

# THREE STORIES OF PROSTITUTION IN THE WEST: PROSTITUTES' GROUPS, LAW AND FEMINIST "TRUTH"<sup>†</sup>

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"What . . . people think of prostitutes is largely determined by what they think is the cause of prostitution."

---The English Collective of Prostitutes

"[P]rostitutes prefer it here."

"Prefer it to what?"

"To being Unwomen who work in toxic waste sites."

---Margaret Atwood, *The Handmaid's Tale*

## INTRODUCTION

Prostitution is a paradigmatic feminist issue with substantial legal ramifications, yet it is largely ignored in legal and feminist literature.<sup>1</sup> This

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† The research for this article was funded by the Belfield and Bates Travel Fellowship of the University of Michigan Law School. I would like to extend my warmest thanks to Martha Fineman, Catharine MacKinnon and Abigail Stewart for providing much needed support and criticism at crucial moments. Estelle McKee and the other members of the Columbia Journal of Gender and Law helped me make my arguments more clearly. Thank you very much to Nancy Boocker, Naomi Cahn, Beth Grossman, Janet Hart and Kevin Mills for helpful comments on previous drafts. Carol Jacobson put me up and put up with me during a difficult research visit to London. Kim Lane Scheppele provided me with the foundation to complete this article. I particularly owe a debt to the women and men in prostitution and prostitutes' organizations that generously shared their time with me: Margo Alvarez and the Red Thread, Nina Lopez-Jones and the ECP, Vednita Nelson and WHISPER, Jan Visser and the Mr. A. de Graaf Foundation, Stefi Barna, Lindi St. Clair and the Corrective Party, The Praed Street Project, Streetwise Youth and CLASP.

Earlier versions of this paper were presented at the Law & Society Association Annual Meeting in Amsterdam in 1991, the Mid-Atlantic National Women's Studies Association Conference in Washington, D.C., in 1992, the Feminism & Legal Theory Workshop at Columbia University Law School in 1992, and the University of Michigan Law School Conference on Prostitution in 1992.

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<sup>1</sup> Christine Overall, *What's Wrong with Prostitution? Evaluating Sex Work*, 17

Article attempts to lessen that problem by considering prostitutes' own strategies to improve the lives of women in prostitution.<sup>2</sup> It considers how women in prostitution have organized into groups to represent their interests to wider society.<sup>3</sup> By discussing these arguments within the broader context of feminism, I hope to pique further discussions about prostitution and its relationship to feminist theories and practices.

Unlike rape, abortion, or other issues that have been subjected to more extensive feminist analyses, most of us know little about prostitution beyond commonly accepted stereotypes. Whereas it has become uncouth, at least in some circles, to joke about rape, incest, battering, and sexual harassment, prostitutes and prostitution remain subjects of unrestrained derogation and innuendo.<sup>4</sup> Through this process of derision, women and

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Signs 705, 706 (1992) ("The relative paucity of recent discussion of sex work by feminists may well be because the topic is a difficult one for women; it is a topic that divides us."). Even contemporary radical feminists (those feminists seemingly most likely to address prostitution) concentrated almost exclusively on pornography throughout the 1980's, even though prostitution presents very similar theoretical and political concerns. Belinda Cooper, *Prostitution: A Feminist Analysis*, 11 *Women's Rts. L. Rep.* 99, 100 n.5 (1989).

<sup>2</sup> The terms "prostitute" and "whore" define some women by their behavior. Laurie Shrage, *Should Feminists Oppose Prostitution?*, 99 *Ethics* 347, 356 (1989). Throughout this paper I will use the term "women in prostitution" to show that women are more than how they have been defined in our male-dominant society. On the other hand, some prostitutes want to reclaim the terms whore and prostitute and redefine them similarly to how "queer" has been reclaimed by lesbians and gay men.

The language of prostitution is problematic. Like the terminology surrounding abortion, none of the terms are neutral. The speaker inevitably takes a position on prostitution by using certain terms to describe participants or acts. See *infra* note 25.

