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Elliott M. Abramson

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# A Note on Prostitution: Victims Without Crime — Or There's No Crime But The Victim Is Ideology

*Elliott M. Abramson\**

“The truth is that . . . the prostitute commonly likes her work and would not change places with a shopgirl or waitress for anything in the world.”

H. L. Mencken

“Common prostitution is a miserable occupation in which woman, exploited sexually and economically, subjected arbitrarily to the police . . . to the caprices of the customers, and doomed to microbes and disease is truly abased to the level of the thing.”

Simone De Beauvoir, *The Second Sex*

## THE ATTACK ON LAWS AGAINST PROSTITUTION

Recently, progressive, liberal thought has militated for a “mature” perspective on prostitution<sup>1</sup> which would result in its decriminalization.<sup>2</sup> For example, the Victimless Crime project of the

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\* Professor of Law, Willamette University; A.B. Columbia University, 1960; J.D. Harvard Law School, 1963.

1. If prostitution is defined as “the practice of indulging in promiscuous sexual activity for money” (see *WEBSTERS NEW COLLEGIATE DICTIONARY* 926 (1973)) it will readily be appreciated that there are many styles of attracting “clients,” and various types of prostitutes. Among them are street walkers who solicit passersby, employees of massage parlors who may be asked by customers for specific sexual favors and who then provide them, “bar-girls” who are available for pick-ups in bars and “call-girls” whose customers telephone for appointments at specified times and places. Although there are obvious differences in these life styles, and although some are higher and some lower in the “professional” pecking order, for purposes of the principal argument of this paper, the key uniting factor amongst them is the promiscuous provision of sexual activity for money. However “elevated,” the particular style with which a practitioner goes about prostituting her (or him) self, the argument here is that human degradation which can and should be redeemed, with the law’s assistance, is taking place.

2. Decriminalization may be taken to mean abolishing prostitution and related activities from the proscription of the criminal law. What was previously defined as a criminal act no longer is. This is distinguishable from “regulation” of prostitution, which also lifts the activ-

Northern California Affiliate of the American Civil Liberties Union favors decriminalization of sexual acts between consenting adults, particularly in the case of prostitution. Similarly, the National Organization of Women is collaborating with the ACLU in working toward decriminalization of prostitution. Even the American Bar Association's Special Committee on Crime Prevention and Control, chaired by Edward Bennett Williams, issued a 1972 report, "New Perspectives on Urban Crime" recommending the decriminalization of prostitution.<sup>3</sup> The commentaries in the Law Reviews have also been critical of current laws, and law enforcement, seeking to restrain prostitution. They have aimed at dismantling criminal sanctions currently applicable to many aspects of prostitutional activity.<sup>4</sup>

After a consideration of the rationale of such attacks, it will be argued here that they are misguided and that the law should continue to operate toward the abolition of prostitution. The reasons why it should and how it should go about doing so will be adumbrated.

There are various arrows in the bow of those favoring the decriminalization approach. Some arguments against specific laws restrictive of prostitution are based on concrete constitutional law arguments. We shall return to these later. Other arguments, which turn out to be rather intimately related to some of the elements

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ity itself from the criminal law's circle of prohibition, because regulation, rather than merely permitting the activity to go on unmolested as, when, where and how it will, sets up norms with which the activity is required to conform when it transpires. Thus regulation may involve such mechanisms as licensing of prostitutes, required medical examinations at specified times and places, inspection of brothels, and segregation of brothels in a particular section of a city. Other approaches to prostitution are a) outright prohibition under the criminal law, and b) the encouragement of abolition of the activity through the voluntary selection of education, therapy, or other means by prostitutes. The major approaches are described in H. BENJAMIN & R. MASTERS, *PROSTITUTION AND MORALITY* (1965). However, both decriminalization and regulation remove the law from the business of dealing with the phenomenon of prostitution, as such, and thereby endorse, by failure to bar it, the activity. The endorsement may be thought to be stronger in the case of regulation, since in that case the law participates in administering the activity. However, it is the attitude of endorsement itself which will be critiqued in this paper, and for that purpose it is sufficient to refer to decriminalization as prototypical of the attitude. Indeed, since it represents the weaker form of endorsement it is the most challenging to the critique. If the latter carries in this context other species of the attitude should be, simply, *a fortiori* cases.

3. Haft, *Hustling For Rights*, 1 CIV. LIB. REV. 8, 10 (1974).

4. See, e.g., Rosenbleet & Pariente, *The Prostitution of the Criminal Law*, 11 AM. CRIM. L. REV. 373 (1973); Jennings, *The Victim as Criminal: A Consideration of California's Prostitution Law*, 64 CAL. L. REV. 1235 (1976); *Privacy and Prostitution: Constitutional Implications of State v. Pilcher*, 63 IOWA L. REV. 248 (1978).

relied on in the constitutional analysis, commonsensically reflect the "victimless crime" catch phrase of which prostitution is frequently thought to be a prototypical example. They emphasize that the actual transaction involving a prostitute and her<sup>5</sup> client is a consensual one as far as both parties are concerned. Each receives from the other what is desired so that, in sharp contradistinction to the great preponderance of situations addressed by the criminal law, no one is hurt, disadvantaged, or victimized.

This analysis is the philosophical ally of a perspective which might be called "pluralistic," or non-judgmental. It alludes to the fact that people, including prostitutes, find satisfaction, accommodation and adjustment to life in a multiplicity of modes. Then this analysis suggests that society ought not pontificate about, and proscribe, through its formal institutions such as law, some of these ways, if they are not socially deleterious. Simply because some, or even many, of society's members do not like such life styles, or even regard them as "immoral," is claimed to be an insufficient and misleading cause for trying to inhibit them. This type of viewpoint is resonant in a passage such as the following:

Proponents of the nonmoral view recommend that the problem of prostitution be treated with scientific neglect . . . they question whether private morals are proper concerns for public law. According to this viewpoint, prostitution is a moral offense which does not militate against the common good and should therefore not be part of the criminal law.<sup>6</sup>

An alloyed approach which focuses sharply on prostitution as merely one of many routine, day-to-day methodologies for confronting life appears in a discussion by sexologist Albert Ellis in a 1951 issue of *The International Journal of Sexology*. He defines prostitution as "engaging in sexual relations for non-sexual and nonamative considerations" and points out that such a definition embraces not only women who sell sex for money by the hour, but also those who trade sexual favors for such pay-offs as food, gifts and entertainment. It also covers "wives who, having no love and no sex desire

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5. The typical situation, almost to the point of exclusivity, in the mind's eye, is the one involving the female prostitute and the male client. There are a variety of other situations, such as the prostitute is male and the client of the same or opposite sex. For the sake of convenience and simplicity, this paper will take the female prostitute-male client situation as prototypical.

