal” in views of roles of women than most women).

reduction of a woman's options for survival to killing her abuser and for explaining the validity of her perception of imminent danger in circumstances which might be understood by a jury as less than immediate. Although several commentators have remarked on the apparent contradiction between the love and hope motivating a woman's decision to remain in an abusive relationship, and the despair and violence of a woman's commission of a homicide,<sup>80</sup> the theme of intimate proximity bridges both. Her *familiarity* with the particular man's habits and patterns of violence, it is argued, yields her a special understanding of the risks he threatens. Phyllis Crocker explains:

Battered women in particular may perceive danger and imminence differently from men. Because they become attuned to stages of violence from their husbands, they may interpret certain conduct to indicate an imminent attack or a more severe attack. A subtle gesture or a new method of abuse, insignificant to another person, may create a reasonable fear in a battered woman.<sup>81</sup>

The courts, too, have been sympathetic to this account of the objective reasonableness of her behavior, perhaps because the explanation reaffirms the traditional "domestic privacy" notion of the uniqueness and complexity of long-term sexual relationships, even as it states the conclusion in "objective" terms.<sup>82</sup> "Intimacy" will still have its privileges, even if they sometimes must accrue to women.

This representation, like that drawn of rape victims under the rape shield laws, benefits women little in encounters with "real" johns, or toward explaining why a woman "stays" in prostitution; even if, like most women in the life, she is raped, assaulted, and threatened with murder on a regular basis.<sup>83</sup> The ties and insights of persistent affection are not commonly present

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80. See Crocker, *supra* note 74, at 136 (by taking action to kill her abuser, the battered defendant may be seen as an exception to the group of which she is a part); Mahoney, *supra* note 74, (resolving contradiction by recasting battery as a means of controlling a woman's separation from a relationship and recharacterizing woman as attempting to take action on her own behalf in both spheres of her conduct); Schneider, *supra* note 74, at 222 (suggesting a fuller description of women's agency required to better explain "why a battered woman doesn't leave the house and why she kills to save her own life").

81. Crocker, *supra* note 74, at 127, citing Schneider, *Equal Rights to Trial for Women*, *supra* note 75, at 634. See also CYNTHIA GILLESPIE, JUSTIFIABLE HOMICIDE: BATTERED WOMEN, SELF-DEFENSE AND THE LAW 69 (1989); Schneider, *supra* note 74, at 211 ("The jury needs expert testimony . . . that the battered woman's prediction of the likely extent and imminence of violence is particularly acute and accurate.")

82. See, e.g., *State v. Hundley*, 693 P. 2d 475, 475-76 (Kan. 1985) (degree of imminence to be evaluated from perspective of "prudent battered woman"); *State v. Kelly*, 478 A. 2d 364, 378 (N.J. 1984) ("the expert's testimony might also enable the jury to find that the battered wife, because of the prior beatings, numerous beatings, as often as once a week, for seven years, from the day they were married to the day he died, is particularly able to predict accurately the likely extent of violence in any attack on her"); *Commonwealth v. Stonehouse*, 555 A. 2d 772, 784 (Pa. 1989) (reasonableness to be determined from perspective of "reasonable battered woman").

83. See *infra* notes 117-26, 140-55, and accompanying text.

between a prostitute and a john. "Loving contrition" is not a common behavior pattern in men who buy women for sex. Nor does the prostitute enjoy the tidy legal status of an otherwise socially conforming "victim." The "good woman" sex role of loyalty to intimate monogamous fidelity, while perhaps of tactical assistance in garnering sympathy for women battered by husbands, is but a tool of punishment of women in prostitution. A prostitute who kills a john cannot argue a specialized understanding of a particular john's habits of violence, at least so long as johns are not understood as men who pose particular perils to prostituted women. Nor are these theoretical distancing strategies only of academic significance. The inapplicability, even structural hostility, of battered women defenses to women in prostitution contributed strongly to Aileen Carol Wuornos's recent first degree murder convictions for killing several johns, for which she has been sentenced to death.

This focus on women's responses to battery by an intimate partner is a relative latecomer to feminist analyses of wife beating, although now the dominant one in the legal arena. The originating critiques questioned more directly how men have come to enjoy the privilege, how male power is enacted in families, how the structure of the family reproduces that power, how law and other institutions of social control remain complicit in male torture of women in the home, and under what political conditions women continue to live with and marry men.<sup>84</sup> The issue for these scholars and activists was not why some women "stayed," but how any woman escaped living in a violent household but by the grace of God or, less transcendently, by a wholesale restructuring of her social options. These critiques bring to light the institutional controls rendering women targets for violence in marriage, including the social, sexual, and economic "channelling" of women into marital dependency to the near exclusion of other viable living arrangements. The feminist shelter movement was the "first line" mobilization of these insights, founded on the understanding that new feminist institutions and strategies for women's empowerment were necessary to provide women with options other than to "stay," or to move on to other domestic arrangements where she would be vulnerable to the same treatment.<sup>85</sup> Shelters were envisioned as the necessary first step; the overall vision the crafting of intervention politics intended structurally "to alter the power system which

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84. The strongest contribution to this critique remains R. EMERSON DOBASH & RUSSELL DOBASH, *VIOLENCE AGAINST WIVES: A CASE AGAINST THE PATRIARCHY* (1979). See also MARTIN, *supra* note 38; SUSAN SCHECHTER, *WOMEN AND MALE VIOLENCE: THE VISIONS AND STRUGGLES OF THE BATTERED WOMEN'S MOVEMENT* (1982); Wini Breines & Linda Gordon, *The New Scholarship on Family Violence*, 8 *SIGNS* 490 (1983). For a collection of essays reviewing the development of these critique in the social sciences, some authored by their originators, see *FEMINIST PERSPECTIVES ON WIFE ABUSE*, *supra* note 58.

85. For a political history of the shelter movement in the United States, see generally SCHECHTER, *supra* note 84; in Canada, see generally GILLIAN A. WALKER, *FAMILY VIOLENCE AND THE WOMEN'S MOVEMENT: THE CONCEPTUAL POLITICS OF STRUGGLE* (1990).

creates the foundation of battering behavior.”<sup>86</sup>

These broadly political critiques and agendas for change have in recent years become largely muffled. Within the shelter movement, the enormity of the struggle and necessary commitments of energy devoted to maintaining minimal resources to keep existing shelter services open and available explains much of the exhaustion.<sup>87</sup> Similar political pressures have contributed to the “professionalization” of the shelter movement, which in the view of some experienced movement leaders has narrowed its political vision and disempowers women who seek its support.<sup>88</sup> In this political environment, “get her out” shelter strategies have become concretized into a “time out” approach to patriarchy, the problem of intrafamilial sexual dominance confined to motivating “the couple” to “break up.”<sup>89</sup> The social scientific emphasis, less accountably, has shifted in the same direction.<sup>90</sup>

In the legal representation of women, these structural insights have largely been compressed to one line mention of women’s common economic dependency on husbands in marriage, ordinarily in the context of a court’s explication of the necessity of expert testimony on battered women’s syndrome. For example, in an extensively reasoned opinion holding that defense counsel’s failure to present evidence on battered women’s syndrome in a prosecution of a woman charged with involuntary manslaughter of her boyfriend constituted reversible error, a California appellate court mentioned the economic factor only once, while discussing at length the inconsistencies in a battered woman’s report of events as a consequence of amnesiac denial.<sup>91</sup> Mention of specific

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86. Ellen Pence & Melanie Shepard, *Integrating Feminist Theory and Practice: The Challenge of the Battered Women’s Movement*, in FEMINIST PERSPECTIVES ON WIFE ABUSE, *supra* note 58, at 282 (quoting ELLEN PENCE, CRIMINAL JUSTICE RESPONSE TO DOMESTIC ASSAULT CASES: A GUIDE FOR POLICY DEVELOPMENT 2 (1985)). Pence has been a significant contributor to the crafting of community strategies against domestic violence in the United States.

87. Phyllis Crocker cites sources stating that existing shelters can provide for but 25-35% of women and children in need. Further, “one-half of these shelters are in the ten most populated states; some states have no shelters.” Crocker, *supra* note 74, at 133 n.63. Some of the most divisive issues within the national anti-domestic violence movement concern the politics of accepting funding from sources which place limitations on the services provided or on advocacy naming male power as the “problem” of battery. The federal government has led the pack on exercising this form of political control.

88. See SCHECHTER, *supra* note 84; Pence & Shepard, *supra* note 86.

89. I would be mortified and angry if these comments were interpreted to suggest that battered women’s shelters are somehow “unprogressive” for women. My criticism is only with a vision of the mission of the anti-battery movement implying that moving a few desperately embattered women out of their own homes “solves” the problem of battery. I also do not intend to suggest that “time outs” do nothing to save women’s lives. One researcher has concluded that femicide rates correlate negatively with availability of shelter services, rape crisis support, and legislative reform of civil orders for protection. See Karen D. Stout, “*Intimate Femicide*”: *Effect of Legislation and Social Services*, AFFILIA 21 (Summer 1989).

90. For a brilliant and glitteringly written critique of the tendencies of even pro-feminist social science research toward “interpersonal” explanations for battery, and the re-awakening of the “complicit female” as a consequence of those investigations, see Laurie Wardell, et al., *Science and Violence Against Wives*, in THE DARK SIDE OF FAMILIES *supra* note 79, at 69, 70-78. A popular example of the “new” social science literature is Jeanne P. Deschner’s THE HITTING HABIT: ANGER CONTROL FOR BATTERING COUPLES (1986). The author articulates the “problem” of battery as an excess of hostile emotionalism within “battering couples,” happily resolvable by properly administered psychotherapy.

91. See *People v. Day*, 1992 WL 828 (Cal. App. 5th Dist.).

economic motives for “staying” in the particular case is rarer still.<sup>92</sup> Nor have feminist legal critics much attended to this descriptive factor, even as the affinity of the heavily “psychologized” content of battered women’s syndrome testimony with the stereotype of women as neurotic and helpless is critiqued.<sup>93</sup> At most, we “maternalize” the economic dimension, attending to the “special” economic pressures on battered women with children to support to remain in abusive marriages. Further, the economic interest of *men* in the women they control by violence, in the time-honored tradition of pimping, remains wholly uninterrogated. Of course, avoidance of the economic question also serves to maintain the “good woman” distance from the inference of prostitution, which the emphasis on intimacy and love in the construction of battered women’s syndrome testimony further severs. Whatever we are there for, it isn’t for the money. If he is no trick, she is no whore.

“Legitimate” work is, after all, the place where women are supposed to make money, an assumption which has fueled anti-sexual harassment legal initiatives and education efforts. Here, our advocacy stresses the *distinction* between a woman’s willingness to work and her willingness to have sex as part of the bargain, or to be sexualized in her status as worker: “real women” do not combine sex with money. At the outset, this may seem a quite perverse distinction to draw in the context, as sexual harassment is defined in those conditions where that combination is women’s lived employment experience. The underlying critical insight is that women are *injured* by that conjunction. As Chief Justice Rehnquist has so nicely acknowledged, sexual harassment prohibitions stand at the ready to sanction any “requirement that a man or a woman run a gauntlet of sexual abuse in return for the privilege of being allowed to work and earn a living.”<sup>94</sup> By “sexual abuse”, Justice Rehnquist seems here to mean any “unwelcome” sex imposed on a woman as a condition or entailment of her job.<sup>95</sup>

Thus, it would seem but a small step conceptually to hold all prostitution

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92. Exceptions include *State v. Felton*, 329 N.W. 2d 161 (1983), where the court noted that the woman returned to a battering husband in part because “he was being nice to her and she was having financial problems,” *id.* at 163, and *Borders v. State*, 433 So. 2d 1325 (Fla. 3rd Dist. Ct. App. 1983), where the court explains that although the woman was the household provider, “the victim on several occasions stole household funds and food stamps in order to purchase additional alcoholic beverages.” *Id.* at 1326.

93. See Schneider, *Describing and Changing*, *supra* note 74 (criticizing inference often raised from battered women’s syndrome testimony that woman is “sick” and wholly passive). Relevant counsel have been less restrained. See *State v. Anaya*, 456 A. 2d 1255 (Me. 1983) (defense testimony that male batterer never had a steady job admissible to rebut expert testimony that battered women are often economically dependent); *State v. Ciskee*, 751 P.2d 1165, 1173 (Wash. 1988) (defense counsel in co-habitant rape prosecution opened with statement that the victim “was an independent woman; hardly a prisoner in her own home”; victim was a bookkeeper, defendant unemployed).

94. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986) (holding sexual harassment to constitute sex discrimination prohibited under Title VII) (quoting *Henson v. Dundee*, 682 F.2d 897, 902 (11th Cir. 1982)).

95. *Id.*, at 65 (distinguishing “unwelcome” sex from “involuntary” sex and affirming unwelcomeness as the proper standard, as an involuntariness requirement would too narrowly confine sexual harassment to circumstances where the woman was “forced to participate against her will”).

to be *per se* actionable as sexual harassment, as the demand for money in the transaction shows that a woman's sexual compliance in the acts were otherwise unwanted. Certainly, demand for payment, unequivocally delivered, might in most circumstances distinguish such transactions from the "romantic attractions" courts find so distressingly indistinguishable, at least in hypothetical contemplation, from unwanted workplace sexual attention.<sup>96</sup> Prostitution may also be fairly described as consistent with one of the two alternative strategies available to women in response to workplace sexualization:

The sexualization of the workplace imposes burdens on women that are not borne by men. Women must constantly monitor their behavior to determine whether they are eliciting sexual attention. They must conform their behavior to the existence of the sexual stereotyping whether by becoming sexy and responsive to the men who flirt with them or by becoming rigid, standoffish and distant so as to make clear they are not interested in the status of sex object.<sup>97</sup>

Both in legal doctrine and in feminist theory, however, this coerced election is instead treated as if it instead defined one class of women who are injured by sexual harassment (the distant ones) and another, those who are not (the "welcoming" ones).

Even Catharine MacKinnon, while she acknowledges that prostitution represents in pure form the model of *quid pro quo* sex for money exchange prohibited in sexual harassment law, nevertheless retreats from the conclusion that prostitution should be actionable as such, apparently even when "unwelcome." Her hesitation seems driven by the belief (affirmatively theorized in Margaret Radin's work<sup>98</sup>) that for women materially supported in the practice, prostitution may be better than nothing at all,<sup>99</sup> and more

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96. For feminist critiques of this "problem," see MACKINNON, *SEXUAL HARASSMENT*, *supra* note 52, at 32; Wendy Pollack, *Sexual Harassment: Women's Experience vs. Legal Definitions*, 13 HARV. WOM. L.J. 35, 52 (1990) ("much of the behavior that women find offensive is behavior that is accepted as normal heterosexual behavior by men"); Nancy S. Ehrenreich, *Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177, 1201-10 (1990); Opinions that continue to wrestle with the romance incitement problem include *Lipsett v. Rive-More*, 669 F. Supp. 1188 (D.P.R. 1987) (supervising physician's "flattering remarks" to plaintiff were based on "romantic attraction"), *Highlander v. K.F.C. National Management Co.*, 805 F.2d 644 (6th Cir. 1986) (plaintiff asked boss to go to a bar with her).

97. *Robinson v. Jacksonville Shipyards*, 760 F.Supp 1486, 1505 (M.D. Fla 1991) (finding based on expert testimony by Dr. Susan Fiske on the effects of sexual stereotyping in employment settings).

98. See Radin, *Market-Inalienability*, *supra* note 36.

99. MacKinnon argues:

In these situations, more than is impermissibly the case for most women's jobs, without the sexual harassment, there *is* no job. Until all women *need* no longer sell their physical attractiveness, there is no point in the law prohibiting all such behavior in these contexts.

MACKINNON, *SEXUAL HARASSMENT*, *supra* note 52, at 209.

rewarding than “romantic” sexual compliance promising little by way of material benefits.<sup>100</sup> While prostitution may represent the “fundamental” economic and sexual “condition of women,”<sup>101</sup> it is, itself, deemed here by MacKinnon a condition too fundamental for redress.<sup>102</sup> Whatever the practical merits of MacKinnon’s view,<sup>103</sup> as in the domestic violence arena, the “unwelcomeness” requirement is understood to founder where the woman is comprehended to “get something” out of it, in particular money. Even those millions of us who believed Anita Hill, and believed in her injury, largely did so not *because* she was prostituted, but because she was *not*.

Taken together, these boundary defenses form a solid wall against the imputation of prostitution to particular “other” women: she is not sexually promiscuous, does not subject herself to random treatment by strangers, and doesn’t do it for cash. Beyond these defenses, is but silence. Domestic legal reform activity on prostitution is nearly nonexistent, both in feminist legislative projects<sup>104</sup> and feminist legal scholarship.<sup>105</sup> The recent legal scholarship

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100. MacKinnon quotes Roberta Victor, a woman with history in prostitution, to the point: What I did was no different from what ninety-nine percent of American women are taught to do. I took the money from under the lamp instead of in Arpege. What would I do with 150 bottles of Arpege a week?

MACKINNON, SEXUAL HARASSMENT, *supra* note 52, at 217.

101. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 8, at 243.

102. MacKinnon does declare in her later work that under a legal theory of equality sufficient for redress of women’s subordination “prostitution . . . would become actionable.” *Id.* at 248.

103. I actually find it a quite lovely thought that feminists could organize a national class action with women in prostitution against some well-placed Johns, the pornography industry, the state of Nevada, every outcall and massage parlor and sauna and woman behind glass outfit for damages and injunctive relief. The return might be better than years of \$20 blow jobs. See *Thoreson v. Penthouse Int’l.*, 149 Misc. 2d 150 (1990), (recovery of \$4,060,000 in actual and punitive damages for sexual slavery), *aff’d as modified*, 80 N.Y.2d 490 (1992) (reversing award of punitive damages). In any event, MacKinnon’s account also leaves unaddressed why women wouldn’t do better stealing cars, and such like, in the meantime.

104. Much of the legislative activity on behalf of women in recent years has been inspired and guided by state gender bias commission studies. See Lynn Hecht Shafran, *Gender and Justice: Florida and the Nation*, 42 FLA. L. REV. 181 (1990); Elizabeth M. Schneider, *Task Force Reports on Women in the Courts: The Challenge for Legal Education*, 38 J. LEGAL EDUC. 87 (1988). Only Florida’s study has included prostitution as a subject matter for scrutiny, and is the only state to have enacted legislation affecting prostitution in consequence of those findings. See FLA. STAT. ANN. § 796.09 (West 1991 Supp.). I initiated that process in Florida and drafted the core provisions of our new state legislation. (I mention my involvement only to indicate that this article and that work are of a piece, rather than indicative of bodies of work supported by distinct constituencies.)