<sup>3</sup> This paper focuses on adult female prostitution. Other authors address child and male prostitution. See generally Eli Coleman, *The Development of Male Prostitution Activity Among Gay and Bisexual Adolescents*, 17 *J. Homosexuality* 131 (1989); Edna Salamon, *The Homosexual Escort Agency: Deviance Disavowal*, 40 *Brit. J. Soc.* 1 (1989); Magnus J. Seng, *Child Sexual Abuse and Adolescent Prostitution: A Comparative Analysis*, 24 *Adolescence* 665 (1989); Mimi H. Silbert & Ayala M. Pines, *Entrance Into Prostitution*, 13 *Youth & Soc'y* 471 (1982); D. Kelly Weisberg, *Children of the Night: The Adequacy of Statutory Treatment of Juvenile Prostitution*, 12 *Am. J. Crim. L.* 1 (1984); D. Kelly Weisberg, *Children of the Night: A Study of Adolescent Prostitution* (1985).

<sup>4</sup> Comments about women in prostitution range from pathological to laughable. In proposing a "Prostitution Control Act of 1984," one law review article author suggested why women in prostitution would be better off working in a brothel: "In a better brothel [prostitutes] may even learn manners, dress and conversation to facilitate making a better marriage if that is a goal." Raymond I. Parnas, *Legislative Reform of Prostitution Laws: Keeping Commercial Sex Out of Sight and Out of Mind*, 21 *Santa Clara L. Rev.* 669, 689 (1981). The model Lauren Hutton has been quoted as saying, "Fashion trends come from people for whom it matters the most, like prostitutes, whose lives depend on how they're turned out." Bob Talbert, *Insider's Notebook Quote Bag*, *Det. Free Press*, Dec. 30, 1990, at 5F.

girls harmed by prostitution are marginalized. Their needs and concerns remain invisible to most people.

Contemporary groups of prostitutes' and ex-prostitutes in the West are organizing and working for social, legal, and political change. They formulate various arguments accounting for the condition of women in prostitution and devise strategies to improve their lives. These arguments provide available frameworks for retelling the "story" of prostitution. Each account asserts the "truth"<sup>5</sup> of its own description of and solutions to prostitution, and questions the validity of other versions.

For this article, I considered recent materials produced by various prostitutes' groups and their self-representations in secondary sources.<sup>6</sup> I also conducted informal interviews with members of prostitutes' groups and others working in prostitutes' movements in the Netherlands, Great Britain, and the United States. Many of my conclusions about these groups are derived from those interviews. I concerned myself with the arguments prostitutes' groups make to improve conditions for women in prostitution. I focused on prostitutes' groups as the political, social, and ideological "representatives" of women in prostitution and did not attempt to discover what individual prostitutes "really" think (if that is possible to know). In other words, I was particularly concerned with discourses of prostitution.<sup>7</sup>

Although one could categorize feminist theory in any number of ways,<sup>8</sup> in this article, I take a fairly traditional approach by categorizing it

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<sup>5</sup> I put the term truth in quotation marks because I am not speaking of a transcendent Truth, rather I am addressing the possibility of knowledge that is socially constructed but is somehow more reliable than other knowledge. See discussion *infra* Part II.A.

<sup>6</sup> Several recent anthologies presenting writings by women in prostitution make prostitutes' arguments more accessible to a wider audience. See generally Good Girls/Bad Girls: Feminists and Sex Trade Workers Face to Face (Laurie Bell ed., 1987); Sex Work: Writings by Women in the Sex Industry (Frederique Delacoste & Priscilla Alexander eds., 1987) [hereinafter Sex Work]; Gail Pheterson, *A Vindication of the Rights of Whores* (1989).

<sup>7</sup> The research for this article was difficult. Rarely have I felt like such an "outsider." See Maria C. Lugones & Elizabeth V. Spelman, *Have We Got a Theory for You! Feminist Theory, Cultural Imperialism and the Demand for "The Woman's Voice,"* 6 *Women's Studies Int. F.* 577 (1983). I experienced personally that great divide between good girls and bad girls --- between madonna and whore. To women in prostitution, I was a good girl, but colleagues, friends, and family questioned my motivation for undertaking this research. What about me made me want to study prostitution, they asked. Was there something I wasn't telling them? Considering discourses of prostitution provided a workable structure for categorizing ideas for this article, but it also provided me with some distance from the emotional challenges of facing the lives of individual women in prostitution.