6. C. WINICK & P. KINSIE, *THE LIVELY COMMERCE* 14 (1971).

for their husbands, continue to have sex relations in order to maintain the socio-economic benefits of marriage." Ellis points out that his definition realistically covers all persons who exchange sexual favors for non-sexual compensations and suggests that

anyone who engages in sex activities when he or she has no sexual or amative desire for the partner . . . is hardly in an enviable position. At the same time, I should also feel that anyone who cooks, or manufactures shoes, or writes a book or does any other kind of activity which he does not enjoy, but for which he derives other socio-economic gains, is also in an unenviable position, and ideally should certainly be looking for a more enjoyable occupation. Since, in this rather grimly realistic world in which we reside, we all tend to have to do many things which we do not like to do, it is difficult to see why prostituting ourselves sexually should be considered much worse than our prostituting ourselves vocationally, artistically, or otherwise.<sup>7</sup>

This intensely pragmatic view of prostitution, as merely one more life coping mechanism, in turn breeds an offshoot position which insists that perhaps because it is simply one amongst many garden variety, non-injurious occupations, prostitution is not susceptible to successful management by law enforcement. The English study entitled Report of The Committee on Homosexual Offenses And Prostitution, commonly known as the *Wolfenden Report*, put it this way:

Prostitution is a social fact deplorable in the eyes of moralists, sociologists, and we believe, the great majority of ordinary people. But it has persisted in many civilizations throughout many centuries, and the failure of attempts to stamp it out by repressive legislation shows that it cannot be eradicated through the agency of the criminal law . . . there are enough men who avail themselves of prostitutes to keep the trade alive. It also remains true that there are those women who, even when there is no economic need to do so, choose this form of livelihood. For so long as these propositions continue to be true there will be prostitution, and no amount of legislation directed toward its abolition will abolish it.<sup>8</sup>

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7. H. BENJAMIN & R. MASTERS, *supra* note 2, at 24.

8. Quoted in Jennings, *supra* note 4, at 1254 n.113.

Yet another argument in behalf of decriminalization asserts that, whether or not prostitution is an ineradicable social phenomenon of human society, in general, efforts to control prostitution in a contemporary, highly industrialized and complex society simply do not succeed. Difficulties in establishing probable cause for arrest, inveiglement of police by bribe, or otherwise, into complicity with the criminal activity, the taking advantage of crowded court calendars by defendants' attorneys through repeated requests for continuances, and plea bargaining are some of the practical obstructions to effective enforcement.<sup>9</sup>

A tangent of this argument that, for practical reasons, prostitution is not well controlled by law enforcement is one which points to how much is spent on current unsuccessful enforcement mechanisms. For example, it has been estimated that San Francisco spent more than \$370,000 in 1967, incident to the arrests of 2,116 persons on prostitution charges while, in 1973, Seattle spent more than \$1 million dollars in efforts to control prostitution.<sup>10</sup> This might be called the misallocation of resources orientation. Aside from stressing the ineffectuality of attempts to control, it objects to how much it would cost to successfully restrict the practice of prostitution, even if mechanisms to do so could be found, by emphasizing that there are much more important social objectives on which to lavish such expenditures.

#### THE FAILURE OF IDEOLOGY

While all of these arguments cutting in behalf of "legalizing" prostitution are what I should like to call ideologically wanting, it is perhaps this last rationale which most exemplifies the type of ideological shallowness I have in mind. For this argument seems quintessentially a technocratic-managerial one which omits vital humanistic considerations. It speaks in terms of most efficiently applying social resources, in terms of getting the heaviest return for the public dollar, but insufficiently attends to certain crucial human factors endemic to the situation and possibilities it purportedly analyzes. It announces that we are spending a great deal in efforts to control prostitution but not succeeding very well, and therefore suggests that we go on to the next problem and see what

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9. *Id.* at 1254-58.

10. *Id.* at 1256.

results the expenditures will produce there. It balances costs against benefits, but it omits people. It simply treats as one other element of analysis, if it heeds at all, the fact that giving up on prostitution is giving up on prostitutes — and prostitutes are human beings. Accepting prostitution by forsaking efforts to eliminate it is admitting that many women will spend their lives in “the life,” as prostitutes refer to the mores of their existence.

This is an ideologically shallow approach because it relaxes the strong moral cutting edge incorporated in the law’s thrust towards ameliorating human misfortune. It converts such misfortune, if it even concedes that “the life” is a misfortune into, simply, one of the many plural facts of life. Thereby it defaults on any responsibility to correct and improve the women who are the victims of such misfortune. It is essentially a regressive rather than a progressive view because it regards the foibles of human nature as irredeemable and sheds no tears for people who lie in the uncomfortable beds they have made.

Also, in accepting the status quo of human misfortunes, it neglects society’s complicity in the origins of the misfortunes. In paying pseudosophisticated attention to supposedly irreducible human diversities, it seeks smug immunization against critiques such as the following:

“Social problems are not solved because people do not want to solve them . . . . Solving social problems would necessitate a change in the organizational mores from which they arise.” This realization should strengthen the conviction that problems of deviance are rooted in a great deal more than the characteristics of deviating individuals.<sup>11</sup>

It is of a quiescence which breeds inability to see what is before one’s very eyes and, therefore, the loss of faculty to make plain commonsensical judgments. It marches as value-free complacency in a sterile positivistic parade which equates each segment of experience with each other and protests that the most glaring differences and inequities may not be measured. It will not permit description of some things which happen to an individual as superior, others as vastly inferior, some even as involving subjugation or exploitation.

