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# Feminism and the Legalization of Prostitution: How far down the river?

Marilyn C. Zilli

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One of the most telling issues on the state of the women's movement today is that of the legalization of prostitution. It would be inappropriate to say that the issue has caused a breach in the ranks: the term is inapplicable to a movement which has never claimed coherency and which has, in fact, consistently demonstrated an inability to reconcile the views of its various factions. The prostitution issue is important, rather, precisely because it underscores these differences of analysis and tactics which have appeared in other areas and the splits between white middle class liberal women, radical feminists, marxist socialists and working class and minority women which have characterized the movement since its inception.<sup>1</sup> It is a "cutting edge" issue because its resolution will signal either the reassertion of a new model of equality for all women or the acceptance of second-class citizenship for one group of them. The swing vote lies with the middle class liberals because their forte has been legislative and legal action and because they are now developing the capacity to resolve the issue in these terms. To the end that women avoid selling their own down the river, the writer presents the following paper.

## I. CAUSES OF PROSTITUTION

In the 19th century, prostitution was a manifestation of economic degradation and exploitation and a reflection of class relationships in society.<sup>2</sup> Prostitutes were drawn from the working class and served the

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wealthy, and if it were true that working class men contributed to the demand for prostitutes,<sup>3</sup> it was equally true that upper and middle class women rarely contributed to the supply.<sup>4</sup> This class bias was recognized by William Acton, a medical researcher whose primary concern was venereal disease. Acton wrote:

It cannot be denied by anyone acquainted with rural life that seduction of girls is a sport and a habit with vast numbers of men, married. . . and single, placed above the ranks of labour. . . . Many such rustics of the middle class and men of parallel grades in country towns employ a portion of their spare time in the coarse, deliberate villainy of making prostitutes. . . . Men who themselves employ female labour, or direct it for others, have always ample opportunities of choice, compulsion, secrecy and subsequent intimidation, should exposure be probable and disagreeable. . . . With these and with the gentlemen whose *delassement* is the contamination of town servants and *ouvrieres*, the first grand engine is, of course, vanity.<sup>5</sup>

Upper and middle class men were aided in their vain indulgence by other factors. First, more and more women were entering the trades, the factories and the homes of the wealthy as domestic servants. They worked long hours and, because the opportunities for women outside the home were few and the competition great, at a very low wage. As sole supporters and sometimes even when husband and children also worked, women had to find means to supplement this meager income. The means were found in the streets. When there was no work at all, the necessity of soliciting, or of giving in to the sexual advances of one's employer, was even more acute.<sup>6</sup> Prostitution was one way of preventing the starvation of one's family:

She said, "I buy things to eat; I can't eat what mother gives us. She is poor, and works very hard; she'd give us more but she can't; so I buy foods, and give the others what mother gives me; they don't know no better, — if mother's there, I eat some; sometimes we have only gruel and salt; if we have a fire we toast the bread, but I can't eat it if I'm not dreadfully hungry." "What do you like?" "Pies, and sausage-rolls," said the girl, smacking her lips and laughing. "Oh! my eye, ain't they prime—oh!" "That's what you went gay\* for?" "I'm not gay," said she sulkily. "Well, what do you let men fuck you for? Sausage-rolls?" "Yes, meat pies and pastry too."<sup>7</sup>

\*To go gay: to become a prostitute.

Second, the poor were forced to live under conditions which contributed to a perpetuation of prostitution. Entire families ate, slept, had sexual intercourse and died in one room. Privacy was virtually non-existent in these overcrowded slums and children acquired a knowledge of the sexual habits of their elders and neighbors very early on. More importantly, the environment created pressure for the immediate satisfaction of sexual desires.

Female children could hardly avoid sexual advances and forced relations. The preservation of one's virginity was close to impossible<sup>8</sup> and the encouragement to see one's body as a saleable item great.

Third, there was great demand among upper and middle class men for the services of whores. This demand was created and sustained by competing social and institutional pressures, all of which conspired to make a sexual marketplace of the poor. On the one hand, marriage at an early age and before establishment as a gentleman was considered unbecoming one's rank.<sup>9</sup> At the same time, sexual satisfaction before marriage among women of one's own class was impossible; the virginity of these women had to remain intact until their own marriage. Further, there was no alternative in masturbation; it was considered an unacceptable substitute for heterosexual intercourse as it supposedly resulted in a premature exhaustion of sexual power. Lastly, even after marriage, sex was considered vulgar. For the true lady, it was a duty which one tolerated but did not initiate and certainly did not enjoy:

Most of the best mothers, wives and managers of households, know little of or are careless about sexual indulgences. Love of home, children, and of domestic duties are the only passions they feel.