105. But a few law review articles on the legal treatment of prostitution have appeared since 1985, a remarkably slim bibliography given the relative robustness of feminist legal inquiry generally in the same period. Those pieces in addition to those cited *supra*, include Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes’ Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, 5 BERKELEY WOMEN’S L.J. 75 (1989-90); Pasqua Scibelli, *Empowering Prostitutes: A Proposal for International Reform*, 10 HARV. WOMEN’S L.J. 117 (1987); Nancy Erbe, *Prostitutes: Victims of Men’s Exploitation and Abuse*, 2 LAW & INEQUALITY 609 (1984); Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 WOMEN’S RTS. L. REP. 98 (1989); P.R. Glazebrook, *Sexist Sex Law*, 44 CAMBRIDGE L.J. 42 (1985); Lori Douglass Hutchins, *Pornography: The Prosecution of Pornographers Under Prostitution Statutes — A New Approach*, 37 SYRACUSE L. REV. 977 (1986); Beth Bergman, *AIDS, Prostitution and the Use of Historical Stereotypes to Legislate Sexuality*, 21 J. MARSHALL L. REV. 777 (1988); Christine L.M. Boyle & Sheila Noonan, *Prostitution and Pornography: Beyond Formal Equality*, 10 DALHOUSIE L.J. 225 (1986); Lan Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 YALE L.J. 1297 (1987); Julie Pearl, *The Highest Paying Customers: America’s Cities and the Costs of Prostitution Control*, 38 HASTINGS L.J. 769 (1987); Ina L. Potter, *Locking Out Prostitution*, 15 HASTINGS CONST. L.Q. 181 (1987);

on prostitution that exists is largely limited in vision to the rather narrow question of whether prostitution should or should not be decriminalized,<sup>106</sup> a discourse closely enmeshed with and perhaps as unproductive to feminist imagination as the never ending debates over the legal treatment of obscenity. Anti-discrimination litigation strategies have been confined to challenges to statutory schemes which criminalize the behavior of prostitutes but not the behavior of johns or impose sanctions at different severity levels, and to enforcement practices with the same effect. Advanced on formal equality theories, these challenge have largely foundered, either because prostitutes and johns are held dissimilarly situated, or because sufficient proof of discriminatory intent is deemed lacking.<sup>107</sup> Conceptually, these strategies exclude consideration of the experience of women in prostitution beyond the rather abstract injury of being jailed while her john takes a walk.<sup>108</sup> This insult, I would propose, pales in comparison to other relevant comparisons in life circumstances that might be made between them.

Our activism in providing support services and progressive organizing has done little better than our legal initiatives. Domestic violence shelters remain in effect inaccessible to women and girls in prostitution, for reasons as precise as express policies excluding drug and alcohol dependent women from admission to shelters, as well as denying access to women who engage in illegal activities of any kind. In addition to specific policy restraints, the invisibility of prostitution to service providers limits their awareness of prostituted women's access and safety needs, the urgency of maintaining confidentiality of the identities of minor girls when sought by police and social service agencies, and the requirement of long-term support for prostituted

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Belinda M. Cheney, *Prostitution—A Feminist Jurisprudential Perspective*, 18 VICTORIA UNIV. OF WELLINGTON L. REV. 239 (1988).

106. See, e.g., RHODE, JUSTICE AND GENDER, *supra* note 34, at 259 (criminalization asserted as origin of problems women in prostitution encounter), Freeman, *supra* note 105, at 77-83, 107-109 (analysis of consent, legal regulation focussed on question of decriminalization), Radin, *Market Inalienability*, *supra* note 36, at 1924-25 (arguing for decriminalization combined with regulation of advertising and promotion.), Scibelli, *supra* note 105 (same); Nancy Erbe's article pursues instead an analysis of the conditions of violence dominating the lives of women and girls in prostitution. See generally Erbe, *supra* note 105.

107. See, e.g., *People v. Superior Court*, 562 P.2d 1315 (Cal. 1977) (prostitute and john not similarly situated insofar as prostitute is a "profiteer" and the john a mere user), *Commonwealth v. King*, note 60 (absence of statutory penalty for "customers" of prostitutes no violation of equal protection where solicitation statute gender neutral; evidence that arrests made only of female and not male prostitutes also insufficient to prove discriminatory enforcement where male prostitutes "could have" been charged under other offense ratings), *Commonwealth v. Finnegan*, 421 A.2d 1086 (Sup. Ct. Penn. 1980) (disparate sentencing scheme justified as parties not similarly situated); *State v. Wilbur*, 749 P.2d 1295 (Wash. 1988) (gender-neutral solicitation statute, even if johns' behavior is not prohibited, no violation of equal protection).

108. It is also not self-evidently clear to me that these strategies, designed ultimately to inhibit arrest of women, even serve women's immediate interests. At present, jail is the closest thing many women in prostitution have to a battered women's shelter. Among the reasons women have recited to me as why sometimes they seek "voluntary arrest" include to get a night's sleep, to escape a violent pimp or john, to detox, to get AZT therapy, to not have to fuck, and to eat a hot meal. I beg the civil libertarians among my readers who represent women in prostitution to please interview a woman carefully on these issues before deciding unilaterally what is "best" for her.

women and girls.<sup>109</sup> From my observation, once women are admitted to shelters, they often feel constrained to lie about their circumstances, reducing the possible benefits of proffered support to painful farce.<sup>110</sup> Her pimp becomes her husband, the cigarette burns on her thighs the consequence of a jealous outburst over her "seeing" other men, she is sexually harassed on the job, and on and on. Anti-pornography activism, which has mobilized the most visible contemporary feminist challenge to prostitution in the United States, has been largely pushed "underground," unlike pornography or prostitution.<sup>111</sup> Women's health agendas, to the extent that work has comprehended prostitution as a health issue at all, have limited the scope of their consideration of prostitution to the risks of AIDS transmission to and by prostitutes.<sup>112</sup> This emphasis obscures the significance of research indicating that chronic poor health among juvenile prostitutes is often a consequence of inadequate clothing,<sup>113</sup> that injuries from beatings and sexual assaults most commonly immobilize women in prostitution,<sup>114</sup> and the social targeting of

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109. In public talks I refer to these patterns as shelter "June Cleaver triage." I hasten to note that some shelters *do* provide real support for women and girls in prostitution; the Harriet Tubman shelter in Minneapolis is one sterling example. Evelina Giobbe and WHISPER have begun a process of educating shelter services to the implications of these policies in excluding women in prostitution from service assistance. As a result of these efforts, the National Coalition Against Domestic Violence did enact a resolution in 1989 in support of full access for women in prostitution to battered women's shelters, as yet without great practical effect. The most active prostitute support and recovery services continue to be provided by the few committed and precariously funded organizations devoted specifically to women and girls in prostitution.

110. These comments are based on personal conversations with women in prostitution who have sought assistance from a variety of shelters. These reports are echoed in the responses of some service providers with whom I have discussed these concerns, who express fear that women in prostitution who are open about their circumstances will disturb and frighten the other women in the shelters. (It is un contemplated that those "other women" might be prostitutes, too).

111. In my view, the suppression of anti-pornography work is part and parcel of the denial of prostitution I am describing here. As I noted above, my own involvement with anti-pornography work began my engagement with prostitution. Anti-prostitution work internationally has focussed principally, if not exclusively, on trafficking women across national borders and on the prostitution of indigenous women for use by foreign men. See, e.g., ARLENE EISEN-BERGMAN, *WOMEN OF VIET NAM* (1975) (prostitution systems developed for American soldiers in Viet Nam); THANH-DAM TRUONG, *SEX, MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA* (1990); INTERNATIONAL FEMINISM, *supra* note 33; Siriporn Skrobanet, *Strategies Against Prostitution in Thailand*, in 2 *THIRD WORLD/SECOND SEX* 211 (Miranda Davies ed., 1987); Tonette Raguisa, *Prostitution: A Phillipine Experience in 2 THIRD WORLD/SECOND SEX*, *id.* at 218. U.S. scholars and activists Kathleen Barry and Charlotte Bunch, whose work has for many years centered on prostitution, are presently primarily engaged in reform at the international level against all forms of prostitution within the international human rights agenda. Kathleen Barry is now the executive director of The Coalition Against Trafficking in Women, an organization with consultative status to the United Nations Economic and Social Council. Charlotte Bunch recently authored *Women's Rights as Human Rights: Toward a Re-Vision of Human Rights*, 12 *HUM. RTS. Q.* 486 (1990).

112. See Gloria Lockett, *Prostitution*, in *BLACK WOMEN'S HEALTH BOOK* 189 (Ellen White ed., 1990). See also Priscilla Alexander, *Prostitutes are Being Scapegoated for Heterosexual AIDS*, in *SEX WORK*, *supra* note 57, at 241; *A VINDICATION OF THE RIGHTS OF WHORES* 109-140 (Gail Pheterson ed., 1989).

113. D. KELLY WEISBERG, *CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION* 116 (1985) (citing DOROTHY H. BRACEY, *BABY-PROS: PRELIMINARY PROFILES OF JUVENILE PROSTITUTES* 62-63 (1979)).

114. Eleanor Miller reports of her research on health conditions of "street women": Health-related [concerns] . . . even more frequently mentioned as occasions for temporary withdrawal from street life than disease or pregnancy included the bruises, broken bones, cuts and abrasions that were the result of the ever-present risk of violence on the streets. The beatings and sexual assaults female street hustlers received

all prostitutes for murder.<sup>115</sup>

Prostitution, indeed, is not like “anything else,” especially anything that we might be. The most brutal rendition of this theme may be Kate Millett’s account, as recounted by Alice Echols, of an episode at a radical feminist conference on prostitution in 1971:

The place finally erupted when a member of The Feminists declared herself an “honorable woman” because she lived in a tenement, worked as a secretary, and yet refused to sell her body. As Millett noted, “the accusation, so long buried in liberal good-will and radical rhetoric—‘You’re selling it, I could too, but I won’t’—was finally heard. Said out loud at last.”<sup>116</sup>

The form of this claim is also familiar, if usually more delicately expressed. Women make it all the time, especially before we identify as feminists or engage in experiences of feminist consciousness-raising. *It’s not me*: if they say it is, I can recite sixteen reasons and change why they are wrong.

I have expressed a good deal of anger here, and mostly at the wrong people. In its legal expression, this feminist flight from prostitution seems largely reactive, driven by a tacit recognition that legal regulation of sexual violence and sex discrimination at bottom always functions as some form of judicial review of a man’s conclusion that a complaining woman was, in fact, a whore, and therefore a permissible target of misogynist rage, contempt, and sexual use. The fate of a woman’s claims on justice, we all seem to know somewhere, crucially depends on her success in proving that she is not, and never has been, a prostitute. As Andrea Dworkin puts the point, “The woman’s effort to stay innocent, her efforts to prove innocence, her effort to prove that she was used against her will is always and unequivocally an effort to prove she is not a whore.”<sup>117</sup>

“There is no point to it.” The point, apparently, is to fix a point of departure from which to flee. With Freud’s Dora, we may acknowledge the prostitute only to expel her.<sup>118</sup>

at the hands of their “men,” their dates, their wives-in-law, former “women” of their “men,” and other street people as well as the police were numerous and often brutal. ELEANOR MILLER, *STREET WOMAN* 138 (1986).

115. See Jane Caputi, *The Sexual Politics of Murder*, 3 *GENDER & SOCIETY* 437 (1989); see also *infra* notes 126-154 and accompanying text.

116. ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967-1975*, 194 (1989). See also Gail Pheterson, *Not Repeating History*, in *A VINDICATION OF THE RIGHTS OF WHORES*, *supra* note 112, at 3, 18 (“Feminists who followed the anti-prostitution and anti-pornography line were often viewed by political prostitutes as naive or self-righteous agents of control and condemnation.”).

117. DWORKIN, *supra* note 25, at 204.

118. I am here paraphrasing Jane Gallop:

As a threatening representative of the symbolic, the economic, the extrafamilial, the maid must be both seduced (assimilated) and abandoned (expelled) . . . . Dora and Freud cannot bear to identify with the governess because they think there is still

## II. THE GREATEST STORY NEVER TOLD

Some women find this business of fleeing somewhat more difficult to achieve. Prostitutes, for example. Some notice has been taken of this, both by prostitutes and by feminist scholars, via feminist prostitution activism and in some corners of feminist legal theory. Nevertheless, as I will detail in this section, the insight that some women “are” prostitutes, and as women are consequently of some interest to feminists, has curiously little disrupted the design of our “not a prostitute” reform strategies. The principle argument advanced on behalf of prostitutes in these activist circles indeed echoes in substance the identical tactic: that prostitutes, too, are “other women,” and, therefore, “not prostitutes,” either. On the surface of things, this may seem a problematic maneuver, assimilating prostitutes into a political discourse which depends on no one we care about being one. As a purely logical matter, certainly, the effectiveness of our “not a prostitute” negation strategies demands that we find one, somewhere, not to be. This structural requirement in fact remains intact on each of the arguments to assimilability offered by prostitution activists reiterating the good woman/bad woman dichotomy permeating mainstream feminist defenses of “other women.” Within this discussion, however, the dichotomy is instead drawn among prostitutes. Some prostitutes (the assimilable ones), are deemed “good prostitutes,” some others (the unassimilable), “bad” ones. The design of these arguments, and their implications for feminist strategy, are the themes I will pursue in this section.

The methodological foundations of these debates are implied in some recent feminist legal scholarship, which questions whether we have, or ever could have, a sufficient grasp of the “subject matter” of prostitution for scholarly consideration; that is, whether prostitution is sufficiently “known” or “knowable” such that “a point to it” can meaningfully be discerned. These hesitations are feminist ones, and it matters that they are. Outside of feminism, it may seem a strange assertion that we “know” little about prostitutes, and display a peculiar fastidiousness to question whether “prostitution,” as a discrete subject matter of inquiry, actually exists. Non-feminist historians, sociologists, psychologists, legal theorists, “ans” and “ists” of all descriptions, have long and avidly inquired of the prostitute and her doings, with a fervor at least as great as the enthusiasm with which similar attempts to capture “other women” have been pursued. Thus, when feminists question whether prostitution is a “knowable” phenomenon for feminist analysis, their doubt is

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someplace where one can escape the structural exchange of women. They still believe there is some mother who is not a governess.

Jane Gallop, *Keys to Dora*, in *IN DORA'S CASE: FREUD-HYSTERIA-FEMINISM* 200, 216 (Charles Bernheimer & Claire Kahane eds., 1989). For further feminist discussion of Freud's severance of “servant girls” from “women,” see HELENE CIXOUS & CLAIRE CLEMENT, *THE NEWLY BORN WOMAN* 153 (Betsy Wing trans., 1986); KAPPELER, *supra* note 13, at 201-206.

implicitly motivated by concern about whether prostitution is knowable in a feminist way.<sup>119</sup>

There are three routes by which "data" about women's lives have been made accessible to feminists in the position to be in the group called "we": they come to us, we go to them, or "they" become "we." Women "come to us" through data accumulated by existing sexual violence services or ongoing activism. Women participate, and tell the truth, in those arenas when they are welcome and recognized. As I have discussed earlier, feminism has created neither of those conditions for women in prostitution, in practical support or in the scope of our announced agendas. Our reform campaigns have little contributed little to the security or visibility of women in prostitution; indeed, they have been hostile to them. Needless to say, in that environment we find few "prostitutes," a state of affairs that explains Martha Chamallas' conclusion that the whole issue of prostitution is "difficult," because "we know very little about the lives of prostitutes."<sup>120</sup> Moreover, so long as feminist support and advocacy work continues its present stance toward prostitution, "we" are unlikely to know much more.

If "they" decline to come to us, we can "go to them." We "go to them," by first identifying a class of "them," and then asking "them" questions about which we have some curiosity. Those investigations have been constrained in two related dimensions: in the difficulties of finding "them," and in the matters about which we have seen fit to inquire. Those matters, as I will demonstrate more completely in the following discussion, have been largely limited to inquiry whether, and to what extent, the life histories of women in prostitution share features in common with those of "other women." To the extent they might not, that is, the extent to which prostitution is different from "everything else," our curiosity has tended to wane. Having confined our interest in prostitutes to what is "not prostitution," attention to what may be the distinctiveness of the practice itself, and its analytic usefulness, necessarily and rapidly wanders. This approach finds many "prostitutes," but little "prostitution."

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119. However much feminists may debate whether feminism affords a unique angle of vision from which to comprehend women's experience, it effaces the achievements of twenty years of feminist activism, both scholarly and otherwise, to assume that "conventional" methods of investigation and interpretation have been fully equipped to perceive "the point" of women's lived realities. On this much, I hope, we can agree. For discussion of the debate within feminist legal theory on this issue, see Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990); Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990); Martha Minow, *Beyond Universality*, U. CHI. LEGAL. F. 115 (1989).

120. Chamallas, *supra* note 68, at 826. I have been truly astounded by the different things my own law students talk to me about since I have been publicly identified with prostitute support work. Before "coming out" as a prostitution activist, not one student ever told me about her own history in prostitution, her present involvement in prostitution, her self-identification as a prostitute, her "fucking everybody" periods, about behaviors associated with prostitution like excessive drug and alcohol use as a way of "getting over" in the sex, "consenting" to oral and anal sex as a tactic to avoid vaginal intercourse, cutting herself with knives and razor blades in the crotch and thighs, and performing sex with men or women to please a husband or lover. Now, these are commonplace discussions, enabled, I believe, by students' impressions that I do not find these disclosures "abnormal," but all too ordinary occasions for grief.

In short order, the coherence of the category “prostitutes,” descriptive of the unique experience of women *in* prostitution, falters as well. Thus, Deborah Rhode finds the data on the experience of women in prostitution inadequate to support reliable conclusions descriptive of prostitutes as a group, and questions whether such data could ever be generated given the range of circumstances under which women enter, practice, and leave prostitution.<sup>121</sup> That *prostitution* may forge a connecting link in the experience of “prostitutes” is a notion suppressed from the empirical get-go by the suppression of prostitution itself as a topic of analysis. Neither “come to us” nor “go to them” strategies of investigation, then, seem likely to cast much light on the subject. Rather, both (again) banish prostitution from feminist sight by causing prostitutes and prostitution to vanish from the realm of the “known.”