[I]f there will always be prostitutes and clients, why shouldn’t

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11. E. SCHUR, *CRIMES WITHOUT VICTIMS* 7-8 (1965) (footnote omitted).

civilized people accept it? But a major issue about prostitution is whether it serves a true social function, and whether fulfillment of this function makes it impossible for prostitutes to achieve any reasonable amount of human happiness. It could be argued, for example, that slavery was functional in the United States before the Civil War; yet however functional it might have been, it clearly violated the slaves' humanity. Similarly, the American dream of making equality meaningful for all would clearly seem to be violated by segregating a group of women whose primary work is meeting the sexual needs of men on an anonymous cash basis. Respect for human beings and for the ideal of giving every person an opportunity to achieve, in John Dewey's phrase, the greatest quality as well as quantity of experience, is clearly inconsistent with condoning prostitution.<sup>12</sup>

The "ultrasophisticated," "pluralistic," "tolerant," "non-judgmental" analysis which has been criticized here deafens itself to such analyses and eschews truths as simple as "prostitution is beyond doubt a social evil because it uses up women in a very rough way."<sup>13</sup>

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12. WINICK & KINSIE, *supra* note 6, at 287.

13. *Id.* at 15-16. There are numerous and various sources which suggest that the contemporary "progressive" assessment of prostitution, which regards it as one of many life styles in a democratic, plural society, represents glib inattentiveness to unfortunate objective conditions which induce prostitutes to "choose" their life style.

Poor living conditions, unhealthy neighborhoods and neglected homes, inadequate education, low levels of intelligence, ignorance of sexual matters or too early sex experience, and a whole combination of personal and environmental factors, many of which are more likely to occur in the lower economic levels, are found in the backgrounds of a great many prostitutes. The remarkable thing is not that women with such backgrounds become prostitutes but that so many from the same background do not.

V. BULLOUGH, *THE HISTORY OF PROSTITUTION* (1964). Jennings suggests that many women who turn to prostitution do so after failing to meet some of society's "norms." They have had difficulties in school, or on a job, or have fallen prey to "persistent social handicaps, such as drug dependence, employment discrimination, culturally ingrained restrictions on career choices available to women generally, or desertion by a man who might have supported them. Women who thus find themselves inadequately prepared to . . . [support] themselves may choose prostitution as their means of support." Jennings, *supra* note 4, at 1252-53.

Dr. Harold Greenwald found psychoanalytic congruences in the backgrounds of prostitutes. Questioning of a prostitute often produced a profile of the intense early feeling of deprivation because of rejection by the mother, the feeling that the mother did not want to nurture them, feed them, take care of them . . . [F]requently [this lack of early nurture] seemed to arise from the fact that the mothers were inadequate individuals, immature and unable to give their daughters the love they needed . . . .



The short-sightedness of removing the normative power of the law as a constraint upon prostitution and, therefore, as a pinion in efforts to correct its concomitant evils is reflected in ambivalences expressed in the *Wolfenden Report*.<sup>14</sup> This document avers that:

there are limits to the degree of discouragement which the criminal law can properly exercise towards a woman who has deliberately decided to live her life in this way . . . [P]rostitution is an evil of which any society which claims to be civilized should seek to rid itself; but this end could be achieved only through measures directed to a better understanding of the nature and obligation of sexual relationships and to a raising of the social and moral outlook of society as a whole . . . . But until education and the moral sense of the community bring about a change of attitude towards the fact of prostitution, the law by itself cannot do so.<sup>15</sup>

An immediate rejoinder to this assertion should ask why the law should not contribute to bringing about "a change of attitude towards . . . prostitution" simply because "by itself [it] cannot do so." This seems tantamount to suggesting that if a person is incapa-

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When the girls found their mothers inadequate they turned to fathers or father substitutes, hoping that they would compensate for what the mother had not supplied. . . . [W]hat the girls were seeking from their fathers and later from men in general was not so much sex as actual nurture, feeding and being taken care of.

H. GREENWALD, *THE CALL GIRL* 92-93 (1958).

Greenwald also points to an amazing uniformity respecting the family atmospheres of his subjects' childhood. "I found not one example of a permanent, well-adjusted marital relationship between the parents. Not one . . . reported growing up in a happy home where her parents got along well together." *Id.* at 107.

Greenwald also reports a pattern of early rewarded sex. "They discovered at an early age that they could get some measure of affection, of interest, by giving sexual gratification." *Id.* at 109.

A strong protest against the complacency and irresponsibility of lapsing legal strictures against a basically undesirable phenomenon, such as prostitution, is expressed from a special perspective by Susan Brownmiller.

[M]y horror at the idea of legalized prostitution is not that it institutionalizes the concept that it is a man's monetary right, if not his divine right, to gain access to the female body, and that sex is 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 cooperative class of women, set aside and . . . licensed for this purpose, is part and parcel of the mass psychology of rape.

S. BROWNMILLER, *AGAINST OUR WILL* 392 (1975).

14. THE DEPARTMENTAL COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION, *THE WOLFENDEN REPORT* (1963) [hereinafter cited as *THE WOLFENDEN REPORT*].

15. *Id.* at 132-33.

ble of doing a job entirely alone, he ought to offer no help at all to someone else working at it. Why should the exemplary power of the law not continue to make a statement as part of the chorus of ideals intent on "raising . . . the social and moral outlook of society as a whole?"

The irresponsibility and sluggishness of a position which so endorses the relaxation of legal judgment is put into high relief later in the *Wolfenden Report* when proposals to bring brothels under state administration and regulation are discussed. For there, although acknowledging that "[W]e have already expressed our view that prostitution can be eradicated only through measures directed to a better understanding of the nature and obligations of sex relationships and to a raising of the social and moral outlook of society as a whole," the report goes on to say that "[t]he licensing and toleration of brothels by the State would make nonsense of such measures, for it would imply that the State recognized prostitution as a social necessity."<sup>16</sup>

While a distinction can be drawn between the law simply not dealing with a phenomenon (decriminalization) and establishing positive guidelines with which the phenomenon must comply (legislation-regulation), it seems that in each instance the law is legitimating an admitted evil.

#### LAW AS CRITICAL THEORY

I would like to denominate the view for which I have been implicitly arguing, the "Critical Theory" perspective on law. The theory suggests that if prostitution is acknowledged as an undesirable phenomenon and experience, the law ought to continue to judge and proscribe it as illegal. The label is derived from the work done by scholars and critics at the Frankfurt School and the Institute of Social Research—especially those monumental figures in twentieth century social criticism, Theodor Adorno and Max Horkheimer.<sup>17</sup>

The notion is both organic and activist. It denies a separation between abstract scientific theorizing and taxonomic formulations, on the one hand, and the practical procedures of living a decent life

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16. *Id.* at 158.