As a general rule, a modest woman seldom desires any sexual gratification for herself. She submits to her husband's embraces, but principally to gratify him; and were it not for the desire of maternity, would far rather be relieved from his attention. . . the married woman has no wish to be placed on the footing of a mistress.<sup>10</sup>

The supposed middle class virtues of passivity, modesty and reluctance were not expected nor, of course, found among working class and poor women. Unlike their "better-bred" sisters they were thought to seek and enjoy sex.

The military also contributed to the continuation of prostitution. Sailors and soldiers in the 19th century were, for the most part, required to remain unmarried throughout their entire and lengthy service. As a consequence, they sought sexual gratification outside their posts. There developed, around every army and navy camp, a ring of whore houses and a large supply of prostitutes to satisfy these demands. Conditions of poor and working class women outside the posts facilitated the development of this situation, of course, but another factor must be considered: the treatment of the wives of the few military men who were allowed to marry and of those who married unofficially. These women were required either to live on post, in their husband's barracks where privacy often consisted of no more than a blanket hung around the couple's bed, or to find lodgings off post. No housing allowances were available, however, and since jobs were scarce and wages low, many military wives turned to prostitution to support themselves, their lodgings and their husbands.<sup>11</sup>

In 1970 female delegates to the first National convention of *El Partido de la Raza Unida* and members of the Chicana Caucus at the National Chicano Political Conference called prostitutes the “victims of an exploitative economic system” and prostitution a practice “used by a corrupt few to reap profits for themselves with no human consideration for the needs of *mujeres*.”<sup>12</sup> These statements attest to the fact that in the 20th century prostitution remains a manifestation of economic degradation and exploitation and a reflection of class relationships.

Statistics support the same conclusion. The National Advisory Commission on Civil Disorders has estimated that in 1967 40.6% of the non-white population of the United States lived below the Social Security poverty level (\$3,335 per year for an urban family of four). The Commission’s statistics also show that in “disadvantaged areas” of all central cities, 384,000 non-white females were subemployed (underemployed or unemployed). Statistics on prostitution mirror the employment picture. The incidence of prostitution is higher in the cities where working class and minority women are forced to gather but where wages are low and must be supplemented by “illegal” means; it is also highest among non-white women.<sup>13</sup>

Prostitution is not merely a reflection of class relationships, however, just as in the 19th century, its existence is also explained by sex relationships. The first male chauvinist pig, the god of the Judaeo-Christian tradition, commanded that women assume a subservient role to man, that she be his servant and helpmate and that she be ever ready to satisfy his sexual needs. Although Victorian societies pushed this sexual relationship to its extremes, women in the 20th century have yet to achieve equality on this most personal level. Men continue to grow up believing that sex is their right and that if it can neither be found in marriage nor among the “right kind of women,” it can and must be found elsewhere. They also continue to be taught that heterosexual intercourse is the only “natural” form of sexual relation. Masturbation is still considered by most people to be an unacceptable substitute for the real thing and is derided as a practice only of the “maladjusted” homosexual or pervert. Homosexual sex itself was condemned in the Bible and, for the most part, continues to be condemned today. For the well-adjusted male, women must continue to provide an outlet for sexual appetites, and if the “good” girls won’t do so, the “bad” ones must.

Conditions in the armed services, very similar to those which existed in the 19th century, also contribute to a perpetuation of prostitution. The mere fact that the services are predominantly male makes indulgence in heterosexual intercourse on base difficult, if not impossible. A supply of women must therefore be found outside the post. Men who have been in the services attest to the fact that “we’ve made Southeast Asia into one of the biggest whorehouses in the world.” Certain areas of Europe and the United States could be characterized in the same way, however. Moreover, *machismo* is perhaps even stronger among our “fighting men” than among

civilians. Men who do not seek sexual satisfaction with women or who seem to be developing relationships with other men are tyrannized by their supposedly “healthy” cohorts.