These vanishing acts have motivated feminist prostitution activists, like “other women” before them, to engage in autonomous organizing of women in prostitution on their own behalf. This work has availed itself of the third, and perhaps most significant, method devised in feminism for feminist “investigation”: that of “consciousness-raising,” meshing practices of “naming” women’s experience from “the inside,” with the crafting of political strategies for change on the “outside.” As I have noted earlier, consciousness-raising is the fundamental process by which feminist “stories” of women’s experience have come to be told.<sup>122</sup> As a means of political investigation, consciousness-raising tends to diverge from conventional analytic methods in three ways I think relevant to this discussion. As a process, consciousness-raising relies on participatory, interactive dialogue, in sharp contrast with the distanced, “observational” techniques employed in the empirical social sciences. This procedural emphasis, in turn, mirrors the thematic focus in consciousness-raising on building a synthetic description of women’s common life conditions. The participatory process of consciousness-raising echoes this discursive theme, *creating* such shared experience “in the act” of consciousness-raising itself.<sup>123</sup> Finally, this process, and these themes, are committed to a specific end: towards a political critique of existing gender relations which have both obscured women’s political identities and inhibited collective action against the prevailing regime.<sup>124</sup>

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121. RHODE, *supra* note 34, at 258.

122. See sources cited *supra* at notes 17-19, and accompanying text.

123. Catharine MacKinnon describes the relationship so enacted among women as “build[ing] a community frame of reference which recasts the perceived content of social life as it alters the relation between ‘I,’ the ‘other’ and the ‘we’ . . . creating a shared reality which ‘clears a space in the world’ within which women can begin to move.” MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 8, at 101 (citing Allen, *Free Space*, *supra* note 17).

124. Kathie Sarachild, an originating theorist of feminist consciousness-raising, emphasizes the rootedness of consciousness-raising in the theme of “who or what has an *interest* in maintaining the oppression in our lives.” Sarachild, *supra* note 17, at 144-45. See also Mari Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763 (1990) (explaining the dialectic of experience and critical consciousness in developing a politics for and by the oppressed). This critical dimension distinguishes consciousness-raising, and feminist activism generally, from simple confession of “personal problems” or pursuit of whatever passes currently for “mental health.” Kathie Sarachild early

It might seem a dubious proposition for women in prostitution to pursue a method of political action which in the hands of other women, crafting their "stories," has so threatened the integrity of prostituted women's lives. The following discussion attempts to chart the difficulties women in prostitution and their allies have encountered in organizing and "integrating" with the larger movement through practices of consciousness-raising. At the outset, though, I want to emphasize two crucial points which I hope will not be lost in the thicket of this analytic escapade. First, *without* feminist consciousness-raising, including, for example, Linda Marchiano's resistance to the pornography industry and the statements by women used in prostitution given to the Minneapolis City Council in support of the Dworkin/MacKinnon ordinance, none of this discussion would be possible at all. Second, as these examples suggest, the political possibilities *for* prostitution advocacy were in part enabled *within* the existing movement, if in some tension with its dominant programs and vision. Thus, the critique I offer here is intended to urge a greater commitment to consciousness-raising, not a recommendation that we abandon it. Nevertheless, insofar as the politics of consciousness-raising have constructed difficulties for women in prostitution to achieve a "voice" in feminism, these difficulties must be confronted.

The first difficulty is obvious, but especially in connection with prostitution, profoundly undercomprehended. The dead, the deeply incoherent, and those presently living in conditions of grave danger are not participants. Consciousness-raising is necessarily a practice for survivors, not casualties. As a method which relies on *participation* for its political analysis, consciousness-raising excludes the testimony of women who did not have enough luck to make it to the meeting, and not only for reasons of inadequate child care. Empirical evidence little assists in "completing the picture," although it helps a bit. Reliable rates of prostitute murders are not available, in part due to statistical reporting methods,<sup>125</sup> but also, and more importantly,

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stressed the significance of activism and critique as essential components of feminist process. "The view of consciousness-raising as an end in itself—when consciousness-raising is made into a methodology, a psychology, is [a] severe and destructive . . . distortion of the original idea." Sarachild, *supra* note 17, at 148. bell hooks has also criticized tendencies towards "therapism" in feminist consciousness-raising, suggesting that "[w]hen women internalized the idea that describing their own woe was synonymous with developing a critical political consciousness, the progress of the feminist movement was stalled." BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 24-25 (1984). See also RAYMOND, *supra* note 19, at 156-60 (1986) (situating the "personification of the political" of "therapism" in "the dissociative context in which many women live"); Anna Lee, *Therapy: The Evil Within*, 9 *TRIVIA* 34, 43 (1986) ("Feminist analysis of rape did not come from the human potential movement. . . . Feminist analysis of racism didn't come from therapy. . ."). The recuperation of feminist political critiques of sexual violence by the psychological disciplines in recent years back into the therapeutic realm of interpersonal disturbance by is the institutional analogue. Louise Armstrong, a feminist activist, author, and survivor of incest, has recently expressed, along with other feminists, a critique of the co-optation and de-politicization of feminist anti-incest work by the "helping professions" wherein the fodder of women's victimization becomes fuel for therapeutic incentive for "forgiveness" of victimizers. See Louise Armstrong, *Surviving the Incest Industry*, *TROUBLE AND STRIFE* 29 (Summer 1991).

125. The Uniform Crime Reports, published annually under the aegis of the FBI, analyzes victimization rates only by sex, age, and race and some circumstantial information, such as victim-offender

because of the “disappeared” status of women and girls involved in the practice.<sup>126</sup> They are “unaccounted for” females, from virtually every possible vantage point of observation, the whereabouts of migrating ducks are more devotedly attended. These unaccounted for females are often runaways or “throwaways” from families,<sup>127</sup> sometimes pimped by them.<sup>128</sup> Family members likely have no knowledge of or interest in a girl’s whereabouts. Those more immediately present in a girl’s life may readily assume she merely “moved on,” fear compromising themselves to the police, be the killer, or simply not care.<sup>129</sup> Police may make similar assumptions,<sup>130</sup> while the vagaries of a prostituted woman’s legal identity<sup>131</sup> render reports listing a woman under a possibly false name and a cursory description of little assistance in linking a corpse to an identifiable woman’s life. Commenting on the difficulties of establishing prevalence rates for serial murder in particular, one team of researchers has hypothesized that many “missing persons” (a gender neutral term even though they document that all but a few known victims of serial murder are women) may be serial murder victims,<sup>132</sup> and even the number of victims reported by apprehended perpetrators may never adequately be established. “We will never know for certain, because the majority of [the victims] would have been prostitutes whose disappearance may

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relationship. Such “relationships” as those a prostitute has with a john, pimp, or serial homicide perpetrator are not within the breakdowns. The National Center for Health Statistics publishes victimization rates only by sex and age. For a survey and critique of the statistical literature of homicide as it pertains to women, see William Wilbanks, *Murdered Women and Women Who Murder: A Critique of the Literature*, in JUDGE, LAWYER, VICTIM, THIEF: WOMEN, GENDER ROLES, AND CRIMINAL JUSTICE 157 (Nicole Hahn Rafter & Elizabeth A. Stanko eds., 1982).

126. See generally BARRY, *supra* note 10.

127. Running away from or being “shoved out” of families is the most common predicate for entry into prostitution among juveniles. See, e.g., MILLER, *supra* note 114, at 87-108 (approximately half of her sample are either runaways or “pushouts”), WEISBERG, *supra* note 113 (summarizing research to date).

128. Two major studies of juvenile prostitution report that 4% of girls interviewed were either with a family member at the time of their first act of prostitution or a family member turned them out. See WEISBERG, *supra* note 113 (citing MIMI SILBERT, SEXUAL ASSAULT OF PROSTITUTES: PHASE ONE 40 (1980) and JENNIFER JAMES, ENTRANCE INTO JUVENILE PROSTITUTION 77 (1980)). See also MILLER, *supra* note 114, at 65-85 (prevalence of recruitment via “domestic networks”), James A. Inciardi, *Little Girls and Sex: A Glimpse at the World of the “Baby Pro”*, 5 DEV. BEHAVIOR 71 (1984) (study of girls age 8-12 prostituted by relatives).

129. Robert Keppel, chief investigator for the Washington state Attorney General’s Office and consultant to the Green River investigation, stated, “Nobody keeps track of these women, monitors where they are going to be day by day. Often by the time the police get involved, it’s a historical research project.” Michael Hedges, *Prostitutes, Psychopaths Too Often a Deadly Match*, WASH. TIMES, June 12, 1990, at A10. Retired Los Angeles Police Department Captain Pierce Brooks deems prostitutes the “easiest victims to kill. All you have to do is drive up, wave a \$5 or \$20 bill. [She] hops in the car and off you go. No muss, no fuss.” Lisa Faye Kaplan, *Someone is Killing U.S. Hookers*, GANNETT NEWS SERVICE, June 7, 1990.

130. Robert DePue, former administrator of the FBI National Center for the Analysis of Violent Crime, asserts that prostitutes are “easier” to murder than children. “Prostitutes can disappear, and there won’t even be a missing person report filed. They’re expendable people, unfortunately, in our society.” Kaplan, *supra* note 129.

131. Women and girls commonly take on a series of assumed names, sometimes in the course of being seasoned for prostitution by pimps, see BARRY, *supra* note 10, at 94-95, and in an attempt to avoid an extensive police record under any one name.

132. JACK LEVIN & JAMES ALAN FOX, MASS MURDER: AMERICA’S GROWING MENACE 19 (1985).

not have been reported. Some may have ended up among the many "Jane Does" in the Los Angeles County Morgue."<sup>133</sup> Pornographic "snuff" films eroticize this ambiguity.

When the bodies are found and even tagged with names, the women even in death are still not "real women." An investigator of the "Green River" serial murders of 48 prostituted women in the Seattle area remarked, "There was wide public attention in the Ted [Bundy] case . . . because the victims resembled everyone's daughter . . . . But not everyone relates to prostitution on the Pacific Highway."<sup>134</sup> Prostitutes, apparently, are nobody's daughters; no longer even "victims" when murdered, but rather part of the flotsam of "prostitution on the Pacific Highway." The murdered spirits of women are contested, in doubt, tainted, interrogated. Were they good women or bad? Deserving dead or undeserving bystanders? During the investigation of the "Yorkshire Ripper" murders, Jim Hobson, police investigator, issued the following statement to the public, with a bit of hortation to the killer:

He has made it clear that he hates prostitutes. Many people do. We, as a police force, will continue to arrest prostitutes . . . . But the Ripper is now killing innocent girls. That indicates your mental state and that you are in urgent need of medical attention. You have made your point. Give yourself up before another innocent woman dies.<sup>135</sup>

Murderers murder prostitutes, police arrest prostitutes. "Troubled" is but the murderer of "innocent girls." According to one reporter, the families of the "innocent girls" were also troubled by the possibility of contagion by those "others" of the purity of their daughters' deaths: "It is the main grief work for the families of [the Ripper's] non-professional victims to try to understand how their girls came under this man's hand. By having the same killer as the prostitutes, their daughters have somehow been tainted."<sup>136</sup>

To be a "prostitute" is to be rapable, beatable, killable, and *why* women are

133. *Id.* at 75.

134. JANE CAPUTI, *THE AGE OF SEX CRIME* 94 (1987) (quoting *The Random Killers*, NEWSWEEK, Nov. 26, 1984, at 100, 106).

135. *Id.* at 93 (quoting Joan Smith, *Getting Away with Murder*, NEW SOCIALIST, May/June 1982, at 10, 12). Peter Sutcliffe was ultimately charged as the "Yorkshire Ripper" with the attempted murder of nine women and the murder of thirteen others. The case was submitted to the jury on diminished capacity manslaughter instructions and was Sutcliffe convicted. For a feminist analysis of the competing (and equally misogynist) psychiatric and criminal deviancy discourses structuring the Sutcliffe trial, see Wendy Hollway, "I Just Wanted to Kill a Woman." *Why? The Ripper and Male Sexuality*, in SWEEPING STATEMENTS: WRITINGS FROM THE WOMEN'S LIBERATION MOVEMENT, 1981-83, 14 (Hannah Kanter, et al. eds., 1984). For a superb analysis and critique of the anti-feminism of prevailing criminological explanations of serial sexual murder, see CAMERON & FRAZER, *supra* note 13.

136. CAPUTI, *supra* note 134, at 95.

(righteously to non-controversially) raped, beaten and killed.<sup>137</sup> Many people do hate prostitutes. Good girls don't get murdered.

It thus seems the better part of prudence to suggest that the murder data that do exist be evaluated in light of whatever multiplier might fairly comprehend prostitutes' social invisibility, compounded yet again by the gendered specificity of their status as "safe" objects of eroticized violence and misogynist hatred.<sup>138</sup> Some numbers are available. Up to thirty-one women murdered in Miami over a three year period, most of them prostitutes;<sup>139</sup> fourteen in Denver; twenty-nine in Los Angeles;<sup>140</sup> seven in Oakland.<sup>141</sup> Forty-three in San Diego;<sup>142</sup> fourteen in Rochester;<sup>143</sup> eight in Arlington, Virginia; nine in New Bedford, Massachusetts, seventeen in Alaska, ten in Tampa.<sup>144</sup> Three girls, ages 3, 4, and 6, sold in Suffolk, New York.<sup>145</sup> Three prostitutes were reported dead in Spokane, Washington in 1990, leading some to speculate that the "Green River" murderer of 48 women and girls had once again become "active."<sup>146</sup>

We can spin tales with the national data. Jane Caputi reports an estimate by a Justice Department official that 4,118 serial murders were committed in

137. To date, the Green River murders have not been solved; there are no suspects and 48 women counted killed. The director of a support program for women in prostitution estimates that 23 women a year *she knows of* disappear from the streets of Portland, Oregon; she presumes them murdered. Interview with Susan Kay Hunter (July 13, 1990). For a "man vs. man" account of the Green River investigation, posing the intrepid police department of King County against the wily killer, see CARLTON SMITH & TOMAS GUILLEN, *THE SEARCH FOR THE GREEN RIVER KILLER* (1991). The book is worthwhile for the individual photographs of each of the women and girls who have been murdered. The impact these pictures, one after another, told me that I still hadn't believed in them, in the density and depth of their real existence, when even only partially reminded of them in these photographic traces.

138. Deborah Cameron and Elizabeth Frazer conclude in their study of sexual murder that "prostitute-killing is the clearest example of the lust to kill whose main component is misogyny." CAMERON & FRAZER, *supra* note 13, at 138. Serial murderer Peter Sutcliffe described his motives in killing his first "non-prostitute": "I realized Josephine was not a prostitute but at the same time I wasn't bothered. I just wanted to kill a woman." Hollway, *supra* note 135, at 131.

139. Hedges, *supra* note 129. Hedges estimates a "low-end" figure of eighteen. See also Barry Bearak, *Eerie Deaths of 17 Women Baffle Miami*, L.A. TIMES, May 14, 1989, Part 1, at 1.

140. Nieson Himmel & Edward J. Boyer, *2nd South-Central Wave of Prostitute Slayings Probed*, L.A. TIMES, Feb. 17, 1989, Part 2, at 3.

141. *Seventh Victim Tied to Serial Killer*, L.A. TIMES, Oct. 8, 1989, Part 1, at 2. Describing the circumstances of six of the women's deaths, the reporter recites that three were shot to death on the street, two were beaten to death, and one hung from a tree.

142. *Suspect in 2 Oakland Killings Probed in 42 San Diego County Murders*, L.A. TIMES, Oct. 13, 1989, at A34. For a time, police involvement with these murders was believed; two of the victims were police informants suspected to have been murdered by police officers. See Seth Mydans, *Police Criticized in San Diego Killings*, N.Y. TIMES, September 22, 1990, at A7.

143. See *Serial Killer Convicted of Second Degree Murder*, ROCHESTER TIMES UNION, Dec. 13, 1990 (9 prostitutes of 10 female victims, all strangled); Mills, *5 Killings Stir Talk of New Serial Killer*, ROCHESTER DEMOCRAT, July 12, 1991 (all 5 women prostitutes).

144. See Hedges, *supra* note 129, at A10. Regional distinctions fleetingly surface; the women in Alaska were allegedly killed after being taken into wilderness areas, stripped, and hunted with a high-powered rifle.

145. Carolyn Colwell, *4 Arraigned on Sexual Abuse of 3 Girls*, NEWSDAY (Suffolk Home Edition), May 31, 1991, at 33.

146. *Suspected Serial Killer Grips Seattle for 2nd Time in Six Years*, DURHAM MORNING HERALD, May 28, 1990, at B4.

the United States in 1982.<sup>147</sup> If a scant half of those victims were women,<sup>148</sup> and of those one third were prostitutes, we divine a low end figure of 600 women in prostitution murdered by serial killers *alone* in that year. In the same year, 4,922 women were reported murdered, approximately 30% by lovers, boyfriends, and husbands.<sup>149</sup> The latter statistic is often employed to support the inference that women are disproportionately targeted for death by "sexual partners." If that inference holds true for the remaining 70% of victims, stranger rape victims and women in prostitution would constitute a substantial percentage of that remainder. Evaluating the cause of death poses its own complications.<sup>150</sup> By whatever means, women in prostitution are dying quickly. One authority cited in the 1985 Canadian government report on prostitution and pornography concluded that women and girls in prostitution suffer a mortality rate 40 times the national average.<sup>151</sup>

These women are not telling their "prostitution stories." Nor do a great

147. CAPUTI, *supra* note 134, at 203 n.4 (citing Robert Lindsey, *Officials Cite Rise in Killers Who Roam U.S. for Victims*, N.Y. TIMES, Jan. 21, 1984, at A1). Caputi cites an increase of serial murders from 644 in 1966 to the 4,118 figure in 1982. *Id.* at 1-2. I have been unable to discover more recent statistics.

148. The estimate of half of victims being women is likely low; the majority of such victims are women. See Steven A. Egger, *A Working Definition of Serial Murder and the Reduction of Linkage Blindness*, 12 J. OF POL. SCI. & ADMIN. 348, 351 (1984).

149. See U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES: 1988 160 (108th ed. 1988) (tabulating total number); FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES: 1986, at 11 (1987) (analyzing relationship of perpetrators to victims).