17. See R. BERNSTEIN, *THE RESTRUCTURING OF SOCIAL AND POLITICAL THEORY* (1st ed. 1976) for reference to Horkheimer's essay, *Traditional and Critical Theory* as "virtually . . . a position paper for the Frankfurt thinkers." *Id.* at 179-85. See M. JAY, *THE DIALECTICAL IMAGINATION* (1st ed. 1973), for a history of the Frankfurt School itself.

on the other. It scoffs at the idea of "value-free" objective inquiry of scientific purity and insists that all inquiry is from a particular orientation, and consequently grinds the axe of the perspective from which it comes.

The practical thrust of critical theory is characterized by Richard Bernstein, thusly:

Critical theory has a fundamental *practical interest* that guides it — a practical interest in radically "improving human existence," of fostering the type of self-consciousness and understanding of existing social and political conditions so that "mankind will for the first time be a conscious subject and actively determine its own way of life."<sup>18</sup>

The close relationship between the ruminations of theory and the rumblings of purposeful political and social activity to improve the human condition and the procreative power of thought to breed significant advance in man's life structures, is traced back by Bernstein to the intimate connection which existed between "theoria" and "praxis" for Aristotle. He viewed the one as suggesting the concrete form which should be taken by the "truly human activity manifested in the life of the *polis*."<sup>19</sup>

Perhaps the distinguishing hallmark of Critical Theory is its explicit recognition that knowledge and interest are inextricably connected.<sup>20</sup> The human activity of theorization is in behalf of humans living a free life — in the deepest sense of that term. A person is freest to be himself in a life in which each person achieves maximum personal development and becomes the most and best of what he has the capacity to become.

A reverence for these possibilities is forsaken by the proponents of decriminalization of prostitution. In rushing to embrace "realism," and "pluralism," they ignore a tradition which insists that there are objective levels of attainment rational persons can reach under appropriate environmental conditions or, perhaps more precisely, given the absence of particular concrete influences. This is a powerful philosophic lineage derived from such synoptic and penetrating eighteenth century thinkers as Kant and Rousseau. It

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18. R. BERNSTEIN, *supra* note 17, at 180-81.

19. R. BERNSTEIN, *PRAXIS AND ACTION* xi (1971).

20. R. BERNSTEIN, *supra* note 17, at 180.

was further developed and shaped by Marx and his followers.<sup>21</sup>

Although it is a strain of thought which has often been deeply submerged in the faddish force of pragmatic, technocratic currents, it has never been entirely drowned and has always resurfaced as an ideal of dynamic vitality. This tradition is unskeptical in its affirmations of mankind's possibilities. It proclaims tremendous promise in man as a rational creature, as a being who, if he lived out the most simple, fundamental signals of his rational character, would achieve highly beneficent and satisfactory experience. It purports to have knowledge of values through its true knowledge of this human nature.<sup>22</sup> The frustration of such nobility of achievement and existence is accounted for by societal and institutional accretions which warp and distort the true nature of man into bastardized versions of what human conduct, optimally, might be. The most popular and renowned expression of this sentiment may be Rousseau's expostulation, at the beginning of the *Social Contract* that "Man is born free, and everywhere he is in chains."<sup>23</sup> (Perhaps the most extreme manifesto of this faith is Trotsky's edict: "Every man

21. For example, consider the following explication of Rousseau's position in his *Second Discourse*, the *Discourse on the Origin and Foundations of Inequality*.

He argues that man, living according to purely natural impulses outside of society, was essentially a stupid but peaceful animal. Hobbes was wrong in supposing a natural state of war among men.

Hobbes' error, according to Rousseau, was that he imputed to natural man a number of qualities—foresight, pride, and fear of violent death—which are the product of *society* and not of nature. Man in the state of nature was not a "wicked child," but a "good" animal who never harmed another unless his own preservation was at stake.

See J. ROUSSEAU, *THE FIRST AND SECOND DISCOURSES* (R. Masters ed. 1964).

Also, in *SOCIALISM: SCIENTIFIC AND UTOPIAN*, Engels wrote of man controlling material conditions, rather than being subjugated to and controlled by them, when he celebrated the coming of that day when man would ascend from the "kingdom of necessity to the kingdom of freedom". II *MAN IN CONTEMPORARY SOCIETY* 289 (1955).

22. A precis of Kant's endorsement of values as objectively knowable can be found in 2 W. JONES, *A HISTORY OF WESTERN PHILOSOPHY* 847-48 (1952).

23. As a shrewd commentator has noted, for utopian oriented thinkers such as Rousseau

Utopia is an attack on both the doctrine of natural sin, which imposes rigid limits on men's social potentialities, and on all actual societies, which always fall so short of men's real capacities . . . .

[Rousseau] knew that suffering was not necessary since he "had discovered that the source of all men's miseries and wickedness was in their false opinions . . . ."

. . . freedom . . . means that there are no set limits to what [man] can do with and to himself. What he does is to abuse his powers and to make himself miserable.

J. ROUSSEAU, *THE SOCIAL CONTRACT OR PRINCIPLES OF POLITICAL RIGHT* 5 (C. Sherover ed. 1974).

Judith N. Shklar insists that Rousseau, himself, did not think men would achieve Utopia. But this does not discount the power of his vision to move men toward its practical attainment. J. SHKLAR, *MEN AND CITIZENS, A STUDY OF ROUSSEAU'S SOCIAL THEORY* 2,3,10 (1969).

an Aristotle," once society's institutions are appropriately arranged. One need not endorse such almost hysterical optimism in the ability of all to achieve supra-magnificently to, nevertheless, find a great power and attraction in the mentioned tradition).

It is essentially a utopian vision for it suggests that people are capable of being much more than they in fact may be at any given historical time and place and teaches that a correct structuring of their environment and institutions will move them toward attainment of much superior objective possibilities. It is idealistic because it discounts the pedestrian character of what is in behalf of moving toward the grandeur of what may be if we make it so.

This chiliastic thrust can be seen as highly discordant with the pluralistic managerial mentality which accepts, as an immutable given, the human misfortune of considerable prostitution and seeks from there to minimize the costs and maximize the benefits of administering it as a personal and social given.<sup>24</sup> This skeptical "realistic" managerial approach disembowels the law's normative thrust toward human "perfectibility," as envisioned in Utopian dreams, when it urges decriminalization of prostitution and offers dispensation for society to ignore human degradation, misfortune and misery.

Decriminalization is subversive of the Critical Theory elements served by the law. It eviscerates the law as an ensign of human aspiration, as a reflection of what it might just be possible for the human experience to achieve if we refuse to default. It ignores the idealistic character of law and treats it simply as an institutional "value-free" arrangement concerned solely with managing competing particularistic and selfish interests so that they interact with minimum dissonance.