## II. THE SOLUTIONS

The high rate of venereal disease among soldiers and sailors was a matter of large concern in the 19th century. Legislative activity strove to eliminate this problem—through the agency of prostitution. The first Contagious Diseases Act in England was passed in 1864. It was administered by a special force of plainclothesmen acting under the direction of the Admiralty and the War Office and provided for the forcible seizure of any woman believed to be a “common prostitute” and for her examination and detention in a hospital should she found to be infected with VD. Refusal to submit to such examination or misbehavior in the hospital made the woman liable for imprisonment. A portion of the Act reads as follows:

10. If any common Prostitute is in any public Place within the Limits of any Place to which this Act applies, for the Purpose of Prostitution, any Superintendent or Inspector of Police or Constabulary authorized to act in that Place, having Good Cause to believe that such common Prostitute has a Contagious Disease, may by Order in Writing signed to him, direct as Constable to take her into Custody, and to bring her, as soon as reasonably may be, before a Justice of the Peace, to be dealt with according to Law; and the Constable. . .may without further Warrant, take into Custody the Woman named in such order, and bring her before a Justice. . .

11. Where, upon any Woman being brought before a Justice. . .it appears to the Justice that she is a Common Prostitute, and was in such a Public Place. . .for the Purpose of Prostitution, the Justice, for the Purpose of obtaining Medical Testimony,. . .may, if he thinks fit, require her to be examined by a legally qualified Medical Practitioner. . .

12. If it is proved to the Satisfaction of such Justice that the Woman . . .is a Common Prostitute, and that, having a Contagious Disease, she was. . .in a Public Place. . .for the Purpose of Prostitution, the Justice may order her to be taken to a Certified Hospital, there to remain until cured.

13. If it is proved. . .that the Woman. . .is a Common Prostitute, and that, knowingly having a Contagious Disease, she was. . .in a Public Place for the Purpose of Prostitution, she shall be deemed guilty of an Offence against this Act, and the Justice may order her to be taken to a Certified Hospital, there to remain until cured, and may further adjudge her to be imprisoned, in case of a First Offence, for any Term not exceeding One Month, and in case of a Second

or subsequent Offence for any Term not exceeding Three Months, such Imprisonment to commence from the Time of her legally quitting the Hospital.

14. If any Common Prostitute. . .quits the Hospital without being required to so do by the Authorities. . .she shall be guilty of an Offence. . .and on summary Conviction thereof before a Justice of the Peace shall be liable to be adjudged to be sent to the same or some other Certified Hospital, there to remain until cured, or, in the Discretion of the Justice. . .to be imprisoned for. . .Four Months.

17. Any Common Prostitute who, having been by Order of a Justice under this Act sent to a certified Hospital, refuses or wilfully neglects while in the Hospital to conform to the regulations thereof, shall be guilty of an Offence. . .and on summary Conviction thereof. . .shall be liable to be imprisoned for any Term not exceeding One Month.<sup>14</sup>

The Acts found both supporters and opponents. Support came primarily from upper and middle class males who claimed that the Acts were a way to prevent the spread of VD from the guilty to the innocent, to protect upper and middle class wives, and their progeny. Victorian ideals of the “pure woman” (if she belonged to the right class) were used as a strong counter to those who took a laissez-faire position, and who argued that the state should not interfere with the natural and just retribution (venereal disease) which God would visit upon the evil.<sup>15</sup> The mother-wife argument may have been a ruse but it diverted attention from the possibility of “guilt” among upper and middle class men.

A second argument in favor of the Acts claimed that the State had a duty to maintain a healthy army, and to do so even at the expense of other legitimate concerns, like protection of the civil rights of all citizens.<sup>16</sup> The argument was strong because it was basically one of economics: tax revenues are being used to support the army. An army debilitated by VD made the “integrity of the tax system” a fraud. The fact that many upper and middle class men were career officers of course gave added weight to the public policy argument.

William Acton presented a final argument in favor of the Acts. He claimed that the Acts were necessary in order to make prostitution respectable. Like many of the men of his time Acton assumed that upper and middle class women were exempt from sexual passion. He also assumed, however, that it was the role of women to provide for all of man’s needs, only one of which was the need for sexual satisfaction.<sup>17</sup> Prostitution was therefore a worthy occupation; it served the dual social purpose of preserving upper and middle class women from the “vulgarity” of their husbands’ desires and of satisfying the legitimate needs of the men of the same classes. Acton argued further, however, that prostitutes had to be encouraged in habits of cleanliness, not simply because propriety was a part of respectability but because patrons should not have to risk contamination.