150. Our conceptions of "cause" remain as politically contingent in this arena as they do in others. On the general problem, see Scales, *supra* note 9. On its complexities in this context, Robin Morgan is illuminating:

[Lisa McElhaneys] seventeen year old body was found in a plastic bag in Columbus, Ohio in April 1987. Her father was an alcoholic, her mother had tried to get an abortion when pregnant with Lisa, but couldn't afford it. Lisa was raped as a child, became pregnant and miscarried at age fifteen, was thrown out by her family, became addicted to drugs, and worked in pornography and prostitution to support her habit. Each time she ran afoul of the law and was incarcerated in a home for delinquents, social workers noted on her file that she displayed an eagerness for relationships and was "starved for affection." But the system was set up to rehabilitate, not to provide relationships or affection, so Lisa withdrew and "would sit for hours and hours, staring into space." When photographs of her performing sexual acts were discovered by the police, she was subpoenaed to testify in a child pornography case against Larry Miller, the pornographer. Although Miller was a suspect in her murder, police believed the killer was a client of hers, Rob Roy Baker, a thirty-four-year-old truck driver who had been linked to similar attacks on other prostitutes. When police came to question him, Baker shot himself to death in a house filled with pictures of nude women cut from pornographic magazines.

So I would ask myself, did Lisa die of assault? Which assault? The lack of affordable abortion for her mother? The beating from her john? Did she die of the disease called "family" or the disease called "rehabilitation," of poverty or drugs or pornography, of economic or sexual slavery or a broken body? Or a broken spirit? . . . .

Perhaps she died of unknown causes.

MORGAN, *supra* note 7, at 316. Commenting on the death of Ingeborg Bachmann by burns sustained in a fire in her apartment, Karen Achberger finds the circumstances, in common with the deaths of other women, to "elude our customary distinctions between accident, murder, and suicide." Karen Achberger, *Introduction*, in INGEBOURG BACHMANN, THE THIRTIETH YEAR (Michael Bullock trans., 1987).

151. SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION, PORNOGRAPHY AND PROSTITUTION IN CANADA 350 (1985).

many others want to chat. For storytelling, especially of past sexual abuse and humiliation, has a particular sexual significance to women in prostitution. Often a john's "tell me about yourself" gambit operates as a bid for verbal arousal in a prostitution transaction, a dynamic too often mirrored in conversation with self-proclaimed "sympathetic" others.<sup>152</sup> The recollection and articulation of a history in prostitution may bring with it the reliving of profound pain and anguish, experience which may seem better left abandoned.<sup>153</sup> While some stories and acts may "spirit murder" an audience, the relation of prostituted women to storytelling here described suggests that some stories may "spirit murder" their *narrators*.<sup>154</sup> The "acting" theme of the prostitution transaction itself is too closely echoed in the "self-performance" of disclosure; the proximity of persuasion to pleasing an audience, erotically and otherwise, verging on the too familiar dynamics of hooking, this time, of feminists. "Storytelling" also requires the ability to remember, to draw connections, to reflect. Among women in prostitution, researchers report a disproportionately high incidence of psychogenic amnesia, multiple personality disorder, clinical depression, and borderline personality

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152. Similar dynamics have been depressingly detected by incest survivors seeking help from male therapists. See HERMAN, *supra* note 45, at 186-187. Herman reports the account of one survivor:

When I began trying to find help, it was the beginning of a bitter education in human failings. As I went from therapist to therapist, it became terribly clear that the supposedly dispassionate professionals seemed just as titillated by my story of incestuous involvement with my father as my father had been excited by the actual experience with me.

SANDRA BUTLER, *THE CONSPIRACY OF SILENCE: THE TRAUMA OF INCEST* 170 (1978) (cited in Herman, *supra* note 45, at 186). Torture survivor therapists also grapple with the implications of "talking therapists" for successful recovery, as the conduct of the therapy so closely resembles the structure of inquisition and confession of the torture itself. See Shaun R. Whittaker, *Counseling Torture Victims*, COUNSELLING PSYCHOLOGIST 272, 276 (Apr. 1988). The relationship of battery survivor to therapist has been similarly critiqued. See Mary Ann Douglas, *The Battered Woman Syndrome*, in DOMESTIC VIOLENCE ON TRIAL *supra* note 78, at 39, 52 ("The professional, like the batterer, believes s/he knows what is best for the battered woman and attempts to control her behavior to conform with the mold in order not to feel like a failure.").

I am attentive to these difficulties in my own life. I am excruciatingly aware of the multitude of occasions when, in some act of self-disclosure of instances of abuse, I can see my interlocutor eroticize the "story," or begin to contemplate what it means that I have been sexually hurt in the past. Too often, it seems, the inferred meaning is that I can be sexually hurt *again* (perhaps by him?).

153. Organizers and prostitute support workers have emphasized to me the deep reluctance of women with histories in prostitution to relate their experience in prostitution in public, narration which often brings with it terrible psychic costs. Therapists who work with other victims of torture also caution against unnecessary narrative replication of the experience, suggesting less mimetic methods of communication. See Marianne Kastrup, et al., *Coping With the Exposure to Torture*, CONTEMP. FAM. THERAPY, 280, 284 (Winter 1988); Whittaker, *supra* note 152, at 272, 276. Some therapists promote one-time tape recording of testimony from the survivor to diminish the need for retelling and to channel the survivor's experience toward restoration of self-esteem through storytelling and social action. See Whittaker, *supra* note 152, at 276-277; Ana Julia Cienfuegos & Christina Monelli, *The Testimony of Political Repression as a Therapeutic Instrument*, 53 AMER. J. OF ORTHO-PSYCHIATRY. For an excellent selection of essays on the recovery process in torture victims, see generally PSYCHOLOGY AND TORTURE (Peter Suedfeld ed., 1985).

154. The term is Patricia Williams's. See Williams, *Spirit-Murdering the Messenger: The Discourse of Finger-Pointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127, 151 (1987). In her conception, "spirit-murder" is the "disregard for others whose lives qualitatively depend on our regard," this is characteristic of racism (and, as Williams notes, of prostitution). *Id.* at 151. As I state in the text, I would extend her description of the damage done to targets of racist speech to those who are compelled to describe their injuries to potential victimizers.

disorder inhibiting those powers.<sup>155</sup> Care-givers commonly trace the origin of such disintegration of the self to an attempted defense against shattering and repetitive trauma, entailing the collapse of memory and profound fragmentation of linguistic cognition.<sup>156</sup> As Andrea Dworkin puts the “rhetorical” problem:

The formal writing problem, frankly, is that the bait can't write the story . . . . I barely know any words for what happened to me yesterday, which doesn't make tomorrow some-thing I can conceive of in my own mind; I mean words I say to myself in my own head; not social words you use to explain to someone else. I barely know anything and if I deviate I am lost; I have to be literal, if I can remember, which mostly I cannot.<sup>157</sup>

The matter of one's entitlement to speak “as a prostitute” is also complex. If the theme of “commonality” is that to be pursued in feminist consciousness-raising, it is not one readily seized by women in prostitution, as a “prostitute” among “prostitutes.” The label is not a self-identification readily or transparently taken as one's own; more frequently, it is copped as a pose, an expediency, or just a condition of being a woman. This may seem an odd equivocation, as the definitiveness of the term “prostitute,” and of what counts as “prostitution,” would seem to dispatch any uncertainty in a hurry. Indeed, the fixity of the boundary can urge its own imperatives. A woman who had for a period of time performed in pornographic films and as a stripper reports: “Within a month, I did my first job as a whore . . . . It was quicker, it was more money, and it was definite. I felt like: Okay, now, I am a whore and if

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155. Colin A. Ross et al., *Dissociation and Abuse Among Multiple-Personality Patients, Prostitutes and Exotic Dancers*, 41 HOSP. & COMM. PSYCHIATRY 328 (1990) (significant incidence of psychogenic amnesia, multiple personality disorder, clinical depression and borderline personality disorder among prostituted women and “dancers.” Nineteen percent of sample of persons affected by multiple personality disorder had been prostituted); Colin A. Ross et al., *Multiple Personality Disorder: An Analysis of 236 Cases*, 34 CAN. J. OF PSYCHIATRY 413 (1989); Dirk De Schampheleire, *MMPI Characteristics of Professional Prostitutes: A Cross-Cultural Replication*, 54 J. OF PERS. ASSESS. 343 (1990) (serious mental health problems perceived among subjects).

156. See James A. Chu & Diana L. Dill, *Dissociative Symptoms in Relation to Childhood Physical and Sexual Abuse*, 147 AMER. J. OF PSYCHIATRY 887 (1990); Frank Putnam, et al., *The Clinical Phenomenology of Multiple Personality Disorder: Review of 100 Recent Cases*, 47 J. CLIN. PSYCHIATRY 285 (1986). See generally JUDITH LEWIS HERMAN, *TRAUMA AND RECOVERY* (1992).

157. DWORKIN, *MERCY*, *supra* note 6, at 229, 231. Primo Levi counts among the silences at the core of our knowledge of the conditions of torture in the Nazi concentration camps the accounts of the most deeply victimized. “At a distance of years one can today definitely affirm that the history of the Lager has been written almost exclusively by those who, like myself, never fathomed them to the bottom. Those who did so did not return, or their capacity for observation was paralyzed by suffering and incomprehension.” PRIMO LEVI, *THE DROWNED AND THE SAVED* 17 (1986).

Torture investigators have noted the same inevitable partiality of personal accounts in developing a descriptively adequate understanding of the effects of torture on human beings. Persons capable of such articulation, known in the literature as “the adapted afflicted,” have already accomplished an unusual degree of recovery. “These accounts often suggest that individuals emerge as better people, having experienced personal growth, with firm identities and life goals,” profoundly skewing comprehension of the more typical consequences. Engdahl & Eberly, *The Effects of Torture and Other Maltreatment: Implications for Psychology*, in *PSYCHOLOGY AND TORTURE*, *supra* note 153, at 31, 38.

anyone calls me that they are right.”<sup>158</sup> Or the same certainty can be turned around defensively: one is not a “real prostitute” if the men don’t seem like strangers, or the financial arrangement is indefinite, or the woman doesn’t care for the sex.

I never called myself a prostitute; I never called myself a porno actress either. I was a filmmaker. I didn’t work the streets, I didn’t work every day, my customers were repeats, referrals. I called them my friends . . . it was an easy lie. They didn’t pay me, I would tell myself; they helped me out with my rent and bills, and they would land me film jobs. And I liked them; you’re never a prostitute when you like them. Besides, I was a lesbian, and I was experimenting, and it was safe. . . . I could get out or stop anytime I wanted . . . . I was on top.<sup>159</sup>

I wouldn’t have thought of it as prostitution at the time. This was doing casual jobs in bars with a friend of mine, an airline pilot, picking up men in the bars. These guys would give me money to go out with them and sleep with them, but it was still a game to me and I didn’t realize I was working. I didn’t identify as a prostitute because I didn’t say ‘look, you’ve got to pay such and such an amount and I’ll sleep with you’; they used to just take me out, give me dinner, and then I would sleep with them.<sup>160</sup>

Or as one woman, addicted to heroin, states: “Yeah, I’ve turned tricks, but I don’t consider myself a prostitute. I always got pretty embarrassed about it. I’d tell the guy, ‘Hey man, I’m not really into this, but I really do need the money.’”<sup>161</sup> Complying to the sex may be, for the woman, only a last ditch

158. Eva Rosta, *Comment in A VINDICATION OF THE RIGHTS OF WHORES*, *supra* note 117, at 144, 145.

159. Sharon Kaiser, *Coming Out of Denial*, in *SEX WORK*, *supra* note 57, at 104, 105. Another woman who had worked as a topless dancer writes of her ambivalence about her entitlement to submit a piece for publication in an anthology of writings by women in the “sex industry,” doubting her “credentials:”

Maybe my experiences weren’t really “sex industry.” I couldn’t waste people’s time with my writing because what I had done was too “tame” to be legitimate. And anyway, my experience didn’t really count because I was a college student; I wasn’t tied to it; I was really above it all, not part of it.

Judy Helfand, *Silence Again*, in *SEX WORK*, *supra* note 57, at 99.

160. Roberta Perkins & Garry Bennett, *Bonnie: International Prostitute*, in *BEING A PROSTITUTE: PROSTITUTE WOMEN AND PROSTITUTE MEN* 133, 134 (1985). At seventeen, Bonnie and another woman were taken from New Zealand to the Phillipines, then to Hong Kong and other locales to practice prostitution. At the time of the interview, she was prostituting in Australia, addicted to drugs, with no resources and about to lose custody of her son. *Id.*

161. Marsha Rosenbaum, *Work and the Addicted Prostitute*, in *JUDGE, LAWYER, VICTIM, THIEF*, *supra* note 125, at 131, 148. Women and girls who are addicted to cocaine sometimes refer to the exchanges

method of getting money, or only one of many strategies.<sup>162</sup> Or the distinction between prostitution and any other “work” or condition of proximity to men may seem, at least in prospect, wholly artificial and illusory. One isn’t a “prostitute” if everyone else is, too. “When I was nineteen years old I made what seemed like a conscious decision to become a prostitute. Having experienced sexual harassment on the job, in the streets, and in virtually every area of life, it was not a particularly fantastic leap to take.”<sup>163</sup> “No trick ever broke my ribs like my husband did.”<sup>164</sup> This ordeal of self-definition, though, is also avoidable by anticipatory defense: “I had considered myself a whore from the time I had become sexually active, even before I became sexually active. From that time on, I had thought of myself as a whore, and it was like, well, I’m gonna make money at it.”<sup>165</sup>

In our political critiques, we have less acknowledged these equivocations than reified them, within an array of contending and mutually exclusive advocacy positions. The tones of doubt, bravado, defensiveness, inevitability these women express about “being prostitutes” are dispersed and frozen politically in the competing terms of a political debate over what constitutes “prostitution” and what does not. Neither the fundamental design of this debate, nor its frozen quality has been “chosen” by its participants. For there is dignity in this discussion, but also an edge of desperation. As fractious as these debates have proven, uniting the visions of these advocates is a shared assumption that the particular case of prostitution can be assimilated into the general case of “women’s oppression” as feminism has heretofore elaborated that condition. Each coalition of advocates has seized a different version of our “other woman” representations, and claims it as the salient description of *prostitution* from women’s perspective. If “other women” seek to split from prostitution by disidentifying from one element of it, prostitute advocates have sought to identify *as* “other women” by identifying *with* one of the “not a prostitute” stories. Prostitutes thereby can “become” other women; prostitution is but one variant of a condition shared in common with those others. If other women aren’t prostitutes, neither are prostitutes. On *all* of the contending

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of sex for drugs as a “tossup,” or as “strawberrying,” deflecting the terms “prostitution” or “whoring” to define their behavior.

162. See Miller, *supra* note 114, at 6, 70-71 (describing repertoire of activities women engage in for money of which prostitution was but one). As one woman told me: “I didn’t think I would ever have to actually fuck them. I thought I could just rob them.”

163. Donna Marie Niles, *Confessions of a Priestessstute*, in *SEX WORK*, *supra* note 57, at 148. Niles ultimately left prostitution, stating that “. . . I simply no longer could justify working in an industry that profited from the sexual objectification of women.” *Id.* at 149.

164. Phyllis Luman Metal, *One for Ripley’s*, in *SEX WORK*, *supra* note 57, at 119, 120.

165. Priscilla Alexander, *Interview with Nell*, in *SEX WORK*, *supra* note 57, at 53, 55. For a discussion of the process of women’s self-identification as “prostitutes,” see Jennifer James & Jane Meyerding, *Early Sexual Experience and Prostitution*, 134 *AMER. J. PSYCHOL.* 1381 (1977) (“A woman who views herself as sexually debased or whose sexuality is more than normally objectified may see prostitution as a “natural”—or as the only—alternative.”). See also Clifton D. Bryant & C. Eddie Palmer, *Massage Parlors and “Hand Whores:” Some Sociological Observations*, 11 *J. OF SEX RES.* 227, 241 (1975) (disidentification of massage parlor workers from label as “prostitutes”).

perspectives, prostitution *is* “like everything else.” The dispute turns on what the “else” is characterized to be. The dignity abides in the simple claim that no woman is a “prostitute,” no woman is deserving of the violence and contempt women in prostitution routinely suffer. The desperation comes in the cost of “proving” it. In this public discussion, that effort, already a brutal demand, seems to require that prostitutes’ lives be *justified*, rather than empathetically understood.

In this compelled endeavor of justification, prostitute advocates have been assisted both by the contributions and the theoretical disputes of liberal feminism, socialist feminism, and radical feminism. In theoretical emphasis and strategic design, these tendencies in feminism identify discrete political “locales” as fundamental to women’s oppression. Liberal feminism, with its stress on the conditions of women’s individual consent, has had principal influence in rape law reform, foundationally in the sex-with-strangers variety. Radical feminism, with its stress on the conditions of women’s coercion in “private” intimacy with men, has had principal influence in domestic violence intervention. Socialist feminism, with its stress on women’s economic exploitation in the family and in the workplace, has had principal influence in altering monetary conditions of women’s employment. Aside from some turf skirmishes (most vituperatively fought among academics), these tendencies co-exist relatively calmly, perhaps because the “sphere of influence” attended to by each conforms with what is viewed as a “natural” division of the street, from the home, and from the workplace, in women’s lives.

This same tripartite division habitates, if less serenely, the splits among prostitution advocates, providing political precedent for the contention by each that prostitutes are “other women,” after all. In the liberal advocates’ view, prostitution “is” non-monogamous, consensual sex, again taking up the selectiveness component as fundamental. In the socialist view, prostitution is work, attending to the matter of money. In the radical feminist view, the woman’s circumstances of intimate coercion occupies the essential territory. Having distilled the crucial problem, we each notice that other women share it. Other women, too, are stigmatized for apparent sexual independence and nonconformity. Other women, too, are economically exploited, reviled for making money at all, the value of their labor cheapened if they do. Other women, too, are “invisibly” sexually coerced, the realities of lifelong sexual abuse masked and perpetuated under an erotic regime which rewards the compliance of the hopeless and thrives in the possibilities which proliferate when no questions are asked.