In other words, the rather narrow, unaspiring mind set I have associated with the decriminalization proponents may be said to overlook the "emancipatory" function of law and legal institutions and processes. This emancipatory component is suggested by work done by perhaps the foremost of the contemporary descendants of the Frankfurt School tradition of Critical Theory, Jurgen Habermas. Habermas, in *Knowledge And Interest*, (this title itself sug-

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24. Daniel Bell writes of the exhaustion of passions for utopia in the 50's, a period which might also be thought of as the origin of the surge toward the full blown managerialism which dominates our lives today. D. BELL, *THE END OF IDEOLOGY* 404 (1962). He also mentions fervor for improvement as a characteristic of ideologies. *Id.* at 402.

gests Critical Theory's view that there is a most intimate relationship between intellectual theorizing and practical moves toward human betterment, between theory and liberation) identifies what he considers to be three primary cognitive interests — the technical, practical and emancipatory. He claims that to each of these three basic cognitive interests there corresponds a science or discipline. "The approach of the empirical-analytic sciences incorporates a technical cognitive interest; that of the historical hermeneutics sciences incorporates a practical one; and the approach of critically oriented sciences incorporates the emancipatory cognitive interest."<sup>25</sup>

It seems not too inapposite to ask that Law, *vis a' vis* this framework, be considered a critically oriented science. Indeed, it would seem to be of such character insofar as its prescriptions wear a normative badge and it represents a proclamation of those arrangements which will maximize the quality of human society. It should therefore, according to Habermas' schema, incorporate an "emancipatory cognitive interest." It should employ its knowledge about how institutions ought to be arranged to free individuals. But proposals for decriminalization cut against emancipation of prostitutes and accept their indefinite bondage to "the life." The law, rather than standing for and endeavoring to bring about the freeing of currently trapped individuals for attainment of superior potentials, which utopian thought claims as objectively realizable, is converted to spiritless concession administering to the unfortunate, but inevitable, seams of reality.

#### CRITICAL THEORY DISTINGUISHED FROM THE ENFORCEMENT OF MORALS TO PRESERVE SOCIETY

What I have called the Critical Theory approach must be sharply distinguished from another species of anti-decriminalization argument, which takes the line that society is entitled to enforce its morals, through its laws and legal institutions, as a means of preserving and perpetuating itself and its values. This latter argument emphasizes protecting predominant social institutions, as they exist, from insidious influences which might induce the unraveling of the fabric incorporating the status quo's ethos. Contrarily, the Critical Theory perspective accentuates positively redeeming

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25. R. BERNSTEIN, *supra* note 17, at 192.

*individuals* currently caught in the miserable toils of undesirable social processes. The approach urging enforcement of morals, as guarantor of society, focuses on protecting society and its prevalent values from the impact of certain individuals pursuing certain activities, but the critical theorist seeks to employ the law as an active instrument by which to integrate beset individuals into the generally benign social matrix so that they can realize their richest potentials.

The acute emphasis on society's stake in protecting itself and its own belief-systems, endemic to the enforcement of morals approach, is elegantly and clearly stated in Lord Patrick Devlin's work, appropriately entitled *The Enforcement of Morals*.<sup>26</sup>

Society is entitled by means of its laws to protect itself from dangers, whether from within or without . . . the political parallel is legitimate. The law of treason is directed against aiding the king's enemies and against sedition from within. The justification for this is that established government is necessary for the existence of society and therefore its safety against violent overthrow must be secured. But an established morality is as necessary as good government to the welfare of society. Societies disintegrate from within more frequently than they are broken up by external pressures. There is disintegration when no common morality is observed and history shows that the loosening of moral bonds is often the first stage of disintegration, so that society is justified in taking the same steps to preserve its moral code as it does to preserve its government and other essential institutions. The suppression of vice is as much the law's business as the suppression of subversive activities; it is no more possible to define a sphere of private morality than it is to define one of public subversive activity.<sup>27</sup>

The law should uphold society's moral judgments because their degradation is psychological treason, as subversive of the existing order in its own way as physically treasonable activities are in another. In Devlin's view a society which wishes to endure as it is must as vigorously check the one deviation as the other:

Society cannot live without morals. Its morals are standards of conduct which the reasonable man approves . . . . [A man

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26. P. DEVLIN, *THE ENFORCEMENT OF MORALS* (1968).

27. *Id.* at 13-14.

may] not share in the common morality; but that should not make him deny it is a social necessity. A rebel may be rational in thinking that he is right but he is irrational if he thinks that society can leave him free to rebel.<sup>28</sup>

In discussing the Critical Theory approach, reference was made to the “emancipatory” energy which could be generated by the law’s normative dimension — its thrusting force to liberate individuals to maximum fulfillment. The lack of interest of the enforcement of morals approach in so freeing personalities to best realize themselves, its obsession with maintaining the order which freezes the overall status quo, is exemplified in a typical taxonomy of the rationale for using the criminal law to inhibit and control immoral behavior. There are four components or claims embedded in this schema, four reasons why the immoral behavior should be proscribed by the criminal law:

- a) the activity in question has serious and deleterious effects upon individuals and upon the society in general;
- b) a cure can be effected;
- c) there is a societal consensus that the activity ought to be forbidden; and
- d) deterrence of the forbidden activity.<sup>29</sup>

This structure can be seen as heavily biased toward society’s interests and relatively unconcerned with the redemption of individuals who might actually be engaged in the undesirable activity. It chiefly aims at protecting society from conduct generated by offending individuals rather than at rescuing such individuals from involvement in the offensive conduct. Even with regard to the second component, the coloration seems to suggest that the prime virtue of curing the individual is to forestall further annoyance to society. Salvation of the former offender seems secondary. Only by reference to serious and deleterious effects upon individuals does this structure seem to focus on improvement of the individual for its own sake, (But even here some of the individuals referred to must be the innocent who might be injured by the perpetuation of the activity in question). Even then, this language is immediately followed by “and upon the society in general” thereby refocusing the eye on the real ball, as far as the objectives of the criminal law are concerned.

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28. *Id.* at 24-25.

29. This particular formulation appears in Skolnick, *Coercion to Virtue: The Enforcement of Morals*, 41 S. CAL. L. REV. 588, 593-94 (1968).



The priority of enforcement of morals is society; that of Critical Theory the individual in society.