<sup>8</sup> See Honorable Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970s*, 1989 *U. Chi. Legal F.* 9, 19--20 (1989)

into three branches of liberal, socialist, and radical feminism.<sup>9</sup> This structure provides a practical framework for analyzing prostitution, particularly because prostitutes' groups in the West are organized along these lines and employ these traditional categorizations in their discourses. I also consider the postmodern feminist critique of liberal, socialist, and radical feminism.

A danger in classifying groups according to various ideologies always exists. A judgment must be made as to whether the classification is more useful than problematic. Categorizing prostitutes' groups' arguments into liberal, socialist, and radical feminism is helpful for a number of reasons. First, prostitution has been undertheorized in law and feminism.<sup>10</sup> Legal decisionmakers and feminists work with analytical structures to understand and evaluate social institutions and behaviors. The framework employed in this article draws on a substantial body of prior feminist work. It therefore allows easy comparison to other issues. Second, these three groups either self-identify, or would not object to, the classification given them. The English Collective of Prostitutes (ECP) and Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER) identify themselves as socialist and radical feminist groups, respectively. The Red Thread does not call itself a liberal feminist group, or even a feminist group, but it does

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(categorizing feminist legal theories based on their conceptual focus --- gender neutrality, differences, equality, dominance and subordination, postmodernism); Marie Ashe & Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 *Texas J. Women & L.* 75, 101 (1993) (categorizing feminist theory as liberal, cultural, radical, and postmodern); Patricia A. Cain, *Feminism and the Limits of Equality*, 24 *Ga. L. Rev.* 803, 829-41 (1990) (same); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 *Berkeley Women's L.J.* 191 (1990) (critiquing the marginalization of lesbian experience in feminist theory).

<sup>9</sup> For an extended description and discussion of liberal, socialist, and radical branches of feminist theory, see Alison M. Jaggar, *Feminist Politics and Human Nature* (1983). See also Alice Echols, "Daring to Be Bad": *Radical Feminism in America 1967--1975* (1989).

By focusing on groups only in the West, this article flattens the multiplicity of prostitution systems and explanatory theories offered throughout the world. A fuller consideration would include the situation of women and children in countries such as Thailand and the Philippines. See generally Thanh-Dam Truong, *Sex, Money and Morality: Prostitution and Tourism in Southeast Asia* (1990); Laura Reanda, *Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action*, 13 *Hum. Rts. Q.* 202 (1991) (summarizing international approaches to the problem of prostitution); *World-wide Solidarity, Women's World*, Winter 1990/91 at 8 (issue on prostitution internationally).

<sup>10</sup> For an example of undertheorization, see Susan A. Basow & Florence Campanile, *Attitudes Toward Prostitution as a Function of Attitudes Toward Feminism in College Students: An Exploratory Study*, 14 *Psychol. Women Q.* 135, 140 (1990) (conflating feminism with liberal feminism, thereby misinterpreting why pro-feminist college students do not support decriminalization and legalization of prostitution).

explicitly say that it identifies with pro-sex, pro-freedom views espoused by liberal feminists.<sup>11</sup>

Liberalism, the political theory of the Enlightenment, holds that all men are created equally capable, rational individuals. The goal of society should be to promote the autonomy and self-fulfillment of each individual. Early liberal feminists argued that women had the same capacities for reason as men and should be afforded the same rights to education and other societal goods.<sup>12</sup>

Contemporary liberal feminists describe how men and women are forced into sex stereotyped roles. They argue that stereotypes of women as weak and irrational have served as a primary means of limiting women's opportunities in society. Central to liberal feminism is the claim that women should not be defined by their biological capacities. Liberal feminists think that equality for women means being treated the same as men.<sup>13</sup> They argue that law and other forms of state authority should be used to end discrimination against women.