Each of these positions, in turn, is also argued from the representational framework commonly advanced by their “other woman” counterparts. Liberal advocates favor the “shielded” version, limiting their “story” of prostitution to the immediate sexual component of the transaction, while arguing to the irrelevance of any other feature of the exchange (often including the money),

and of any other surrounding conditions of a woman's life. Socialist feminist advocates favor the categorical divide between "sex" and "work," familiar from sexual harassment campaigns, holding prostitution unambiguously to fall in the productive realm of "work." Radical feminist advocates urge an expanded version of the domestic violence story, stressing the effect of serial, sometimes life-long, suffering of sexual abuse in prostitutes' lives as the relevant interpretive context. Having set the terms, however divergent, on the correspondence of the oppression of women in prostitution with that suffered by "other women," the (feminist) debate on prostitution thus seeks to merge in theme and strategic focus with those familiar from other feminist campaigns without rupture.

The most publicly visible of these positions is that advanced by prostitutes' rights organizations, who promote political demands for affirmative legal and social rights for women to practice prostitution.<sup>166</sup> These advocates advance this view under principles familiar from mainstream liberal feminism: the fostering of women's individual autonomy and sexual self-expression. In this normative emphasis, these campaigns follow themes familiar in mainstream feminist anti-rape work. The manifesto of the International Committee on Prostitutes' Rights, for example, states that it "*affirms the right of all women to determine their own sexual behavior, including commercial exchange, without stigmatization or punishment.*"<sup>167</sup> A specific political parallel between the legal and social suppression of women's sexuality generally and the criminalization and loathing of prostitutes is explicitly drawn in support of this position. Each case constitutes a practice of female sexual nonconformity in a culture which punishes any female sexual behavior uncontained by legal monogamy or released from functions (re)productively beneficial to men.<sup>168</sup>

The strong version of this argument asserts that prostitution is a sexually progressive practice for women, yielding women both useful rewards in return for the sex we otherwise forfeit for no discernible benefit, and, for some women, a context for the felt exercise of control and power in sexual transactions. As Margo St. James, founder of COYOTE, states the points, "In private, the whore has power. She is in charge, setting the terms for the sexual

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166. Those organizations include Call Off Your Old Tired Ethics (COYOTE), founded in 1973 by Margo St. James, the National Task Force on Prostitution (NTFP), and the International Committee for Prostitutes' Rights (ICPR). See A VINDICATION OF THE RIGHTS OF WHORES, *supra* note 116, at 33-51 (on the organization of the ICPR); COYOTE/National Task Force on Prostitution, in SEX WORK, *supra* note 57, at 290 (organizing and policy statement of COYOTE); *id.* at 305 (charter of ICPR and statements from conferences).

167. *International Committee for Prostitutes' Rights World Chapter and World Whore's Congress Statements*, in SEX WORK, *supra* note 57, at 305, 310.

For negative assessments of the representative legitimacy of prostitutes' rights organizations, see Kathleen Barry, *The Opening Paper: International Politics of Female Sexual Slavery*, in INTERNATIONAL FEMINISM, *supra* note 33, at 21, 24-25.

168. See, e.g., Joan Nestle, *Lesbians and Prostitutes: A Historical Sisterhood*, in SEX WORK, *supra* note 57, at 231. For a strong objection to this political correlation authored by a lesbian with a history in prostitution, see Toby Summer, *Women, Lesbians and Prostitution: A Workingclass Dyke Speaks Out Against Buying Women for Sex*, LESBIAN ETHICS 33 (Summer 1987).

exchange and the financial exchange."<sup>169</sup> Priscilla Alexander of the NTFP reports, too, that many women in prostitution assert that "the first time they felt powerful was the first time they turned a trick."<sup>170</sup> Prostitution, in this view, offers an alternative to the straitjacket of female sexual "respectability" and an opportunity for women and girls to experience the self-affirmation of outlaw rebellion and the fast thrill of feeling desired enough to part a man from what he likely covets most: his money.<sup>171</sup> The weaker version, less committed to wholesale endorsement of prostitution as a practice of sexual freedom for women, urges the decriminalization and social acceptance of prostitution consistent with the feminist program of state deregulation of women's sexual behavior.<sup>172</sup> If no means no, yes should mean yes under whatever conditions a woman chooses. Voluntariness may be inferred from ordinary indicia of age and capacity, confirmed in the receipt of cash.

These claims are legally articulated in the discourse of privacy doctrine. This argument asserts that the "sex" of prostitution differs in quality not at all from adult, heterosexual sex ordinarily deemed within the realm of the private. This premise profits from arguments long advanced in explanation of the "inevitability" of prostitution: a view of the practice as meeting natural, and urgent, "human" requirements for sex.<sup>173</sup> For example, philosopher Lars Ericsson argues that prostitution is a necessary feature of human life, as "sexual urges" are natural and therefore will be satisfied by whatever means necessary. He draws the analogy of sex to food, then, among food sources, of prostitution to restaurants, and concludes that bought meals are not always

169. Margo St. James, *The Reclamation of Whores*, in *GOOD GIRLS/BAD GIRLS*, *supra* note 40, at 82. See also M. Anne Jennings, *The Victim as Criminal: A Consideration of California's Prostitution Laws*, 64 CAL. L. REV. 1235, 1253 (1976) ("[Prostitution] may also be viewed as a choice by the prostitute to exercise control over her own sexuality, giving her greater economic and psychological independence than may otherwise be available.").

170. Priscilla Alexander, *Introduction*, in *SEX WORK*, *supra* note 57, at 15.

171. See, e.g., Peggy Miller, *From the Floor*, in *GOOD GIRLS/BAD GIRLS*, *supra* note 40, at 48-49. Women who do not identify as prostitutes express similar motives for engaging in "risky" sexual behavior. One woman who regularly had sex with members of a fraternity known for gang raping women explains:

I thought I could pick and choose whatever man I was going to sleep with and this gave me a feeling of power to be able to say to some guy, "No, I don't want to sleep with you," or "Yes, I do." . . . I also liked to court danger. Being warned against going to [the fraternity] was the incentive to make me go. There was a certain thrill in going someplace that I knew had a bad reputation, where it was hard to say what was going to happen next. I also liked going someplace where my name was known, where I would be recognized when I walked into the room—even if they were kind of jerks.

*Comments by "Amy,"* in PEGGY REEVES SANDAY, *FRATERNITY GANG RAPE: SEX, BROTHERHOOD AND PRIVILEGE ON CAMPUS*, 100-01 (1990). Amy was later gang raped by the fraternity members. *Id.* at 98-100.

172. For another summary of these arguments, see Freeman, *supra* note 105, at 91 (prostitutes' rights groups contend that "prostitution enhances freedom . . . [and] enables [autonomy] to flourish").

173. The inevitability of prostitution is taken as a given in most work in the area, even that urging reform of the practice. See, e.g., ARLENE CARMEN & HOWARD MOODY, *WORKING WOMEN: THE SUBTERRANEAN WORLD OF STREET PROSTITUTION* 195 (1985) ("It should be clear that in none of the alternatives that we look at, including the status quo, is it possible to abolish prostitution."); Jennings, *supra* note 169, at 1259 ("[B]ecause some amount of prostitution is likely to continue for the foreseeable future, legislative reform should be aimed not at its abolition, but at minimizing the undesirable aspects of prostitution, particularly overt public solicitation.").

the worst.<sup>174</sup> David Richards continues the gourmet theme on a moral ground, arguing that affirmation of an array of “eating styles” is consistent with respect for individual autonomy and that “to compel by law any one style of eating would evince contempt for the dignity of individual self-determination.” For Richards it then follows that “[l]egal enforcement of a particular sexual ideal fails equally to accord respect for individual autonomy.”<sup>175</sup>

These justifications for the “naturalness” of prostitution are further aided by often-expressed perplexities over how to distinguish prostitution from other, socially conforming sexual transactions. Confusions articulated by men, including legislators, over the appropriate boundary to be drawn between prostitution and ordinary “courting” behavior reflect this definitional difficulty. For example, during public hearings on proposed revisions to the New York prostitution statute, language defining prostitution as sex exchanged “for a fee or for other compensation” was successfully challenged as impossibly broad. One witness persuaded the hearing commission that the term “or compensation” should be deleted, as “the whole concept of the male-female relationship in our culture . . . is based on compensation.”<sup>176</sup> I heard similar uncertainties expressed while testifying before the Florida legislature in support of a bill affording civil remedies for women induced into prostitution.<sup>177</sup> Among other practices defined in the statute to constitute “inducement” to prostitution is a “promise of marriage,” designed principally to reach “mail order bride” operations which motivate women and girls to enter the United States and which then turn them out to prostitution. Several legislators indicated concern that *all* marriage could be understood as prostitution, and therefore all husbands plausible defendants. In a related vein, some legislators were anxious to know if the statutory definition of prostitution in Florida requires cash payment, so as to distinguish the practice from the giving of gifts, dinners, and so forth, followed by sex. The legislators were not joking; they seemed deeply disturbed and anxious. I was, too, if for different reasons.

These men are hardly isolated in these views. Women often voice them, angrily. Men complain that the price of ordinary sex comes too high and without adequate assurance of performance. When sex researcher Shere Hite asked, “Have you ever had sex with a prostitute? How did you feel about paying for sex?,” many of her male respondents, including men who answered

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174. Lars Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment*, 90 ETHICS 335, 341 (1980). For feminist responses to Ericsson, see Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, 93 ETHICS 561 (1983); Laurie Shrage, *Should Feminists Oppose Prostitution?*, 99 ETHICS 347 (1989). See also CAROLE PATEMAN, *THE SEXUAL CONTRACT* 189-218 (1988) (prostitution is most adequately conceived as an institution which enables all men to affirm themselves as masters).

175. 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, 1239 (1979).

176. Pamela A. Roby, *Politics and Criminal Law: Revision of the New York State Penal Law on Prostitution*, 17 SOC. PROBS. 83, 91 (1969) (quoting testimony of Dr. Biegel).

177. See FLA. STAT. ANN. § 796.09 (West 1991 Supp.).

“no” to the first question, replied, “you always pay anyway.”<sup>178</sup> Thus:

I have had sex with a prostitute. I have no feeling about paying for sex. After all, marriage is paying for sex by contract. You pay for it one way or another—actually its cheaper with a whore! Also she’s a pro, doesn’t play coy games, and no pretenses.

I don’t like paying for sex, but really what’s the difference if a guy pays twenty-five or thirty dollars on a date, then ‘maybe’ has intercourse, or just picks up a prostitute off the street and pays her the same? Actually a person is money ahead with a whore.<sup>179</sup>

Each of these arguments, whether to natural inevitability or to social convention, bolster the affirmative case in support of prostitution offered by liberal prostitution advocates: it’s all just “sex,” no more and no less, after all.

The case for decriminalization further proceeds by way of critique of the conventional justifications for state sanctions against prostitution. Those justifications include the control of venereal disease; the inhibition of other crimes related to prostitution, including theft, assault, and drug use; the protection of girls and women in prostitution; and the suppression of “public offense” caused by prostitution, taking either the form of neighborhood disruption or moral outrage. Analysis of those justifications is largely confined to challenging the empirical assumptions about prostitutes underlying them. Where those assumptions are factually corroborated, the causal connection between those conditions and the practice of prostitution itself is the site of contest. The empirical and causal “control group” explicitly or implicitly invoked in structuring these inquiries is “normal women.” The empirical question becomes whether social dangers said to be posed by prostitutes are not similarly posed for or by “normal women.” The causal question becomes whether it is prostitution or “womanhood” that brings them into being. Needless to say, with a control group like that, prostitution begins to look rather tame as a social problem, as criminalizing “womanhood” appears to be an unthinkable alternative. In structure, this strategy is also similar to our anti-rape campaigns. Like the representational minimalism pursued via rape shield legislation, these analyses seek to confine the significance of prostitution to the “four corners” of the transaction, slicing away any other conditions commonly

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178. SHERE HITE, *THE HITE REPORT ON MALE SEXUALITY* 293-94 (1981). Hite found the frequency of this response “terrifying.”

179. *Id.*

experienced by women in the practice as accidental to "prostitution itself."

The role of prostitution in the spread of venereal diseases, for example, is empirically tested by amassing data on the incidence of venereal diseases among prostitutes. This data typically does not support the inference that prostitution contributes substantially to the spread of those diseases in the "general population."<sup>180</sup> Women in prostitution, thus, are no more or less dangerous than "other women" for sex. The link between prostitution and the commission of other crimes is similarly found overstated as a matter of fact,<sup>181</sup> or causally distinguished from prostitution in origin. The causal argument is that most vigorously pursued in contemporary advocacy, as the statistics on the incidence of violence against prostitutes continues to mount. The most detailed of those investigations is Mimi Silbert's analysis of victimization rates among 200 street prostitutes in San Francisco. Silbert summarizes her findings on victimization rates by johns:

Of the subjects, 78% reported being victimized by forced perversion an average of 16.6 times each woman. Also, 70% were victimized by customer rape or clients similarly going beyond the prostitution contract, an average of 31.3 times . . . . Of the subjects, 41% were victimized in some other way, an average of 2.6 times (e.g., forced into sex for no pay with police, being beaten by police, being beaten by other prostitutes). Additionally, 65% of the prostitutes were physically abused and beaten by customers, an average of 4.3 times . . . . More than three-fourths of the victims stated there was nothing they could do about customer abuse; only 1% mentioned reporting to the police.<sup>182</sup>

These data are consistent with other studies finding high sexual and physical victimization rates among women engaged in prostitution in its various milieus, inflicted by pimps, other women, and strangers other than johns.<sup>183</sup> The

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180. See, e.g., Priscilla Alexander, *Prostitutes Are Being Scapegoated for Heterosexual AIDS*, in *SEX WORK*, *supra* note 57, at 248-263; Scibelli, *supra* note 105, at 129-131 (assembling data on incidence of AIDS, syphilis, and gonorrhea in prostitutes); Barbara Milman, *New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?*, 3 *HARV. WOMEN'S L.J.* 1, 28-29 (1980); Jennings, *supra* note 169, at 1242, 1243; Therese M. Wandling, *Decriminalization of Prostitution: The Limits of the Criminal Law*, 55 *OR. L. REV.* 553, 556 (1976).

181. See, e.g., Charles Rosenbleet & Barbara J. Pariente, *The Prostitution of the Criminal Law*, 11 *AM. CRIM. L. REV.* 373, 418-19 (1973); Wandling, *supra* note 180, at 557; Jennings, *supra* note 169, at 1244.

182. Mimi H. Silbert & Ayala M. Pines, *Occupational Hazards of Street Prostitutes*, 8 *CRIM. JUST. & BEHAV.* 395, 397 (1981).

183. See *supra* notes 125-151 and accompanying text (on murder); Enablers, *Juvenile Prostitution in Minnesota: The Report of a Research Project 70, 75* (1978) [hereinafter *Enablers*] (more than half of girls beaten by pimps; 20% report constant or regular beatings); (40% beaten by johns; 28% three or more times); MILLER, *supra* note 114, at 138; PERKINS & BENNETT, *supra* note 160, at 238-41, 295-96 (33.99% of women raped while engaging in prostitution); A *VINDICATION OF THE RIGHTS OF WHORES*, *supra* note

means of causal finesse of these numbers is illustrated by Barbara Milman's comments on the victimization of women in prostitution by pimps: "The prostitute who is regularly beaten by her pimp is, like a battered wife, certainly the victim of a violent crime. But is she a victim of prostitution?"<sup>184</sup>

The incidence of drug dependency among women in prostitution, as well as the massive incidence of childhood incest, sexual use and physical battery in the life histories of women in prostitution is similarly dispatched as accidental to the woman's situation as a prostitute. Like the issue of violence against prostitutes, the problem of drug use and addiction<sup>185</sup> is again scuttled on the business of cause.<sup>186</sup> The matter of childhood sexual abuse, especially incest, is less handily suppressed. The prevalence statistics suggest very high rates of incestuous sexual abuse, physical harm, and emotional brutalization in prostituted women's childhood histories.<sup>187</sup> Running away from home to escape these circumstances is a common precondition for entry into prostitution, a factor noted in earlier literature but dismissed with Freudian alacrity. One study published in 1969 reported:

In a large proportion of cases, there is considerable indication that the girl runs away from home to ward off *the unconscious threat of an incestuous relation* with her father, the fear of the resultant dissolution of the family, and the concurrent depression.<sup>188</sup>

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112, at 161-68 (routine violence reported by ICPR conference attendants); WEISBERG, *supra* note 113, at 108-110 (with few exceptions, girls reported that any pimp would beat a prostitute given "provocation" (citing DOROTHY H. BRACEY, *BABY-PROS: PRELIMINARY PROFILES OF JUVENILE PROSTITUTES* 37 (1979)); more than half of girls and women beaten regularly or constantly by pimps (citing MIMI SILBERT, *SEXUAL ASSAULT OF PROSTITUTES: PHASE ONE* 60 (1980)); rape by "non-customers" common and extremely violent (citing SILBERT, *id.* at 62)).

184. Milman, *supra* note 180, at 33.

185. For incidence rates of drug use and addiction, see, Mimi H. Silbert et al., *Substance Abuse and Prostitution*, 14 J. PSYCHOACTIVE DRUGS, 193 (1982); WEISBERG, *supra* note 113, at 99-100; PERKINS & BENNETT, *supra* note 160, at 241-42 (estimating 70-75% of women drug users). I am increasingly troubled generally by the emphasis placed on drug addiction as an index of trauma incurred by women and girls in prostitution. In no other arena is drug addiction considered a dispositive indication of whether trauma has been inflicted on a woman. Indicia of rape trauma syndrome, for example, do not suggest that a woman is injured only if she becomes an inveterate junkie as a consequence of sexual assault.

186. See Milman, *supra* note 180, at 25 ("[T]he literature suggests that drug addiction and prostitution are probably not causally related to each other."); Scibelli, *supra* note 105, at 128; MILLER, *supra* note 114, at 108 (few women in her study "describe substance abuse as the thing that caused them to be involved in deviant street networks").

187. For rates of incest, see Enablers, *supra* note 183, at 22-23 (31% of respondents reported incestuous abuse); WEISBERG, *supra* note 113, at 91-92 (66% of women sexually abused by father or father figures, including stepfathers, foster fathers, or mother's common law husband)(citing MIMI SILBERT, *SEXUAL ASSAULT OF PROSTITUTES: PHASE ONE* 85 (1980)). For sexual abuse by others, see James & Meyerding, *supra* note 165, at 38 (65% of respondents had been raped; 85% of those occurred when victim was under 15); Mimi Silbert & Ayala Pines, *Entrance Into Prostitution*, 13 YOUTH & SOC'Y 471, 479 (1982) (60-70% of women in prostitution sexually abused as children). For other physical and emotional abuse, see Silbert & Pines, *id.*, at 479 (45% of girls beaten regularly when growing up; 70% emotionally abused); Enablers, *supra* note 183, at 22 (66% beaten by family member).