### THE CONSTITUTIONAL DIMENSIONS OF THE PROBLEM

As earlier mentioned, some of the decriminalization arguments are derived from a constitutional law analysis of statutory prohibitions on prostitution.<sup>30</sup> The principal orientation of this paper is not consonant with an exhaustive examination of these constitutional analyses for the purpose of trying to refute their assertions that many current anti-prostitution laws may be unconstitutional. However, a brief consideration of some of the more trenchant constitutional challenges seems warranted, if only to show that such arguments are certainly not of overwhelming and dispositive power. This discussion will also reveal the very short shrift that is generally given by decriminalization proponents to the possibility of redeeming individual human lives.

One of the most prototypical of the constitutional arguments is one based on Supreme Court cases, such as *Griswold v. Connecticut*<sup>31</sup> and *Eisenstadt v. Baird*,<sup>32</sup> which established a "right of privacy" regarding sexual matters. *Roe v. Wade*<sup>33</sup> is a relatively recent addition to the arsenal and is seen by those advancing such a position as embellishing the area of sexual privacy with a "right to a certain scope of personal autonomy."<sup>34</sup>

It is maintained that the "Supreme Court's analysis of the right to privacy . . . includes two related aspects: the right to carry on . . . sex-related activities in seclusion," as well as the right to the just mentioned "scope of personal autonomy," and that "prostitution is a good example of confluence of these two aspects of privacy."<sup>35</sup> It is further claimed that "[t]he private sexual act involved in prostitution is no less a personal right for being commercial."<sup>36</sup> However, the argument is concluded, perforce, with acknowledgment that the privacy interest is not absolute, or a categor-

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30. See, e.g., Rosenbleet & Pariente, *supra*, note 4; Haft, *supra* note 3; and *Privacy and Prostitution: Constitutional Implications of State v. Pilcher*, *supra* note 4.

31. 381 U.S. 479 (1965).

32. 405 U.S. 438 (1972).

33. 410 U.S. 113 (1973).

34. *Privacy and Prostitution: Constitutional Implications of State v. Pilcher*, *supra* note 4, at 265.

35. *Id.*

36. Haft, *supra* note 3, at 16.

ical imperative. "Therefore, the government should not be able to prohibit it [prostitution] unless the state can meet the very heavy burden of proof that banning it is beneficial to society."<sup>37</sup>

The same concession to the indubitable right of the government to invade the sacrosanct perimeter of privacy, if it can carry that heavy burden of demonstrating that its encroachment is beneficial to society, is granted in the following contention:

*All of the statutes and ordinances which either directly or indirectly make prostitution punishable under the criminal law are prime targets for raising a privacy argument. The thrust of the attack is that in making prostitution illegal the state is invading an individual's zone of privacy: the right to control the use and function of his or her body without unreasonable interference from the state.*<sup>38</sup>

The last phrase, of course, admits that if any anti-prostitution statute can be deemed to be reasonable interference with the right of privacy, it is immune from constitutional evisceration.

But this barrier is not at all, as such proponents of decriminalization seek to insinuate, prohibitive or impassable. It is of the essence of reasonability to have laws aimed at redeeming human lives from despair and motivating them towards fulfillment; it is manifest that such laws are very "beneficial to society." It is quientessentially reasonable—and most assuredly not "unreasonable interference"—to seek to cultivate people's lives in accordance with their most noble capacities as beings of reason.

Is it any more "unreasonably" intrusive to seek to protect people from the self-inflicted torments and privations of a life of prostitution than it is to try to protect them from perversely ingesting adulterated food which could make them seriously ill or kill them? Suppose it were suggested that as long as foods were clearly labeled as containing ingredients which could seriously impair the health of individuals, such foods should be allowed to be sold to the public, since a law prohibiting the sale of foods so marked, illegitimately interdicts the private rights of individuals who, in full awareness of what they are doing, want to eat such food. It could be asserted that occluding the opportunity of individuals who want to so treat their own bodies from doing so is unsupportable meddling with their

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37. *Id.*

38. Rosenbleet & Pariente, *supra* note 4, at 411.

autonomous rights respecting their own bodies. It can no longer be seriously thought that such arguments would prevail against the state's judgment that such individuals must be protected from their own instincts to destroy themselves. A judgment by the state that such individuals can do better and are engaging in such self-destructive activity only because of having been victimized by objectively unfortunate conditions and influences, would certainly be sustained against constitutional challenges based on rights of privacy and correlative ones of personal autonomy. If so, why should analogous judgments articulated in terms of laws seeking to save prostitutes from their emotionally crippling existences be considered any more vulnerable to constitutional attacks of that nature.

Perhaps those firing the constitutional fusillades at anti-prostitution laws cast their arguments so assuredly through a failure to even conceptualize the rationale of human redemption which may be conceived as inspiring legal efforts to control prostitution. For example, consider the interests on behalf of state interference which Rosenbleet and Pariente feel they must confute in arguing that prohibiting prostitution is an unconstitutional, because unreasonable, encroachment on areas of personal privacy.

The logical question then follows. What is the state interest in placing statutory restrictions on prostitution? Several possibilities exist: (1) The claim that prostitution is the cause of great increases in venereal disease; (2) An alleged link between prostitution and organized crime; (3) The theory that prostitution is in some way connected to other crime-related activities and is a significant factor in increasing such crimes as robbery, assault, and narcotic possession and sale; and (4) the notion that street-walkers offend public decency and that the regulation of immorality is necessary to safeguard the general welfare. All of these possibilities fall short of providing a particular and specific interest which is compelling enough to permit the state to encroach upon personal liberty and invade an individual's zone of privacy.<sup>39</sup>

Such commentators feel that if they can demonstrate the false assumptions entwined in these interests by showing that such purported objectives will not in fact be attained by enforcement of laws against prostitution, they have made out the unreasonability of

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39. *Id.* at 416-17.

such laws' commands to individuals leading their private lives. But as is evident from the just quoted material, the rationale put forward here, which justifies the effort to control prostitution as a project to redeem people from their own misguided instincts and to lead them toward the richer experience it is believed they can attain, is not even considered as reflecting a germane state interest which must be addressed.

Once such a state concern must be confronted as a salient objective of legal efforts to restrict prostitution, the constitutional impediments sought to be raised to inhibit such efforts at control become much less formidable. Indeed, as suggested above, they dissolve.