Just as in England before the passage of the Contagious Diseases Acts, prostitution in the United States is presently a crime. The Indiana statute (Burns 10-1220) is not atypical:

Prostitute. — Any female who frequents or lives in a house or houses of ill fame, knowing the same to be a house of ill fame, or who commits or offers to commit one or more acts of sexual intercourse or sodomy for hire, shall be deemed guilty of prostitution, and on conviction thereof shall either be fined not less than one hundred dollars nor more than five hundred dollars, and imprisonment not to exceed 180 days or such person may be imprisoned in the Indiana women's prison not less than two years and not more than five years.

We have, however, come full circle for moves are now being made in the United States to legalize prostitution.

These moves have come primarily from white middle class liberal women. Beginning from the premise that prostitution is not a crime, these women have argued that prostitutes are the victims of a discriminatory and malfunctioning legal system of

laws that have been around for a long time without eliminating or systematically controlling the "vice"; laws that are themselves more destructive than the traffic they attempt to control and laws that, in a time of rising urban and suburban crime, are frivolous. . .<sup>18</sup>

and have made the following recommendations:

1. That laws concerning prostitution and patronizing be repealed.
2. That legislatures make a distinction between prostitution and crimes such as rape, murder, and robbery which may be committed by persons who sell or solicit sex.
3. That houses of prostitution and/or prostitutes be licensed by the state.<sup>19</sup>

These recommendations have been justified in a number of different ways:

1. Prostitutes are not criminals.
2. Existing laws have not succeeded in eliminating the trade.
3. Present laws actually encourage the perpetuation of prostitution because of the financial burdens they impose on prostitutes.
4. Existing laws stigmatize prostitutes and make it difficult for them to find legitimate jobs.
5. Prostitution is not a serious enough social ill to merit the time and money which laws making it a crime require of law enforcement systems.
6. Prostitutes do commit some crimes (murder, robbery, assault,



vagrancy or creating a public nuisance) and should be punished accordingly. Law enforcement time and money should be committed to controlling this type of activity.

7. The licensing of houses and/or prostitutes would not put the state in a position of condoning prostitution but could control the spread of disease.

8. Prostitutes have the same right to work in sanitary conditions as all other workers.

These policies would be codified into state laws imposing civil penalties on prostitutes and owners of whore houses for refusal to register, refusal to submit to health inspections and neglect in complying with sanitary codes—laws which, we assume, would be very similar to the Contagious Diseases Acts if only because the proposals are being justified in the same terms as the 19th century laws (emphasis on making prostitution respectable, on controlling disease, on assuring citizens a proper return on that part of their tax dollar that goes into law enforcement, on refusing to interfere in the free choice relation of buyer and seller).

An alternative proposal for dealing with the prostitution problem has come from working class and minority group women. These women also begin from the premise that prostitutes are victims and not criminals but conceive the issue in class and sex struggle terms. Prostitution is only one aspect of an economic system which exploits the poor: a small group of males reaps profits from a larger group of poor females; the poor serve the rich; females serve males. Working class and minority women do not reject the legal model in seeking a solution to the problem. They ask, however, that the law punish the exploiter (pimps, owners of houses) rather than the exploited (the prostitute herself). More importantly, they claim that legalized prostitution is merely a means of employing poor women who are on welfare and demand therefore, that society not condone its own exploitation by such legalization.<sup>20</sup> Finally they reject the notion that prostitution is a necessary evil and call for a reintegration of poor women into the “good life” which our society supposedly offers indiscriminately to all citizens. In summary they suggest that:

1. those who reap profits from prostitution be given heavy prison sentences and be made to pay large fines;
2. *mujeres* who are forced to prostitution not be condemned to serve prison sentences;
3. prostitution not be legalized.<sup>21</sup>

### III. THE FUTURE

My own bias favors the working class minority view of the prostitution problem. I have concluded that the legalization of prostitution is not only

counterrevolutionary but that its proponents betray a lack of respect for themselves and their sisters which women today can hardly afford. This idea is not a new one. It was put forth by English women in the 1860's as they struggled against the passage of the Contagious Diseases Acts and for their subsequent repeal. This struggle can provide 20th century women with cogent arguments against the legalization of prostitution, arguments which, however, should not sound unfamiliar. And if it does not convince them of the need for a whole new social order it should at least indicate that traditional legislative and legal effort must be directed to other goals.