188. Ames Roby, *The Runaway Girl*, in FAMILY DYNAMICS AND FEMALE SEXUAL DELINQUENCY 127, (Otto Pollack & Alfred S. Friedman eds., 1969) (emphasis added). It is now well known that Freud

Even in contemporary research, these data seem most relevant to investigators of juvenile prostitution. Eleanor Miller's otherwise detailed and astute interviews with a sample of Milwaukee "street women," excluded questions on the topic of incest until she began to note the high rates of unsolicited disclosure of incestuous sexual abuse from her subjects.<sup>189</sup> Even at that juncture, she decided only to inquire on the subject when the context seemed to warrant further interest in the matter, while asserting that the issue requires further study.<sup>190</sup> The empirical assumption appears to be that the effects or relevance of childhood abuse to adult prostituted women's experience wither away upon attainment of the age of majority.

The marginalization of issues of drug abuse and childhood abuse is aided by a further empirical split between juvenile and adult prostitutes and between drug-addicted and chemically clean women and girls in the practice of prostitution. In the literature, "juvenile prostitutes" and "addicted prostitutes" are treated as distinct populations, "special cases" within the cohort of ordinary prostitutes. These distinctions are maintained despite the fact that the median age for entry into prostitution is 14,<sup>191</sup> and, as noted above, regular use of drugs is widespread among women and girls used in the practice.<sup>192</sup> This adjectival sleight of hand is justified by the inference of involuntariness raised by youth and drug dependency,<sup>193</sup> and of the presumed greater recklessness among addicted women in conducting themselves.<sup>194</sup> The norm of an adult, "professional," and voluntary cadre of prostitutes may remain undisturbed by the existence of these discordant actors.

In sum, insofar as women in prostitution share the plight of all women, by rape, battery, sexual torture, self-destruction, humiliation and contempt,

knowingly suppressed the incidence of incestuous sexual abuse of girls in favor of an explanation of female "hysteria" generated by incest fantasies. See FLORENCE RUSH, *THE BEST KEPT SECRET: SEXUAL ABUSE OF CHILDREN* (1980); JEFFREY M. MASSON, *THE ASSAULT ON TRUTH: FREUD'S SUPPRESSION OF THE SEDUCTION THEORY* (1984).

189. MILLER, *supra* note 114, at 114-15.

190. *Id.*

191. See WEISBERG, *supra* note 113, at 94 (summarizing the available data). As Weisberg notes, Mimi Silbert's study found a median age of entry of 13. *Id.* at 137, n.130. The average age of entry seems to be dropping in recent years. Prostitute advocates link this decline to the greater sexualization of children culturally, as well as an increased demand for virgins or young girls thought less likely by johns to carry the AIDS virus.

192. See *supra* notes 185-186, and accompanying text.

193. On the social construction of juvenile prostitution as a social problem distinguishable from prostitution generally, see WEISBERG, *supra* note 113, at 1-17. Of addicted prostitutes, Marsha Rosenbaum observes: "[F]or the addicted prostitute [in contrast to others], there is no way out. She must utilize this form of work because of the desperation of her heroin habit." Rosenbaum, *supra* note 161, at 142.

194. See Milman, *supra* note 180, at 27 ("[T]here is a definite group of prostitute-addicts...[who] are often less professional, may take more risks, and may be arrested more often than other prostitutes."); MILLER, *supra* note 114, at 108-14 (analyzing marginal status of addicted women within street networks facilitating prostitution); Marsha Rosenbaum, *Women Addicts' Experience of the Heroin World*, *URBAN LIFE* 65 (Apr. 1981). I suspect the "addicted prostitute" will be the subject of increased attention with the rise of greater research interest in heterosexual AIDS transmission. Some research work is already in print on the rate of HIV exposure among women in prostitution. See S.E. Barton et al., *HTLV-III Antibody in Prostitutes*, 2 *LANCET* 1424 (1985); G. Papaevangelou et al., *LAV/HTLV-III Infection in Female Prostitutes*, 2 *LANCET* 1018 (1985).

prostitution is effaced as a significant factor in bringing about that treatment or in adding to it. As a story of origin, "normal womanhood" precedes prostitution; the significance of a woman's status as "prostitute" eroded insofar as her treatment conforms with treatment of "normal women."<sup>195</sup> Some advocates take this argument one step further: if prostitution creates particular risks for women, it is because prostitutes are identified *as* "other women" by men. The proper focus is thus to recognize the status of "other women" as the problem of prostitution. Marie Arrington explains:

One of the issues that we hear constantly at our speaking engagements with the public is: "What are the effects of prostitution and pornography on society's perception of women?" One more time it is turned around. We think the real question is, "What effect does society's perception of women have on prostitution and pornography?" We think that is the *real* issue because the perception is there before the imagery of the trade comes into being.<sup>196</sup>

There are many who exploit, manipulate, and profit from the views expressed here. Pimps, johns, and pornographers are all enthusiastic promoters, as well as the husbands and boyfriends of "other women" emboldened by the promise that there is no great difference between the "prostitute" he imagines and the woman he lives with. For women in prostitution, there is another kind of promise held out by this rhetoric: perhaps the acknowledgement, however fleeting, that she *is* a person, that she may *have* a sexuality, and that she does not have to justify herself anymore, to anyone. The rhetoric of the pro-prostitution position promises to give her what the prostitution takes away, by validating the prostitution. This is not consciousness-raising. This is the exploitation of consciousness.

For what women and girls are enacting in prostitution is not their "self-determining sexuality," but paid sexual compliance to the demands of a consumer. In this "public" dimension, prostitution is reconceptualized by socialist feminist advocates as a form of work rather than libidinal

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195. See also Richards, *supra* note 175, at 1268-69:

Many accounts forcefully show how difficult and costly an occupation [prostitution] can be, but many recent accounts of women's traditional role show how difficult and costly that life can be as well . . . . When we look at these lives unsentimentally . . . We cannot regard either as necessarily rational or irrational.

196. Marie Arrington, *Under The Gun*, in GOOD GIRLS/BAD GIRLS, *supra* note 40, at 173. Nina Lopez-Jones of the English Collective of Prostitutes explicitly asserts this analysis in opposition to the traditional feminist view. "Most of Women's Liberation was hostile to prostitute women on the grounds that exchanging sex for money was uniquely degrading. They said it encouraged rape by leading men to believe that all women are available, conveniently forgetting that men already thought that." Nina Lopez-Jones, *Workers: Introducing the English Collective of Prostitutes*, in SEX WORK, *supra* note 57, at 271, 273.

adventure.<sup>197</sup> By a strategy familiar from our anti-sexual harassment campaigns, this position is founded on the categorical *divide* between “work” and “sex,” and, in stark contrast with the liberal advocacy position, allocates prostitution to the former category. Thus, Rachel West, a spokeswoman for the United States Prostitutes Collective, emphatically severs the connection drawn between prostitution and a woman’s experience of sexuality by the prostitutes’ rights organizations. “Prostitution is about money, not about sex.”<sup>198</sup> This account seeks to place prostitution squarely in the public realm of commerce and exchange as organized under capitalism, split conceptually and experientially from “sex” as a feature of corporeal or emotional identity. In contrast to the prostitutes’ rights organizations, these advocates do not argue for an unqualified right to practice prostitution as a vindication of a basic human right to express one’s sexuality in whatever form. Like any work organized under capitalism, the fundamental structure of this labor is not valorized, but its most exploitative features sought to be ameliorated in support of the interests of the workers themselves. “We are not interested in legitimizing prostitution, but in legitimizing all prostitute women.”<sup>199</sup>

The institutional organization of prostitution into an economic enterprise might also be theorized to distinguish the practice from the more entrepreneurial “dating” and courting rituals held indistinguishable from prostitution by the prostitutes’ rights advocates. One report asserts that 40 million dollars *per day* is spent on prostitution in the United States,<sup>200</sup> while in 1978, the French Ministry of the Interior reported that pimping and procuring constituted that country’s third largest business, generating seven billion dollars in annual profit.<sup>201</sup> A 1986 report on prostitution commissioned by the United Nations Educational, Scientific and Cultural Organization concluded that some nations foster prostitution as a fruitful development strategy, elevating private economic incentive to the level of state economic policy. Distinguishing such “promotional” governments from those more inadvertently encouraging prostitution through less specific industrial development plans, the report explains:

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197. Traditional arguments supporting the criminalization of prostitution echo this theme, insofar as they distinguish “public” and “private” sex under the rubric of “public morality.” Privacy challenges to prostitution and other “public” sex have recently failed before the Supreme Court. *See Barnes v. Glen Theatre, Inc.*, 111 S.Ct. 2456 (1990). Earlier privacy challenges to prostitution laws pursued in state courts have universally foundered on this justification. *See, e.g., In re Dora P.*, 418 N.Y.S.2d 597 (Sup. Ct. 1979).

198. Rachel West, *U.S. PROSTITUTES Collective*, in *SEX WORK*, *supra* note 57, at 279, 283. West deflects the entire subject of women’s alleged sexual motivations for entering prostitution with a plain economic explanation. “If women’s basic economic situation does not change, then women will continue to work as prostitutes.” *Id.*

199. Lopez-Jones, *supra* note 196, at 275. *See generally* NO BAD WOMEN/JUST BAD LAWS (English Collective of Prostitutes ed., 1990).

200. *See* PATEMAN, *THE SEXUAL CONTRACT*, *supra* note 174, at 190 (citing SAN FRANCISCO EXAMINER (Feb. 3, 1985)). *See generally* HELEN REYNOLDS, *THE ECONOMICS OF PROSTITUTION* (1986).

201. This figure is reported in *SISTERHOOD IS GLOBAL* 226-27 (Robin Morgan ed., 1984). *See also* Kathleen Barry, *The Underground Economic System of Pimping*, 35 J. INT’L AFF. 117 (1981).

In certain parts of the world, however, prostitution is not a consequence of the national income but a 'planned' and 'institutionalized' part of it. In certain countries in South-East Asia and Europe, the existence of mass prostitution and the structure of the market, which makes use of the media, airlines, hotel chains, international communications and the banks, mean that it could neither exist nor develop without the tacit or implicit agreement of the institutions.<sup>202</sup>

Indeed, cash and incentive abound, as do reports of some women earning better than survival sums in the practice.<sup>203</sup>

Explanations for the source of the demand for prostitution have also long been couched in economic terms, even by feminists. The demand side, we are told, is a function of the persistent "sexual scarcity" suffered by men in the uncompensated market. For example, the Bullough history recites as one of the essential conditions supporting prostitution "a shortage of willing female sex partners."<sup>204</sup> Such "shortages" are said to exist for men living on military bases<sup>205</sup> or in environments where they are in the demographic gender majority,<sup>206</sup> lacking the opportunity for "a normal married life."<sup>207</sup> The notion of "scarcity" is also flexible enough to include desire for forms of sexual contact otherwise unavailable, or at rates deemed insufficiently frequent, e.g., fellatio,<sup>208</sup> sadistic sexuality, and a form of iconized masturbation reminiscent of "money shots" in pornographic films. Lars Ericsson further

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202. UNESCO, DIVISION OF HUMAN RIGHTS AND PEACE, *Final Report: International Meeting of Experts on the Social and Cultural Causes of Prostitution and Strategies for the Struggle Against Procuring and the Sexual Exploitation of Women*, SHS-85/Conf. 608/14, 7 (1986). It is estimated that 60% of the two million tourists visiting Thailand each year are drawn by the availability of "cheap" sex. In 1982, more than one million Japanese men traveled to Thailand, the Philippines, South Korea, Taiwan and Hong Kong on "kisaeng" tours, expressly designed for access to prostitution. See Truong-Dam, *The Dynamics of Sex Tourism: The Case of Southeast Asia*, 14 DEVELOPMENT & CHANGE 533, 533 (Apr., 1983). Statistical information compiled in Sisterhood is Global reveals the following data regarding prostitution in Thailand: "A 1981 report estimated that 300,000 women worked in approx. 1157 places offering sex services in Bangkok alone . . . approx. 40% of women working in the Bangkok region are prostitutes (1980)." SISTERHOOD IS GLOBAL, *supra* note 201, at 670.

203. See SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION, *supra* note 151, at 386 (reports of gross incomes of over \$40,000 a year heard by Committee).

204. VERN BULLOUGH & BONNIE BULLOUGH, *WOMEN AND PROSTITUTION: A SOCIAL HISTORY* 293 (rev. ed., 1987); see also Ericsson, *supra* note 174, at 347.

205. See BARRY, *supra* note 10, at 70-72 for a review of this literature; see also James A. Sandos, *Prostitution and Drugs: The United States Army on the Mexican-American Border, 1916-1917*, 1980 PAC. HIST. REV. 621.

206. See, e.g., ALAIN CORBIN, *WOMEN FOR HIRE: PROSTITUTION AND SEXUALITY IN FRANCE AFTER 1850*, 186-213 (1990).

207. CHARLES WINICK & PAUL M. KINSIE, *THE LIVELY COMMERCE: PROSTITUTION IN THE UNITED STATES 198-99* (1971) (dubbing such sexual restraints "ecological considerations," also including "the location of some cities," "the many beautiful women around Hollywood," and extensive travelling).

208. Some, perhaps outdated, academic research reports that fellatio is the most demanded sexual practice in prostitution. See, e.g., HAROLD GREENWALD, *THE ELEGANT PROSTITUTE* 223 (1970) (75% to 90% of johns request fellatio); MARTHA L. STEIN, *FRIENDS, LOVERS, SLAVES: NINE MALE SEXUAL TYPES* 95 (1974) (85%); WINICK & KINSIE, *supra* note 207, at 207 (90%).

expands this litany of lacks to include the “scarcity” of reciprocity of sexual desire between individuals, describing as a condition of “scarcity” any sexual economy except one in which all persons are granted sexual access upon demand to all other persons.<sup>209</sup> That is the abstract argument. This is what it means: “My wife won’t blow me and these girls are good at it. They’d rather suck cock than breathe.”<sup>210</sup>

Despite the magnitude of the demand for prostitution, the economic circumstances of prostituted women and girls are commonly marginal to impoverished. The Canadian report on prostitution states that “[t]he best estimates put the net income of a female street prostitute at \$12,000 to \$15,000 per year.”<sup>211</sup> Yet D. Kelly Weisberg’s study of adolescent prostitution concludes that “[m]ost street walkers are constantly on the edge of financial crisis.”<sup>212</sup> The annual report for 1990 of one prostitution support program recites that 90% of the women in the program had been transient for average of six years,<sup>213</sup> while 88% of the women who participated in Mimi Silbert’s study “described themselves as poor.”<sup>214</sup> Kim Romanesko and Eleanor Miller’s study of street women in Milwaukee concludes that “although women do make a great deal of money from their work as street hustlers, they personally derive little benefit from the wealth they create.”<sup>215</sup> The authors conclude generally that women and girls in prostitution suffer even greater economic marginalization as a consequence of their involvement in prostitution than in the “licit” market where they were already marginalized as workers.<sup>216</sup>

Advocates committed to the “prostitution as work” position accordingly locate their argument for reform in placing “ownership” control over prostitution in the women themselves, to the ends of greater economic empowerment and improved working conditions. Demands for reform take up themes familiar from the campaigns of organized labor for trade union status, government benefits, and collective organization. As members of the Canadian Organization for the Rights of Prostitutes (CORPS) explain:

Our ideal situation is like anyone else’s—that we have control over our work environment . . . We want the support systems everyone else has.<sup>217</sup>

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209. Ericsson, *supra* note 174, at 341.

210. LEWIS DIANA, *THE PROSTITUTE AND HER CLIENTS: YOUR PLEASURE IS HER BUSINESS* 190 (1985).

211. SPECIAL COMMITTEE ON PORNOGRAPHY AND PROSTITUTION, *supra* note 151, at 385.

212. WEISBERG, *supra* note 113, at 112-113.

213. COUNCIL FOR PROSTITUTION ALTERNATIVES, *ANNUAL REPORT 2 (1990)* (data based on case histories of 72 women).

214. Silbert & Pines, *Occupational Hazards*, *supra* note 182, at 396.

215. Romanesko & Miller, *supra* note 44, at 131.

216. *Id.* at 109-10.

217. Valerie Scott, Peggy Miller, and Ryan Hotchkiss, *Realistic Feminists*, in *GOOD GIRLS/BAD GIRLS*, *supra* note 40, at 204, 209.

The design of these reforms mirror at a strategic level the identification of prostitution with any form of "work" engaged in by other women. The "most crucial truth" about prostitutes, states Nina Lopez-Jones, spokeswoman for the English Collective of Prostitutes, is that "prostitute women have poverty and overwork in common with each other and with most others, especially women. They also share the increasing criminalization of those who refuse this destiny."<sup>218</sup> Ultimately, this argument merges prostitution with a general critique of labor under capitalism. In accord with Karl Marx, prostitution is elevated as the paradigm of the alienation of all workers from their own labor, both in process and in capital accumulation,<sup>219</sup> and "at the very least, the argument implies that there is nothing wrong with prostitution that is not also wrong with other forms of work."<sup>220</sup> Consequently, if "other workers" are aided, if not wholly liberated, by trade unionist collective action, then this strategy fundamentally should assist in the empowerment of prostitutes.

The political determination crucial to the design of these strategies, again in common with a marxist political critique, is the identity of the "capitalist," or "owner" of the labor sold in prostitution. Women's economic disempowerment in prostitution, it is argued, is a consequence of the pervasiveness of economic exploitation of women in the practice by "third-party" pimps, massage parlors, brothels and outcall services. Like other "owners," these actors appropriate percentages of 50-100% of the cash taken in by the women, either in exchange for facilities, purported protection, displays of affection, or through simple brutality or its threat.<sup>221</sup> The economic interest of these actors in rationalizing the transaction itself in turn has increasingly proletarianized prostitution as a labor practice over the last century. As Rachel West points out, especially in highly regulated, state licenced prostitution, the practice is organized both for the john and for the woman into "assembly line" systems, each behavior sought by the john broken down into commodified units, each with a predetermined value:

#### Legalization in Nevada, in the United States, and in the Eros

218. Lopez-Jones, *supra* note 196, at 272.

219. KARL MARX, *ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS OF 1844*, 133 (International Publishers ed., 1964) ("Prostitution is only a *specific* expression of the *general* prostitution of the *laborer*. . .") More recently, John Reiman has recited the same theme: "Prostitution is the incarnation of the degradation of the modern citizen as producer. . ." Jeffrey H. Reiman, *Prostitution, Addiction, and the Ideology of Liberalism*, 3 *CONTEMP. CRISES* 53, 66 (1979).