#### WHAT SHOULD LAWS "CRIMINALIZING" PROSTITUTION PROVIDE?

If there should continue to be laws against prostitution, what disposition should be provided for their violation? More precisely, what disposition for violation should be provided consistent with the rationale, argued in the foregoing, that prostitution should continue to be treated as illegal activity toward the end of saving prostitutes from themselves and guiding them to more fulfilling life styles and experiences?

Clearly, from what has been said, punishing prostitutes either for punishment's sake or as a means of deterrence cannot be thought of as useful in moving toward the redemptive goal. Retribution for falling prey to misfortune is irrational. And the timeless persistence of prostitution, in the face of long and many efforts to outlaw it, belies the effectiveness of orthodox structures of deterrence. Similarly, simply incarcerating someone for a given period of time without dealing with the factors which motivated the person to be a prostitute does nothing to discourage the person from resuming prostitution activities. "Most were back working the streets soon after they were released . . . . One of the primary reasons the laws don't work is that putting a criminal label on prostitutes and locking them up does not eliminate the reasons for prostitution."<sup>40</sup>

In any event, ample evidence incontrovertibly demonstrates that, because of the administrative realities of the criminal courts system, most arrested prostitutes spend very little time in "protective" custody. "Once arrested, a prostitute arranges bail and returns to the streets within a day . . . . Crowded court calendars also lead to

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40. Haft, *supra* note 3, at 14.

extensive use of plea bargains, resulting in light sentences. By repeatedly requesting continuances, a prostitute's attorney may get her case dismissed for lack of witness testimony or may secure a better plea bargain."<sup>41</sup>

The only rationale for stretching the arm of the criminal law to embrace prostitutes is the rehabilitative one.<sup>42</sup> The law should continue to proscribe prostitution in order to express the authority necessary to compel prostitutes to avail themselves of state provided services and experiences commended. This is the right spirit—but with insufficient fervor. If prostitution is the result of the kind of fundamental, deep-seated syndromes which occasion people to have such a self-deprecatory and distorted a view of themselves that they spend their lives much less satisfyingly, much more masochistically, than they might, motivation toward "the life" will not be extirpated by such cursory or superficial means.<sup>43</sup> If the root goes deep, so must the therapy be radical, penetrating and comprehensive. If we wish to change a woman from a prostitute into someone who believes she can, and is entitled to be, a productive, respected, fulfilled and even, hopefully, happy member of society it will not do to have her speak to a social worker once or twice and let it go at that—with a smug feeling of having tried. To authentically transform her self-image and eradicate the objective conditions which propelled her toward prostitution may well require substantial resources. Psychotherapy, medical attention, job training, exposure to minimal general education experiences, and child support payments are but some of the services which might need to be provided in redirecting a single prostitute from "the life" to life.<sup>44</sup>

This is obviously not the forum to prescribe, in exhaustive detail, a redemptive program. A great deal of varied and specialized professional expertise is presumably necessary to spell out particular details. But it is important to recognize that the same law which has the power to apprehend and convict prostitutes should also provide them with significant and intelligently targeted services so that there is a reasonable chance for such persons to leave prostitution behind.

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41. Jennings, *supra* note 4, at 1258.

42. See note 45 and accompanying text *infra*.

43. See notes 11-16 and accompanying text *supra*.

44. See notes 50-52 and accompanying text *infra*.

### SPECULATION ON RATIONAL AND INCORRIGIBLE REASONS FOR PROSTITUTION

It is perhaps necessary, in a paper urging that the law continue to address prostitution with the aim of rehabilitating its practitioners, to consider arguments that such rehabilitative efforts are unwise and misdirected because prostitution is a very rational and sensible choice for some women to make, and because prostitution's existence results in greater social benefits than it does liabilities.

One of the powerful arguments in behalf of the rationality and sensibleness of choosing prostitution as a means of earning a living is a straightforward economic one. It points out that the high priced call girl earns from "the life" a financial remuneration far beyond what she could in any other form of work for which she could possibly qualify. Therefore, it is highly logical for such a woman to choose to be a prostitute insofar as she is a rational economic animal.<sup>45</sup>

This conclusion serves but to validate the contention that people will subjugate and demean themselves as abysmally as "the life" requires only in response to specifiable objective conditions of the environment. It makes sense to be a prostitute in order to earn the most money only in an atmosphere in which the economically rational aspect of personhood has been stimulated to obsessive proportions. If we lived in a society in which a person's self-image were not so frequently made contingent on a bank balance, would people so single-mindedly seek to maximize their economic position at the expense of other aspects of their personalities?

In other words, does not the "it's economically rational to be a prostitute" argument confirm what was earlier said about prostitution very often being ascribable to particular social conditions? Does not it conform with the utopian confidence in a human nature which aspires to, and is capable of experiencing, "higher" levels of existence if the influences dragging it lower are removed or effectively counteracted? This "rational economics" argument brings prostitution into relief as a social disease as well as a personal one, and serves to reinforce the assertion that people would not be prostitutes if not forced to it. If materialism were not a thread in almost every aspect of this society's fabric, and if more decent jobs paying decent

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45. Gail Sheehy in her book on "the life," *HUSTLING*, estimates that prostitution is a \$10 billion dollar business in the United States, with some full-time prostitutes earning as much as \$70,000 annually (as cited in Bode, *New Life For the Oldest Profession*, *THE NEW REPUBLIC* 23 (July 8, 1978)).

wages existed, prostitution as a job might seem a much less "rational" choice than it now does. There is evidence that the effort to eradicate prostitution in mainland China has been successful.<sup>46</sup> Is this sharp testimony to the effect that when the image of man as *hominus economicus* is decelerated prostitution becomes much less of a feasible alternative to many potential practitioners?

While the "rational economics" justification for prostitution may induce pessimism about immediate efforts to obliterate it in the sense that it is not reasonable to expect a rapid and radical transformation of this country's economic system and environment, its upbeat message may be that prostitution is *not* an irreducible expression of personalities. If becoming a prostitute may, at least in part, be contingent on mutable economic circumstances rather than an inexorable product of irrepressible impulses, there is incentive to persist in applying influences such as the law, which can counteract and dilute transitory forces motivating the unfortunate to become prostitutes.