The first Contagious Diseases Act evidently passed Parliament unnoticed; it was not until 1869 that the Acts first drew the attention of women. One of the first and later the most outspoken opponents of the Acts was Josephine Butler. Butler verbalized the inequities of the Acts and later spearheaded the movement for their repeal. Her arguments are expressed in the following *Women's Protest* of 1870:

We, the undersigned, enter our solemn protest against these Acts.

1st.—Because, involving as they do such a momentous change in the legal safeguards hitherto enjoyed by women in common with men, they have been passed not only without the knowledge of the country, but unknown, in a great measure to the Parliament itself; and we hold that neither the Representatives of the People, nor the Press, fulfill the duties which are expected of them, when they allow such legislation to take place without the fullest discussion.

2nd.—Because, so far as women are concerned, they remove every guarantee of personal security which the law has established and held sacred, and put their reputation, their freedom, and their persons absolutely in the power of the police.

3rd.—Because the law is bound, in any country professing to give civil liberty to its subjects, to define clearly an offence it punishes.

4th.—Because it is unjust to punish the sex who are the victims of a vice, and leave unpunished the sex who are the main cause, both of the vice and its dreaded consequences, and we consider that liability to arrest, forced medical treatment, and (where this is resisted) imprisonment and hard labour, to which these Acts subject women, are punishments of the most degrading kind.

5th.—Because, by such a system, the path of evil is made more easy to our sons, and to the whole of the youth of England; inasmuch as a moral restraint is withdrawn the moment the State recognizes, and provides convenience for the practice of a vice which it thereby declares to be necessary and venial.

6th.—Because these measures are cruel to the women who come under their action—violating the feelings of those whose sense of shame isn't wholly lost, and further brutalizing even the most abandoned.

7th.—Because the disease which these Acts seek to remove has never been removed by any such legislation. The advocates of the

system have utterly failed to show, by statistics, or otherwise, that these regulations have in any case, after several years' trial, and when applied to one sex only, diminished the disease, reclaimed the fallen or improved the general morality of the country. We have, on the contrary, the strongest evidence to show that in Paris and other Continental cities, where women have long been outraged by this system, the public health and morals are worse than at home.

8th.—Because the conditions of the disease, in the first instance, are moral, not physical. The moral evil through which the disease makes its way separates the case from that of the plague, or other scourges, which have been placed under police control or sanitary care. We hold that we are bound, before rushing into experiments of legalizing a revolting vice, to try to deal with the causes of the evil, and we dare to believe that with wiser teaching and more capable legislation, those causes would not be beyond control.<sup>22</sup>

Ms. Butler was concerned first of all with the inherent injustice of the Contagious Diseases Acts and without using the precise language made equal protection, due process and unreasonable search and seizure arguments. She objected to the fact that women were being charged with prostitution and with being disease carriers without notice of the elements of the offense, without the opportunity to consult a lawyer, come before a judge or jury or challenge the health inspection warrant. More than that she decried the unreasonable search and seizure of a women's body, without probable cause, which the laws permitted:

The 1866 Act introduced a new punishment. A harlot had never before lost rights over her own person. . . . Now if the chief policeman swear that he had "good cause to believe". . . that a woman is a harlot, the law forthwith commands that the woman's person be forcibly violated. . .<sup>23</sup>

Today women who recommend the legalization of prostitution would seem to be willing to risk the same loss of rights for their sisters. The problem is that to make prostitution legal but at the same time to impose a health inspection requirement does not mean that prostitutes are no longer mistreated by the law. What it means, rather, is that they can be picked up and detained in hospitals without regard to those rights supposedly guaranteed by the Constitution to persons arrested for a crime or searched on suspicion thereof. This is to put a woman's body in the same category as regulated industries where the Supreme Court has permitted warrantless searches under a public interest rationale.<sup>24</sup> Further, and because of their frequent involvement in activity which would remain illegal, it is likely that detention of prostitutes for health inspection would become a sort of pretext arrest. The same possibility exists were repeal of prostitution laws to be traded off in favor of a more stringent enforcement of vagrancy laws.<sup>25</sup> It sounds as if we are being asked to rob Peter to pay Paul, a particularly

inappropriate stance given evidence of the less than fair treatment which law enforcement officials accord the poor.