220. PATEMAN, *supra* note 174, at 191.

221. Romanesko & Miller, *supra* note 44, at 116-119, 123-128. The authors state that "[a]ccording to the women of this study, a prerequisite to working as a street hustler is that a woman must have a male sponsor, a 'man,' to act as a 'keep-away' from other 'men' who vie for a living on the street." *Id.* at 116. See also Sally Engle Merry, *Manipulating Anonymity: Streetwalkers' Strategies for Safety in the City*, 45 *ETHNOS* 157 (1980) (on the relation of pimps to street prostitutes); Silbert & Pines, *Occupational Hazards*, *supra* note 182, at 397 (more than half of adult and three-fourths of juvenile prostitutes had pimps; 41% reported "no advantage" to having a pimp).

Centers of West Germany are basically the new sex assembly lines. The women have no control over working conditions, hours worked, the number of clients they see, tips they receive, etc. Women, when working, have to register with the police and therefore are registered as 'known prostitute women.' They are also subject to health checks and are restricted in their movements outside the brothels."<sup>222</sup>

From the point of view of the john, the woman so "assembled" as product is apotheosized in pornography, the women "restricted in their movements" to a photographic freeze or celluloid zoo. Health checks are rendered obsolete by the elimination of the risky business of skin contact, the product herself consumable any time, anywhere, the price fixed wholly in advance along with the promised repertoire, catalogued with bibliographic nicety at your local pornography brothel.

One difficulty at the heart of this critique is that its reform agenda collapses the separation of sex from money, the very separation which forms the predicate assumption of its analysis of prostitution as labor. The "reformed" version of prostitution urged by these advocates anticipates the arrival of a decentralized, individualized practice of prostitution: "deproletarianized," presumably, by an integration of the woman's personal choices, preferences, and desires into the terms of the transaction. Thus, as the *economic* conditions urged by these advocates approach the ideal, the entailed *sexual* conditions approach the normatively non-economic. The better a "job" prostitution is, that is, the less it looks like a job, or the less it looks like prostitution.

More fundamentally, the entire "money not sex" critique avoids the whole question of *what* the woman is selling, and the john buying, in the prostitution transaction itself. The argument that prostitution *is* labor, it will be recalled, relies on an analysis of the conditions of economic exploitation entailed in the relationship of pimp to prostitute. The matter of consumption, of the social interaction between prostitute and john which produces "prostitution" as a commodity, is never addressed. The issue of gender is also suppressed, in regard to both the pimp/prostitute relationship and the john/prostitute relationship. The fact that both are typically male/female arrangements, similarly economizing the prostitute's identity as a "sexed female," huddles silently, inarticulate within an analysis rigorously distinguishing "sex" from

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222. Rachel West, *U.S. PROstitutes Collectives*, in *SEX WORK*, *supra* note 57, at 279. West's analysis is argued from an historical vantage point by Judith Walkowitz in her study of the impact of government regulation of prostitution in Victorian England. According to Walkowitz, those regulation attempts had the immediate effect of "professionalizing" prostitution for women to an extent unknown in modern society, locking women into the practice while at the same time constructing them as a "problem" for the state. "Third party" intermediaries, such as pimps and brothel owners, consequently emerged as institutional buffers/exploiters of this newly created "class" of women, themselves rendered increasingly vulnerable by their social isolation and public scrutiny. *See generally* JUDITH R. WALKOWITZ, *PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE* (1980).

“work.”

Like the liberal position on prostitution, the socialist view, too, is subject to cynical exploitation, available to advance the interests of men and to maintain the institution of prostitution exactly as it is. Evelina Giobbe critiques the characterization of prostitution as a “job”:

There has been a deliberate attempt to validate men’s perceived need, and self-proclaimed right, to buy and sell women’s bodies for sexual use. This has been accomplished, in part, by euphemizing prostitution as an occupation. Men have promoted the cultural myth that women actively seek out prostitution as a pleasurable economic alternative to low-paying, low-skilled monotonous labor, conveniently ignoring the conditions which make women vulnerable to prostitution.<sup>223</sup>

In common with the liberal position, the “prostitution as work” campaign also holds out a promise to women in prostitution: that whoever her “self” is, she isn’t in the prostitution. Prostitution is something she *does*, not something she *is*. Yet, for the woman used in this transaction, neither the money nor the sex may translate readily as anything her “own.” In respect to both, she remains a stranger, neither worker nor “partner.” As K.C. Reed once said to me, “I could never make it feel like a job, not once. I would go to COYOTE meetings; they would tell me it was a job. I would try to make it feel like a job. I felt like a failure, again. I couldn’t make it feel like a job, when they were telling me it was.” Evelina Giobbe reports, based on her oral history research among women with histories in prostitution, survivors have “testified repeatedly that they did not experience prostitution as a career.”<sup>224</sup>

Devoted to making visible that experience is a third group of advocates, comprised of a loose collective of prostitution advocacy groups, prostitution survivors and academic activists, commonly umbrellaed under the label “radical feminist.”<sup>225</sup> These advocates, including myself, have pursued what might be understood as a “two tier” analysis of prostitution, which seeks to sever, not the sex from the money, but the john from the prostitute. This analysis conceives of the prostitution transaction as one in which, if both parties are present, they are not to each other. On this account, the prostitute is present to the john literally and solely as a thing that produces an experience of sex for him, as he wishes it. These theorists identify the john as twice-

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223. Sarah Wynter (Evelina Giobbe), *WHISPER: Women Hurt in Systems of Prostitution Engaged in Revolt*, in *SEX WORK*, *supra* note 57, at 266.

224. Giobbe, *supra* note 3, at 68.

225. For a rough-cut sampling of the organizations and individuals who have aligned themselves with this position, see Margaret A. Baldwin, *Pornography and the Traffic in Women*, 1 *YALE J.L. & FEMINISM* 111, 116 (listing of amici supporting radical feminist position on prostitution in pornography litigation). As implied by this citation, I am myself committed to the radical feminist position for reasons I hope this article makes clear.

blessed: both “owner” and “consumer” of the transaction, the john dominates both economically and sexually.<sup>226</sup>

Fundamental to the john’s sexual experience is eroticized disregard of the woman. Developing Hanna Olsen’s description of the “sex” of prostitution as “masturbation in a woman’s body,”<sup>227</sup> Kathleen Barry accordingly has described the john’s sexual agenda as the reduction of a woman to “body parts separated from the self and the woman’s sexual experience. . . . This experience constitutes an essentially noninteractive, non-mutual sexual experience which establishes the basis for further demands of perversions and violence in the exchange.”<sup>228</sup> Timothy Beneke refers to this sexual process as “pornographizing,” the sexual experience of relating to a woman as a “low whore”:

In pornographizing, one anonymizes the woman and fails to

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226. This analysis reverses a popular view of the quality of the prostitution transaction, which characterizes the woman’s behavior as nearly a form of theft. Promoted some years ago by sociologist Kingsley Davis, this view holds that prostitution represents an arrangement of economic exploitation, this time of the *man*. The woman “gets” both money and sex, while the man “gets” only the sex and forfeits the money:

It is even true that some women enjoy the intercourse they sell. From a purely economic point of view prostitution comes perilously near the situation of getting something for nothing. The woman may suffer no loss at all yet receive a generous reward, resembling the artist who, though paid for his work, loves it so well that he would paint anyway.

Kingsley Davis, *The Sociology of Prostitution*, 2 AMER. SOC. REV. 744, 750 (1937). The issue posed here, of course, is whether the “womanhood” which makes a woman marketable as a prostitute ought to divest her of a claim that she loses something in the transaction for which she should be compensated. That is, if prostitution is an economic system, it is not one for her. She is a woman with the job of *being* a woman; the distinctiveness of her job from her pleasure receding to the vanishing point. Insofar as her sexuality aligns with her job demands, the lingering issues of exploitation and the puzzle of prostitutes’ impoverishment can thus be dispatched with speed. Rushing to meet these descriptive challenges is a small industry of social science investigators set on probing the sexual experience of women in prostitution with johns and others. Orgasm-counting is thought sufficient to capture the gist of the matter: Look! She is having sex, after all! (And is robbing us.) Recent contributions to this literature, commenced with vigor by Havelock Ellis, see 4 STUDIES IN THE PSYCHOLOGY OF SEX 275 (1936), include Exner, Wylie, Leura, & Parrill, *Some Psychological Characteristics of Prostitutes*, 41 J. PERSONALITY ASSESSMENT 474 (1977) (“sexual responsiveness” of prostituted women equal or greater than control in most categories); Paul H. Gebhard, *Misconceptions About Female Prostitutes*, 3 MEDICAL ASPECTS OF HUMAN SEXUALITY 24 (1969) (reaching similar conclusions); Wardell B. Pomeroy, *Some Aspects of Prostitution*, 1 J. SEX RES. 177 (1965) (finding women in prostitution more sexually responsive than women interviewed for major Kinsey study on female sexual behavior); Leonard Sovitz & Lawrence Rosen, *The Sexuality of Prostitutes: Sexual Enjoyment Reported by Streetwalkers*, 24 J. SEX RES. 200 (1988) (prostituted women report they usually derive pleasure from both lovers and customers); but see WINICK & KINSIE, *supra* note 207, at 26 (“many prostitutes are revolted if they are expected to respond”); Mimi Silbert & Ayala Pines, *Early Sexual Exploitation as an Influence in Prostitution*, SOCIAL WORK, Jul.-Aug. 1983, at 285, 288 (14% of subjects reported being asexual, close to 50% reported almost never reaching orgasm).

These largely “sex-positive” accounts (excepting Silbert and Pines) have displaced the older psychoanalytic conclusions, rooted in female illness explanations for prostitution, that women in prostitution, are sexually frigid, hostile to men, or “homosexually oriented.” See, e.g., KARL ABRAHAM, *Manifestations of the Female Castration Complex*, in KARL ABRAHAM, SELECTED PAPERS 361 (1942); FRANK CAPRIO & DONALD BRENNER, SEXUAL BEHAVIOR: PSYCHO-LEGAL ASPECTS 249 (1961).

227. Kathleen Barry, *Social Etiology of Crimes Against Women*, 10 VICTIMOLOGY 164, 171 (1985)(quoting Hanna Olsen).

228. *Id.* at 172.

acknowledge her moral, spiritual or emotional being. One relates to her as a thing without a soul. The woman as a locus of experience is denied. And, one often relates to her body as a fetish . . . Pornographizing is the perceptual counterpart to sex as the achievement of possession of a commodity and sex as aggressive degradation.<sup>229</sup>

The transfer of money from the john to the prostitute, on this view of his sexual interest, confirms and celebrates his entitlement to treat the woman this way (any way he wishes), situating him in the role of "owner." As Susanne Kappeler has observed, the transfer confirms his dominance, his power to control the value, the meaning, the script of the "exchange": "[I]t is the one with the surplus (capital) who decides what is 'like for like,' who fixes the price according to his demand. He decides what to buy, and what is a commodity. He writes the possible scenarios, and determines how they are viewed."<sup>230</sup> Among those possible scenarios, as Barry suggests,<sup>231</sup> are the rape scripts, the laceration scripts, the murder scripts—whatever "story" a john might have in mind for a woman whose status as human is for him to determine. That is the sexual authority men buy in prostitution: to fix the meaning of who or what a woman is.

According to research on customer satisfaction, this experience is said to confer considerable psychic benefit on the john, from enhanced self-esteem<sup>232</sup> to the unimpeded exercise of sexual ideational dissociation, sometimes called "fantasy." As the Kinsey researchers reported:

As far as psychologic responses are concerned, the male in many instances may not be having coitus with the immediate sexual partner, but with all the other girls with whom he has ever had coitus, and with the entire genus Female with whom he would like to have coitus.<sup>233</sup>

Lewis Diana summarizes these findings as standing for the proposition that "[p]rostitution provides temporary relief from the obligations inherent in involved sexual and emotional relationships,"<sup>234</sup> while David Richards sees in the quotidian arrangement a modern form of "the best in romantic love":

229. TIMOTHY BENEKE, MEN ON RAPE 23-24 (1982). See also Katz, *supra* note 71, at 62 ("pornographizing" of women central predicate for men's felt entitlement to rape).

230. KAPPELER, *supra* note 13, at 159.

231. See Barry, *Social Etiology*, *supra* note 227, at 171.

232. See STEIN, *supra* note 208, at 316-317 (interaction with prostitute restored john's "battered self-worth"); WINICK & KINSIE, *supra* note 207, at 197 (61% of sample of johns said prostitute refurbished battered ego).

233. ALFRED C. KINSEY ET AL., SEXUAL BEHAVIOR IN THE HUMAN FEMALE 684 (1953). See also Harold R. Holzman & Sharon Pines, *Buying Sex: The Phenomenology of Being A John*, *DEVIANT BEHAVIOR* 89 (Oct.-Dec. 1982).

234. DIANA, *supra* note 210, at 191.

“when the relationship is most realistic, fair and reciprocal.”<sup>235</sup> This is again the flavor of the empirical data relied on in reaching these conclusions: “This woman wants nothing, asks nothing, needs nothing. I don’t need to please her or be concerned about whether she’s enjoying it. I can do what I want and please myself.”<sup>236</sup>

Kathleen Barry further suggests that women may experience deep ambivalence regarding their right to benefit from money received in prostitution which they nominally control, even absent direct economic exploitation by third parties. She reports:

A former call girl, who is now working in a shelter trying to get young girls out of prostitution, told me that in her opinion one reason why she and all other call girls she knew went through their money so fast and couldn’t save “for that boutique in the sky” was that to her it wasn’t clean money. After six years in the life she left. “When I found myself crying as I turned tricks I knew that I couldn’t take life that way anymore.”<sup>237</sup>

Similarly, Eleanor Miller’s study of street women in Milwaukee indicates that, for many women, the cash has a particular meaning as “fast money”: as dead, as useless, as phony, as demeaning to hold, as the trick.<sup>238</sup> Moreover, life in prostitution is simply expensive: the cost of transience is very high in lodging, food, and the need for constant replacement of necessities.

If the cash is never quite hers, neither, exactly, is the sex. The sex is done to her, on her, in her; certainly never *with* her. Renditions of women’s experience of the sex of prostitution, on these advocates’ accounts, commonly proceed by way of flat, objective description of the acts performed by the women at the man’s express or implied behest. Andrea Dworkin’s narrative summaries of the content of pornography capture the tone;<sup>239</sup> K.C. Reed’s “story” of one night in prostitution speaks in the same voice. The experience of prostitution profoundly conveyed by this narrative style is the fact of the woman’s utter *irrelevance* to what happens, how it happens, why it happens, much less her subjective “feelings” toward the encounter. Her presence is marked by her availability as sexual apparatus, in a transaction to which her role is to be the perfect small appliance: useful, but beside the point, not the

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235. Richards, *supra* note 175, at 1271. Psychiatrist Ethel Person also analyzes the relationship of john to prostitute as one of “erotic transference” similar to the transference phenomenon of psychotherapy, integrating both into an account of romantic love. See ETHEL PERSON, DREAMS OF LOVE AND FATEFUL ENCOUNTERS: THE POWER OF ROMANTIC PASSION 262-63 (1988).

236. DIANA, *supra* note 210, at 191.

237. BARRY, *supra* note 10, at 135-36.

238. MILLER, *supra* note 114, at 139-40 (“The women always corrected me when I asked if there was ‘good money’ to be made on the streets. They said that there was, rather, fast money.”).

239. See DWORKIN, *supra* note 25 *passim*.

point, no point at all.

Yet for these advocates, too, who have devoted the closest attention of all prostitution advocates to comprehending the process and consequences of sexual commodification in the transaction to the woman, the point lies principally elsewhere. The principal explanatory emphasis urged by radical feminist advocates goes to the “why did she stay” question applied to prostitution, and, in common with the representational strategies advanced on behalf of battered women, opens up the descriptive frame of reference for addressing that question to include the significance of the incest, seasoning by pimps, battery, rape, humiliation, and torture conceded by all as the preconditions and conditions of life for vast numbers of women and girls involved in the practice.<sup>240</sup>

Of course, social scientific inquiry into prostitutes’ motivations for entering and remaining in prostitution comprises a vast literature. The matter of girls’ “flight from incestuous fantasies” has already been noted,<sup>241</sup> which is the more modern version of now somewhat outdated phrenological, medical, and psychoanalytic accounts of some women’s innate will to prostitute themselves.<sup>242</sup> Like the masochistic battered woman, the prostitute on these analyses is exoticized, subject to self-destructive or erotic urges beyond ordinary ken. As Kathleen Barry states the thrust of these inquiries:

To those who study the victims of the practice I have called female sexual slavery these women are the exceptions for whom exceptional behavior is normal; to sociologists they are deviants; to psychologists they are sadomasochists. Their life and experiences are construed as normal for them while they are supposedly different from the rest of us.<sup>243</sup>

The radical feminist position, instead, seeks to “normalize” women in prostitution by demonstrating the “normalcy” of her responses to systematic abuse and coercion which, in common with the battered woman, cause her to “stay.”

The direction of this work was early charted by Kathleen Barry’s groundbreaking investigations of domestic and international trafficking in women for prostitution, which she theorized as practices of female sexual

240. See *supra* nn. 187-195 and accompanying text.

241. See *supra* note 188 and accompanying text.

242. See, e.g., ELLIS, *supra* note 226, at 275 (“there can be no doubt that moral imbecility of slight degree is very frequently found among prostitutes”); Edward Glover, 2 THE ROOTS OF CRIME: SELECTED PAPERS ON PSYCHOANALYSIS (1960) (prostitution constitutes acting out of oedipal conflicts); CAESAR LOMBROSCO & WILLIAM FERRERO, THE FEMALE OFFENDER 147 (1895); Clinton P. McCord, *One Hundred Female Offenders: A Study of the Mentality of Prostitutes and “Wayward” Girls*, 6 J. OF THE AM. INST. OF CRIM. L. & CRIMINOLOGY 385, 388 (1915) (half of women in study of intelligence indicators were of “phlegmatic, lazy, apathetic type” the other half “lack emotional control”).