However, an argument can be made that proclivities toward prostitution are ineradicable in at least some practitioners because some persons are, possibly genetically destined to be prostitutes just as others are endowed with and impelled to express artistic gifts. This argument seems spurious, however, insofar as prostitution is defined as the provision of sexual services in return for compensation. The compensation angle distinguishes it from promiscuity because promiscuity alone suggests choice of partners by the person being promiscuous. Such a person engages in promiscuous sex for the sake of the sex, or even perhaps for the sake of cumulating promiscuous sex, but not for the sake of a sale. It is much easier to conceive of such volitional promiscuity as determined by something in the nature of a genetic code than it is to conceive of a genetic urge to be promiscuous *for money*. Genes may well "know" or "be aware" that people other than the body containing the gene exist, but it is very difficult to credit a gene's "awareness" of money since there seems nothing intrinsically "human" about the latter.

Nevertheless, it presumably could be contended that there are those whose sexual character, perhaps genetically signalled, is indiscriminately promiscuous. Their nature incites them to engage in frequent and casual sexual encounters and to have no particular

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46. Bode, *supra* note 45, at 22. See also Bell, *The Chinese Challenge*, 29 HARV. L. SCH. BULL. 14-15 (Spring, 1978).

concern about who their partners are. It is the act that counts, not with whom it is done. Therefore, literally, anyone will do. If so, if this disposition is naturally present and inextricable, then it makes sense to get paid for indulging it. That is, it makes sense to become a prostitute — for why not be paid, while you are having fun. And, since the promiscuous impulse is fundamentally embedded in the personality, it is presumptuous to “judge” it and attempt to treat it, for no amount of “treatment” will succeed in eradicating it.

One possible response refuses to acknowledge that such a syndrome is a healthy natural configuration and does classify it as a disease (nymphomania, for example) likely produced by environmental circumstances which can be countervailed or diminished in influence. However, even if it is granted, by hypothesis, that a promiscuous impulse can indeed derive from a congenitally implanted code, the proportion of the cases of prostitution so accounted for must be meager. Thus even if there are some persons irredeemably actuated to prostitution there remains the overwhelming proportion of prostitutes who can and will want to reject “the life” if they are but reached in the right way.

Another argument in behalf of relaxing efforts to control prostitution stems from what might be termed its “social service” facet.

Prostitutes offer . . . men variety and an opportunity for sexual experiences in which only the man's needs matter. In the context of prostitution he can indulge these needs in ways that he cannot or will not with his regular partners. The skillful prostitute creates a fantasy world in which repressed desires can be acted out in safety, and may thus function as a paraprofessional sex therapist. (footnotes omitted)<sup>47</sup>

The elaboration of this view suggests that accessibility to such an outlet diverts and absorbs male energies and impulses which, if not so deflected, might well erupt in negative, threatening and socially disruptive actions and modes.

The quick rejoinder notes that an institution “in which only the man's needs matter” may be heaven for the man, but hell for the woman. Should one human being be entitled to salvation at the expense of another's damnation and domination? As for the claim that prostitution acts as a reservoir into which is poured much energy of socially harmful potential, it can be asked, what price is

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47. Jennings, *supra* note 4, at 1251.



society entitled to extract from many particular individuals in behalf of indulging self-interested precautions? In other words, how much individual degradation can be glibly rationalized in the cause of sanctifying the order that is? How much exploitation of some is defensible, or tolerable, in pursuit of the ease, stability and protection of others? Indeed, it has been suggested that the exploiters are themselves exploited: "[prostitution is] the extreme form of a relationship in which the members are interested only in exploiting each other."<sup>48</sup>

This last characterization intimates a more powerful counter argument to the assertion that prostitution should exist to provide sexual release and satisfaction not otherwise attainable by many men. This more forceful riposte observes simply that, if it is indeed true that prostitution affords many men what they need but cannot otherwise obtain, a very damaging indictment of society is thereby made out. Society is then admonished to cease trying to evade the implications of such a critique by encouraging the maintenance of a subjugated and degraded group to handle a problem of human organization it should solve with greater humanness, dignity, and effectiveness.

Such an indictment is most sharply and concisely put by Dr. Karl Menninger in the introduction he wrote to the American publication of the *Wolfenden Report*: "Prostitution . . . exist[s] illegally to provide relief for physical and emotional tensions which, in theory, could and should find other outlets . . . ."<sup>49</sup> The sexual and emotional satisfaction that may be being provided by prostitutes should be available from sexual relations not dependent on one of the partners being an object or commodity exploited by the other. "In a theoretically good society, where sexual fulfillment ought to be as possible as other kinds of personal satisfaction no one would be a prostitute or a client."<sup>50</sup>

It is the responsibility of a social order to the citizens who constitute it to provide an environment where urgent fundamental needs can be accommodated satisfyingly and harmoniously without significant numbers of individuals being injured and degraded. The existence of prostitution is society's admission that it has thus far defaulted on this responsibility. "The continuance of prostitution

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48. *Id.*

49. WOLFENDEN REPORT, *supra* note 14.

50. WINICK & KINSIE, *supra* note 6, at 15.

today suggests that society has yet to develop institutions consonant with its values which can satisfy the needs prostitution satisfies."<sup>51</sup> It is perverse for society to point to its own default as reason for perpetuation of that default's emiserating consequences through prostitution.

A transformation, through education and therapy, of constricting and crippling attitudes about sexuality is a methodology of infinitely greater dignity and perspicacity by which to provide necessary satisfaction for all, than is furnishing surreptitious access to fulfillment for some at the expense of exploiting and degrading others.

Perhaps someday a truly free atmosphere will enable everyone to explore his sexuality fully with unpaid partners. The range of emotional meanings which people can project on to sex acts will be recognized and appreciated. People will enjoy the variety and complexity of each other's sexual fantasies instead of being frightened by them. No one will feel guilty for enjoying any sexual practice that gives him pleasure.<sup>52</sup>

#### CONCLUSION

It has been argued that efforts toward decriminalizing prostitution are misguided insofar as they concede the inevitability of a class of citizens who will be prostitutes. In its responsibility to be a mechanism for more harmoniously arranging human affairs, improving the human condition, and "emancipating" human beings, the law should retain jurisdiction over those engaging in activities of prostitution. It should do so as a means of requiring persons convicted of participating in such activities to undergo a rehabilitation-therapy-training program designed to re-orient their self-images and life styles so that they would no longer wish to prostitute themselves. This approach may be helpful attitudinally, as well as practically, in minimizing the ravages of prostitution until its deep seated objective social causes can be extirpated from the life of the community.

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51. M. STEIN, *LOVERS, FRIENDS, SLAVES* 2 (1974).

52. *Id.* at 371.