Butler further objected that the Contagious Diseases Acts were being applied only against women. The lawmakers had forgotten, it seemed, that men were not only often the carriers of VD but the cause of prostitution itself, as patrons, employers, pimps and husbands.<sup>26</sup> She recognized the assumption underlying the Acts—that women could be made available, by the state, to satisfy the sexual needs of men—and that this assumption explained the equal protection violation permitted by the laws. She analogized the Acts to the establishment of a legalized white-slave trade<sup>27</sup> and said:

If you vote for Mr. Childers [standing for Parliament and a supporter of the Acts], you endorse the sentiment that a holy life is impossible for unmarried men, and that women must be provided for them by the state, and sacrificed body and soul to their lust. . .<sup>28</sup>

In the United States today a “liberated” view of the prostitution problem holds that the practice is a common, natural phenomenon that does and should be allowed to occur between consenting adults and which needs only to be made respectable.<sup>29</sup> Under this analysis prostitution becomes only one aspect of a new consciousness which has permitted women equal indulgence in and enjoyment of sexual relations. Advocacy of its legalization is tantamount to a throwing off of “bourgeois morality” which has nothing to do with condoning the provision of women for the satisfaction of male sexual needs. In fact what this view demonstrates, however, is an uncanny inability on the part of middle class liberals to distinguish their own situation from that of the poor. Prostitutes are not on some liberation fling. They are usually women without jobs who got involved in drugs at a very early age and who now need money to support a habit and pay an underworld pimp or police officer. They are on the streets not only because society teaches that men expect sex and will pay for it but because they have no other choice.<sup>30</sup> Middle class advocates of legalization are wrong, then, when they say they are institutionalizing nothing. No matter what rubric justifies a legalization of prostitution, an agreement to accept the existence of the trade condemns a whole class of women to an economic relationship with men and society which can only be called subservience. This relationship can be condoned—as long as you and your kids aren’t involved. It cannot be made respectable.

As a corollary to the legal arguments described above and what might be called her second major point, Ms. Butler rejected the idea of interest balancing. The opposition’s argument said that the state had an interest in controlling the spread of VD and that this interest was enough to outweigh the personal rights of women:

I have watched the insidious materialism creeping over the country and entangling. . .many good men deceived by appeals made to them in the name of benevolence, and for the sake of diminishing physical

The elimination of physical suffering was, of course, a worthy goal but not if it involved a concomitant denial of due process and equal protection. The goal was particularly inappropriate, moreover, if it were being touted as a substitute for real social change. Butler called upon the state to analyze and eliminate the fundamental causes of VD and prostitution. For example, of the military, she said:

But while favouring the element of brutality in him (the soldier), we had not need go further and assume in practice that his animalism is a necessity which must be provided for. . . .If the soldier is more immoral than his contemporaries. . .it must be because the standard of morality is lower in the army than out of it. Shall we then raise it. . .or degrade it further by a practical avowal that vice is, in the soldier's case, a necessity to be provided for, like his need for food and clothing? This admission of the necessity of vice is the point on which the whole argument turns. . . .The admission involves civil as well as military society.<sup>32</sup>

It was time to direct the "labours of science" to "the gradual moral progress of the governed."<sup>33</sup> Butler therefore recommended an establishment of public institutions to aid the poor, a cleanup of slum areas, and state-provided employment and minimum wages. She called for army reforms that would allow men to marry and which would provide adequate and free housing for military families. To upper and middle class men she suggested the folly of postponing marriage. And continually she cited the effect of legalized prostitution on the health and morals of other societies: more prostitutes, a higher incidence of VD, less respect for women and the poor in general.<sup>34</sup>

The position of present advocates of legalization is as superficial as that of Ms. Butler's opponents in the 19th century. Except for an allusion to the effect of existing prostitution laws on future employment possibilities (which seems to have the process backwards in any case), no suggestions have been made which indicate an understanding of the class bias of prostitution or of its causes. The point is that because prostitution is often caused by poverty, lack of adequate housing and employment, because it is bred in an environment where "illegal" activity is the norm rather than the exception, because it is merely part of a whole racism/sexism syndrome, it cannot be eliminated merely by making it legal. Much more extensive and fundamental changes in our society are required.