243. BARRY, *supra* note 10, at 9.

slavery. In her formulation, sexual slavery entails “*all* situations where women and girls cannot change the immediate conditions of their existence; where regardless of how they got into those conditions they cannot get out; and where they are subject to sexual violence and exploitation.”<sup>244</sup> Prostitution induced under those conditions is thus, for Barry, but one form of an array of similar coercive sexual practices, including woman battery, incest and compulsory marriage.<sup>245</sup> Especially for United States prostitution, Barry emphasizes the central role played by pimping in creating those conditions of coercion for women in prostitution. In contrast with the economic exploitation entailed in pimping stressed by the prostitution-as-work advocates, Barry focuses on the effects of “seasoning” practices common to pimping, combining strategies of force, isolation, and emotional and physical dependency to gain control of the woman and to render her otherwise defenseless.<sup>246</sup> In this emphasis, Barry locates as a key feature of forced prostitution the dynamics of traumatic intimacy, now familiar from feminist accounts of domestic battery. Here, the pimp stands in the role of the controlling, battering, cajoling husband, a continuity, as I noted much earlier, often seized upon by (non-pimping) husbands as they shout “you slut” at their bewildered wives. The woman’s prostitution adds but another means by which he can humiliate and injure her, with the added boot of a profit.

The overwhelming incidence of incest in the life histories of women in prostitution expands this basic framework for understanding “why she stayed.” Among radical prostitution advocates, incest is understood as a *form* of seasoning, a practice of a father pimping his daughter to himself: isolating her in silence, from recognition or help, imposing as a condition of survival her sexual compliance, and delivering the deal in the names of love and protection. On this view, incest is less a “precondition” of prostitution than a practice of it. The common self-identification of incest victims as “whores” noted by Judith Herman,<sup>247</sup> and the “traumatic sexualization” suffered by them theorized by David Finkelhor,<sup>248</sup> trace this continuity symptomatically. Like the battering husband, the father rapist who calls his daughter a “slut” is simply missing the obvious point: that he is a pimp, turning his daughter out

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244. *Id.* at 40.

245. *Id.* at 163. “Familial sexual slavery” Barry thus describes in these terms:

Many girls and women directly experience female sexual slavery without ever going out of their homes. For them, home replaces brothel, they are the wives and daughters who are the victims of husbands or fathers instead of pimps. I am speaking of course, of wife battery and incest, practices which make the private family instead of the public street or “house” the location of female sexual slavery. In certain cultures, these practices take the form of forced marriage, polygyny, veiling and the seclusion of women.

*Id.*

246. See *id.* at 77-79; BARRY, *Social Etiology*, *supra* note 227, at 167; see also Diana Gray, *Turning Out: A Study of Teenage Prostitution*, 1 *URB. LIFE & CULTURE* 401 (1973); Silbert & Pines, *supra* note 182, at 488.

247. See HERMAN, *infra* note 45.

248. See Finkelhor, *infra* note 45.

first to himself and later, if “passively,” to others. For the girl, “[o]nce in prostitution, both pimps and johns replicate the abuse these girls endured in their families.”<sup>249</sup>

The other prostitution “data,” on this account, also rise above the footnote line and theorize the “you slut” epithets hurled at “other women” with such reckless abandon. The routine beatings, rapes, and humiliation of the woman by johns confirm her helplessness and reinforce her status as a woman born to be used, this time in the “workplace.” The “solicitations” of sexual harassment, replete with insult and contempt, here receive their full expression. Drugs are good buffers, as “other women” know, too.

In sum, prostitution is here conceived as the obvious consequence of serial, unbounded, life-long sexual and emotional abuse. As Evelina Giobbe puts it, the act of prostitution represents a john’s try at “turn[ing] child sexual abuse and rape into a job by throwing money at their victims.”<sup>250</sup> I honor this story, because it acknowledges and respects women’s pain. It knows the murdered women are out there, stuffed in garbage cans, floating in rivers, tossed by the roadside, because a john chose not to believe she was alive in the first place, or because killing her was his idea of a good time. It knows that the incest, the neglect, the beatings, the betrayals, have real and deep consequences that persist beyond the first date with a new boyfriend. It knows, too, that these women are the least likely to be recognized as injured, ever, because everyone is too busy fantasizing them, beyond the pale of suffering or empathy. It knows that prostitution is what happens to “other women” who are luckless, who are treated as nothing but cunt, relentlessly, their whole lives long.

The argumentative rejoinder is obvious, and, as I have already explored, often lodged by advocates of the opposing positions: all of this torture, humiliation, and exploitation may happen, and be truly terrible, but what does it have to do with prostitution? Are not the incest, the beatings, the rapes (on and on) but “ancillary” to prostitution, itself? Doesn’t the radical feminist critique merely restate, if rather more grimly, the point made by all of these advocates: that prostitutes *are* “other women,” and prostitution, *per se*, therefore unremarkable? And they would be right, as right as each of the advocacy groups is in making the identical criticism of each of the others. *For the purpose of each of these positions is to destroy itself*, and “prostitution” along with it. Each of us is more apt to savor this point in criticism of our opponents than reflect on its implications for ourselves, or for what it means toward advancing this debate. The measure of success we each set for our own accounts of prostitution is the ease with which our “other woman” story can swallow it whole. This same measure of success is, in turn, the measure of failure we use to castigate the failings of our opponents. The more persuasively

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249. Evelina Giobbe, *The Vox Fights*, VOX MAGAZINE 29, 33 (Winter 1991).

250. Giobbe, *supra* note 3, at 3.

we argue the continuity of our accounts of prostitution with our renditions of “other women’s” life conditions, the more vulnerable we are to the charge that we have failed to grasp the specificity, the “reality” of “prostitution itself.” Since each of us is bent on “de-specifying” prostitution in our own terms, the charge begins to ring rather falsely as a criticism. If each of these positions is self-consuming in its own terms, the “debate” is as self-defeating.

The “real truth,” I think, about this debate is its irreality *as* a debate, at least about *prostitution*, to all concerned. As no doubt my own rendition demonstrates, there is a vivisectionist’s abstraction, a deadness, a feeling of being semantically distracted from insight, that imbues the entire discussion. There is an explanation for this. The “true” question in contest in the prostitution debate is not really prostitution at all. Rather, the debate is the site of contest over the representational expansion and dominance of our “other women’s” stories beyond the zones of explanatory control each formerly more peaceably occupied. The struggle over prostitution, as it is presently argued, is a bid by each tendency in feminism for territory largely ceded to the others by each before prostitution entered the scene: a bid for a story of money by liberals, for a story of sex by socialists, and for a story of strange men by radicals.

Within a political movement founded on “explaining ourselves,” these are some large stakes indeed. Yet, at least in the “larger movement,” we have seemed about equally committed to winning them as we are to losing them. I notice this contradiction in the conditions of my own activism in the “larger movement.” Sometimes, conference organizers and symposium planners call. They express enthusiasm for your “prostitution story.” This enthusiasm is shown when the prostitution story you are telling is helpful toward advancing the position of some “other women” engaged in a jurisdictional conflict with some other “other women.” Some factions within liberal feminism, for example, express enthusiasm for the liberal and socialist advocates’ position on prostitution, because those advocates help shore up against radical feminist incursion certain views liberal feminists promote about “choice” and about “privacy.” Those of us who identify as radical feminists, in turn, look to gain added leverage in our critiques of liberal theories of consent in the display of “our” prostitutes, whose stories we consume with satisfaction until we move on to the next workshop. Feminists of post-modern sensibility may marvel at the complexities, how “prostitution” can mean so many things, and, as they would argue, the more prolific the discursive possibilities, the freer we know we are. In all of this, we cast ourselves in the role of the john: It could be any way. This is how I want it. (And if we can have it lots of ways, so much the better.)

An added dimension of utility in this procedure is that all concerned can maintain the separation between “prostitutes” and “other women” which has proven so significant in all our reform strategies (if the latter category now

includes some “good prostitutes,” the former category is comprised of the “bad” ones, allied with our political adversaries). The distinction is also maintained in the degree of attention and support offered by “other women” to women in prostitution off the grander stages of our jurisdictional wars. When it’s time for the dirty work, there are about a dozen women to call, fewer than would assemble a respectable workshop. The real struggle, most days, seems far from any conference paper — getting some money together for prostitution support programs; calling to see if there is one more space at the “good” juvenile detention center for another 15 year old; seeing the look on a woman’s face which says that she will be calling tomorrow, or next year, to tell you about the prostitution; overcoming in myself again and again the flicker of despair just before I hear what I will hear when she calls (will it be *worse?* how *can* it be worse?); afterwards, losing some of the women and knowing it may be permanent. The “larger movement” at these times seems scarcely to exist, the “prostitution debate” of little aid in meeting these women’s needs or in gaining further clarity for myself or them on how, ever, to get them met.

Sometimes these moments occur at feminist meetings. These are moments with “other women” who don’t believe in the stories we tell about them, either: the woman whose father gave her money, maybe a lot of it; the woman who “stayed” because she wanted to prove she could beat him back; the woman who cuts herself after a couple of drinks; all the stories that don’t quite fit the “other woman” stories we tell. They are “other women,” too, who see how close they were, or are, to being prostituted; who were prostituted, and could never talk about it to anyone. All the “you whore! you slut!” stories wanting to be told. The pressure to speak, the pressure not to speak, is enormous. There is a fear of the boundaries eroding, and a fear of the boundaries not eroding.

What is lost in the prostitution debate, as we are all asked to justify the lives of prostitutes as just like those of other women, is what other women need to learn and know and appreciate and politicize about the conditions of their own existence *from* women in prostitution. That is the fundamental condition of consciousness-raising that has been forfeited by the larger movement: that women in prostitution have insight and knowledge that other women need to make sense of their *own* lives. The continued silence, shame, the formalistic appeals, the elevation of theorizing over action stifling the participation of woman in prostitution in our movement is supported by a political climate that wants prostitutes only to ask permission to join, not authority to direct. “Other women” don’t want to hear, perhaps, that our boyfriends and husbands are buying sex from women in prostitution. “Other women” don’t want to hear, perhaps, that the “straight” jobs we have are sexualized top to bottom. “Other women” don’t want to hear, perhaps, that we are each one man from the street. But if our stories are to gain in boldness

and integrity, we all need to be able to hear all of that, and find the “point to it.”

I am not about to say, as you may think I am about to say, that “all women are prostitutes.” That is a glib and silly, nearly insulting, thing to say. (I mean, insulting to women in prostitution.) There is a theme, though, that obviously links all of these stories. That is the story that *no one is a prostitute*, recited with utmost conviction, or with the passion of a final plea for help and justice. And perhaps *that* is the story that is the prostitution story itself: a woman declaring, with equal parts conviction and resignation, that she is not a prostitute, to please somebody else upon whom her survival depends.

[III. UNTITLED]

There is one more prostitution story I want to tell you. This is it:

There you are, in a dump that’s more or less clean, holding a towel in your hand, looking at somebody you’ve never seen before. The more you retreat, the more he advances; since the room is fairly cramped, you soon find yourself with your back against the wall. The guy’s arms are around you, they’re all over your body like slimy tentacles that grope you, strip you, and drag you down as he pulls you over the bed . . .

For an instant, you escape from the nightmare: you are back in the church playground, playing hopscotch. It seems like yesterday. You almost feel good, and you shut your eyes to make the dream last. When you reopen them, after a split second, reality blinds you.

Reality has taken the form of a cock, a real family man’s wiener, a little soft but still enterprising.<sup>251</sup>

This is not an isolated incident. It is a commonplace observation within prostitution support and advocacy circles that dissociative strategies of

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251. JEANNE CORDELIER, *THE LIFE: MEMOIRS OF A FRENCH HOOKER 69-70* (1978), *quoted in* Kathleen Barry, *Prostitution, Sexual Violence, and Victimization: Feminist Perspectives on Women’s Human Rights* 7-8 (1991) (unpublished manuscript).

distancing the act, herself, and the john are routine tactics practiced by women in prostitution, described by Kathleen Barry as constructing a "split-identity" between "that" woman performing an act of prostitution and her "other" self.<sup>252</sup> "Disengagement," Barry explains, "is the up-front strategy of women in prostitution."<sup>253</sup> Nor is this a costless tactic. The terrible psychic injury absorbed as a consequence of these survival tactics is recorded in the litany of "splitting" disturbances suffered by prostitutes.<sup>254</sup> As is becoming better known, similar strategies of disengagement, of "not being there," are also commonly employed by women and girls to avoid trauma in incest and rape.<sup>255</sup> The term "denial," I think, but weakly and perhaps misleadingly conveys this experience. From the "inside," the feeling is less one of repression than of being released to someplace *else*, anywhere else, where it feels better, or doesn't feel at all. "It's not happening, no, this *other* thing is happening."<sup>256</sup> For women in prostitution, these other things may occur very frequently. Estimates of the frequency of sale of women in prostitution range from three or four to 80 tricks *a day*, over a course of days, months, or years.<sup>257</sup>

These disengagement strategies, though, as Barry further points out, are not only the last defenses of the used. "Disengagement" from her "real self" is the fundamental demand made of women in prostitution, the essential term of the transaction itself. What a john wants is for the woman to *act* like the woman he wants, and for the woman to maintain a credible performance as part of the bargain. She is to act as if she *is* the role he wants her to play. Barry explains:

[C]ustomers generally require that prostitutes act as if they are engaged with the customer emotionally, psychically, affectively by entering into a fantasy or by feigning the role of a lover.

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252. Barry, *supra* note 227, at 171. See also Summer, *supra* note 168, at 36; see generally Baldwin, *supra* note 225, at 133.

253. Barry, *supra* note 251, at 5. In the words of women Barry quotes:

Dia says: "I have to be a little stoned to go through with it. I have to shove my emotions completely to the side. I get talkative and don't give a shit." Elizabeth reports: "You switch off your feelings, you have to do it." Brita reports "I've taught myself to switch off, to shove my feelings away. I don't give a damn, as long as there's money. It doesn't have anything to do with feelings."

*Id.* at 5. Former prostitute Rosie Summers describes the sexual experiences of prostitution as "a [woman] turning off her emotions, being psychically someplace else while someone who despises her is making love to her." Rosie Summers, *Prostitution*, in *SEX WORK*, *supra* note 57, at 117-18.

254. See *supra* notes 155-156 and accompanying text.

255. See, e.g., WOMEN'S RESEARCH CENTRE, *RECOLLECTING OUR LIVES: WOMEN'S EXPERIENCE OF CHILDHOOD SEXUAL ABUSE* (1989); ELIZABETH A. STANKO, *INTIMATE INTRUSIONS: WOMEN'S EXPERIENCE OF MALE VIOLENCE* (1985).

256. For a powerful literary account of this experience, see SUSAN PALWICK, *FLYING IN PLACE* (1992).

257. See, e.g., PERKINS & BENNETT, *supra* note 160, at 16 (Sydney, Australia sample averaged 40 to 50 johns per week); Matthew Freund et al., *Sexual Behavior of Resident Street Prostitutes With Their Clients in Camden, New Jersey*, 26 *J. SEX RESEARCH* 460, 465 (1989) (average of 4.13 johns per workday; 553 johns over a seven month period).

Either the prostitute is to *act* like a whore or she is to *act* like an affectionate lover. . . . In prostitution, what men expect from women is the *semblance* of emotional involvement, pleasure and consent, a *semblance that they can treat as if it is real* in the moment of the commodity exchange.<sup>258</sup>

This dynamic plainly exceeds in complexity the description of prostitution as “objectified sex,” understood as a wholly unselfconscious, unilateral act of sexual consumption. Rather, the demand made of the woman is to demonstrate a happy complicity, to whatever role is demanded.<sup>259</sup>

I would suggest that a similar demand, and similar strategy in the fact of it, drives the design of our feminist strategies in our public advocacy. The disengagement tactic step, has, I hope, been demonstrated throughout this paper: whatever we are, wherever we are, it is not prostitution. It is love, or freedom, or work, or force, or fear; anything but prostitution. We can prove it by our arguments, over and over, from every possible angle that might be mustered in opposition. It is all a great mistake, and if no one else is convinced, we can at least convince ourselves. “I was never really into it.” How many times a day do we turn this trick? How many years has feminism told this story, been “somewhere else” as a strategy of resisting what we are told we are?

And who are we talking to? Who is it, who cares so much, that we should care to convince? The men, it seems: the men who feel license to destroy us if we fail to convince them, the johns we hope at the risk of our lives will remember we are human beings. We are not prostitutes, and hope we can act well enough to fit the part of not being one. The law, too, we hope to convince. Our stories of “consent,” of “work,” of “intimacy,” have been crafted with the law in mind, placating its demand that we not “really” be sluts. We deliver the goods, compliantly, now in the name of a self-determining, liberated feminism. “It was good for me, too, honest.”

My further intuition is that this is a structural political requirement, not only a problem of bad men, silly laws, or short-sighted feminism. My belief, also my fear, is that within the existing political and legal order, and the possibilities for change afforded some women, is embedded a profound

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258. BARRY, *supra* note 251, at 6-7.

259. See also Holzman & Pines, *supra* note 233, at 108-109:

In every encounter discussed, the individual paying for sex engaged in social, courting behaviors that were often flavored with varying degrees of romance. According to the subjects in the study, these behaviors represented a conscious attempt to create a positive experience that would fulfill their fantasies, that is, the client via such devices as compliments tries to manipulate the prostitute into complying with his particular vision of a pleasant, satisfactory encounter . . . There existed a belief that by being pleasant or even amorous they could subtly seduce the prostitute into allowing their created illusion to play itself out. Even better, if their tactics worked, the prostitute might exceed mere tolerance of the fantasy - they might become a more energetic (as opposed to passive) participant, albeit still a paid professional.

bargain: take what you can, but it will always be at the price of abandoning prostitutes, of gaining your advantage at her expense. There is a term for women who accept bargains like that. It's called being a pimp's "bottom woman," the one who treasures his highest regard, and sometimes gets off the street herself, but only if she helps run the less lucky girls. There is also a term for the arrangement which makes this bargain compelling. It's called pimping, period. If my intuition is correct, this is the arrangement women presently have with the state, motivating the "not a prostitute" content of our legal stories as a condition of our legal citizenship. My question for all of us, in love and struggle, is this: if I am right, in this intuition, do we love our pimp so much, after all? What stories would we tell, if not for him?