This gap in the analysis can no doubt be explained in a number of ways. The most acceptable explanations would be that legalization advocates believe an immediate change in the prostitution laws is necessary and that changes must always be minimal because no one law can accomplish a complete reform of society. These explanations leave open the possibility of legislation in other areas and of working on a number of different fronts to eliminate prostitution.

Probably the most accurate explanation of the gap, however, and the one that is totally unacceptable, is that proponents of legalization see no need to eliminate prostitution and are therefore not concerned with its causes. This explanation was implied in the discussion of equal protection *supra*: if you don't think the trade is a way of using poor women, if you don't think legalization would condemn these women to further subservience, if you think women have a right to choose prostitution and always do so freely, you want to clean things up a bit but you don't want to deny anyone their livelihood. The logic is perfect but the irony overwhelming. Proponents of legalization would do well to go back to the history books and statistics, or better still to the words of working class and minority women<sup>35</sup> which they once attempted to dismiss with a "That's not what they meant,"<sup>36</sup> for a re-examination of the whole problem.

Ms. Butler's third major argument was that a woman's struggle against the Contagious Diseases Acts was an assertion of self-love and self-respect. Women, she felt, must not only reject the idea that their only role in life is to satisfy the needs of men; they must actively oppose any legislation which seeks to institutionalize their own exploitation. If a government has the right to punish a misdeed, it also has the obligation to use the most effective means for suppressing its causes;<sup>37</sup> legalization of prostitution, because it favors men and condemns women, is not the most effective means. To participate in such legislation, even merely through passivity, is to deny one's own integrity. Instead women must assert their belief in equality and work for the moral enlightenment of both sexes:

(Women must ask) how far the proposed solution ministers to the moral education of society. The sense of self-dignity, the deep conviction that each of us has a task to fulfill on earth, for our own improvement and that of all our fellow creatures, is the first step of all education. . . .If you crush in women their innate self-respect, you decree the helot. If you sanction moral inequality,. . .you create. . .corruption.<sup>38</sup>

Butler's belief in the integrity of a woman's body and soul should not sound foreign to 20th century women. The same belief has guided them through campaigns to change the family structure, to equalize employment and educational opportunities, to effect the media's portrayal of women etc. It was the specific issue on which the abortion case was argued and on which change in the rape laws has been recommended. Why is it, then, that this integrity has been denied in the area of prostitution and that some women are now willing to ask their sisters to retain the same role in matters of public sex that they would forbid them to assume in private sex, in the family, in education, in employment, in the professions, in the media, in health care, in any and every other aspect of their lives?

If the ultimate goal is a total restructuring of society and its institutions, and I believe it is, the contradiction is great and will have to be resolved.

The swing vote is with the liberals. Let us hope they do not lose total contact with the rest of us.

#### FOOTNOTES

1. Juliet Mitchel discusses how the women's movement has split along class and political lines in her *Woman's Estate*. Juliet Mitchel, *Woman's Estate* (Vintage Editions, New York, 1973).
2. E. M. Sigsworth and T. J. Wyke, "A Study of Victorian Prostitution and Venereal Disease," in *Suffer and Be Still, Women in the Victorian Age*, ed. Martha Vicinus (Bloomington, 1972), p. 99.
3. Sigsworth and Wyke feel that although 19th century literature deals only with the middle class demand for prostitution, it cannot be doubted that a working class demand also existed, "given the frequency with which prostitution is associated with drinking, and especially with the beerhouses which after 1830 catered to the thirst of the working man." (Citation omitted) Lack of comment in the literature may simply mean that working class prostitution was less commercialized: working class man had "less need to purchase what was freely available." Despite this imbalance in the literature, Sigsworth and Wyke conclude that "it is difficult to resist the impression that prostitution resolved itself into a physical expression of the class structure of Victorian society." All citations, Sigsworth and Wyke, p. 87.
4. Loc. Cit.
5. William Acton, *Prostitution considered in its moral, social and sanitary aspects in London and other large cities and garrison towns with proposals for the control and prevention of its attendant evils*. (1st edition 1857) (London, 1972), p. 273.
6. *Sigsworth and Wyke*, p. 80.
7. Quoted in *Sigsworth and Wyke*, p. 81 from *My Secret Life* (anonymous), ed. E. and P. Kronhausen, 19.
8. *Sigsworth and Wyke*, p. 81.
9. *Sigsworth and Wyke*, p. 85.
10. *Acton*, p. 172.
11. *Sigsworth and Wyke*, pp. 89-91.
12. *MS. Magazine*, December, 1972, p. 128.
13. See generally, Harry Benjamin, M.D. and R.E.L. Masters, *Prostitution and Morality. A definitive report on the prostitute in contemporary society and an analysis of the causes and effects of the suppression of prostitution*. (New York, 1964).
14. Mimeographed copy of the Act supplied by Prof. Martha Vicinus, Indiana University, Bloomington.
15. Untitled pamphlet in *Contagious Diseases Report and Pamphlets, Contra, 1869-1873*.
16. *Sigsworth and Wyke*, pp. 91ff.
17. D. W. Granger, "The Treatment of Women in the 1870 Edition of William Acton's Prostitution," unpublished paper (Indiana University, Bloomington, Spring, 1973).
18. Pamela Roby and Virginia Kerr, "The Politics of Prostitution," *The Nation*, April 10, 1973.
19. Loc. cit.
20. *MS. Magazine*, p. 128.
21. Loc. cit.
22. Josephine Butler, *Personal Reminiscences of a Great Crusade* (London, 1896), p. 121.
23. Francis W. Newman, "The Cure of the Great Social Evil," 1869, included in *Contagious Diseases Reports and Pamphlets*.
24. *United States v. Biswell* [406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972)] (gun dealer);

*Colonnade Catering Corp. v. United States* [397 U.S. 72, 90 S.Ct. 774, 25 L.Ed.2d 60 (1970)] (liquor dealer); *Wyman v. James* [400 U.S. 309, 91 S.Ct. 381, 17 L.Ed.2d 408 (1971)] (welfare recipient). See also *Henderson v. United States* [390 F.2d 805 (9th Cir. 1967)] where Judge Duniway held that although the mere crossing of a border is sufficient cause for a search of baggage, car, wallet, purse and pockets, a warrantless search of the body (here, of a woman's vagina) is unreasonable as an invasion of privacy. Something more than mere suspicion is required. The Supreme Court has not ruled on the proper scope of administrative searches although it seems possible, given its more recent decision in *Robinson* that it might rule such searches could properly extend to the body. Whether *Schmerber* would be determinative remains an open question.

25. See *Green v. United States* [386 F.2d 953 (10th Cir. 1967)], *Amador-Gonzalez v. United States* [391 F.2d 308 (5th Cir. 1968)]. It has been argued that vagrancy statutes are unconstitutional as containing inadequate probable cause requirements and as interference with rights of movement and assembly and therefore that they cannot provide a valid shortcut to due process when used in a pretext arrest situation.
26. Women who advocate the legalization of prostitution seem to have made the same oversight. Nowhere is the proposals cited (p. 10) does one find the suggestion that pimping be made a crime. In fact the suggestion is made that existing laws which punish patrons be repealed. See also *Benjamin and Masters*, Chapter 12: Legal and Law Enforcement Aspects.  
The Model Penal Code, Section 251.2, would, however, punish both pimps and patrons.
27. Butler, *Personal Reminiscences*, pp. 161-162.
28. *Personal Reminiscences*, p. 93.
29. See, for example, *Benjamin and Masters*, Chapter 6: The Prostitute's Customers and Chapter 12: Legal and Law Enforcement Aspects.
30. Even Benjamin and Masters, who argue that many women chose the life because of its "benefits" (easy work and good pay), must still state that "it is doubtful that fewer women are economically motivated to enter prostitution today than in the past." (p. 95, emphasis mine). See generally, *Benjamin and Masters*, Chapter 4: Why Women Become Prostitutes.
31. *Personal Reminiscences*, p. 119.
32. *Personal Reminiscences*, pp. 9-10.
33. *Personal Reminiscences*, p. 155.
34. See generally, *Personal Reminiscences*.
35. *MS. Magazine*, p. 128.
36. This statement was made in the course of a class discussion of LaRaza's statement.
37. *Personal Reminiscences*, p. 23.
38. *Loc. cit.*



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