Socialist arguments are based on a Marxist theory of historical materialism. In a socialist's view, human nature is created historically through the interrelationship of human biology, society, and the physical environment, mediated by human labor. Capitalism exploits the labor of workers for the benefit of those who control the means of production. Socialist feminists critique more traditional socialist theory for ignoring the sexual division of labor. Work traditionally allocated to women, such as reproduction, child care, and housework, has not been recognized as work.<sup>14</sup> Socialist feminists "hope[d] to meld a materialist analysis of class domination with the best insights of radical feminism . . . ."<sup>15</sup>

Radical feminists argue that subordination of women based on sex is a central form of inequality upon which other inequalities are based.<sup>16</sup>

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<sup>11</sup> See discussion *infra* Part I.B.1.

<sup>12</sup> See generally Mary Wollstonecraft, *A Vindication of the Rights of Woman* (Carol H. Poston ed., Prometheus Books 1989) (1792).

<sup>13</sup> See, e.g., Linda C. McClain, "Atomistic Man" Revisited: Liberalism, Connection, and Feminist Jurisprudence, 65 S. Cal. L. Rev. 1171, 1175 (1992) (arguing that there is more room for dialogue between feminists and liberals than feminists have acknowledged and that such dialogue might be furthered by revisiting the feminist critique of liberalism as atomistic); Wendy Webster Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 *Women's Rts. L. Rep.* 175, 175 (1982) (supporting the application of the "equal treatment" model as opposed to the "special treatment" model to pregnancy and other legal issues).

<sup>14</sup> Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction* 53 (1989).

<sup>15</sup> Lise Vogel, *Socialist Feminism*, in *Encyclopedia of the American Left* 707 (1990).

<sup>16</sup> Echols, *supra* note 9, at 3 ("Radical feminists argued that women constituted a

Women and men in contemporary society are not merely different from one another; rather, men are socially dominant and women are subordinate.<sup>17</sup> Radical feminists collapse distinctions between sex and gender in their analyses because they think that issues of sex are so deeply socially constructed that it would be artificial to separate sex and gender. They argue that sexuality is an exercise of male power.<sup>18</sup>

Part I of this article describes three organized groups representing women in prostitution and discusses their structure, characteristics, and strategies for change. It analyzes the arguments of the Red Thread in Amsterdam,<sup>19</sup> the ECP in London,<sup>20</sup> and WHISPER in Minneapolis/St. Paul.<sup>21</sup> Part I illustrates that the groups' arguments are versions of three widely known branches of feminist theory---liberal, socialist, and radical feminism, respectively.<sup>22</sup> Each organization addresses the needs and desires of some women in prostitution, but they do so through different

sex-class, that relations between women and men needed to be recast in political terms, and that gender rather than class was the primary contradiction.").

The term "radical feminism" may scare away some potential adherents. Historically, the radical aspect put women at the center of its analysis instead of relying on an existing grand theory. It may be worth renaming radical feminism to represent more accurately what it means. There is no need to alienate some supporters in the effort of using radical feminist ideas to improve the lives of women in prostitution. To paraphrase what Elizabeth Holtzman said to me, "Do you have to call it radical feminism?" Interview with Elizabeth Holtzman, Comptroller of New York City, in New York, N.Y. (Feb. 27, 1991).

<sup>17</sup> As Catharine MacKinnon states:

Sexuality, then, is a form of power. Gender, as socially constructed, embodies it, not the reverse. Women and men are divided by gender, made into the sexes as we know them, by the social requirements of its dominant form, heterosexuality, which institutionalizes male sexual dominance and female sexual submission. If this is true, sexuality is the linchpin of gender inequality.

Catharine A. MacKinnon, *Toward a Feminist Theory of the State* 113 (1989).

<sup>18</sup> Andrea Dworkin, *Intercourse* (1987). See also Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 *Signs* 515 (1982).

<sup>19</sup> Red Thread, Margo Alvarez, P.O. Box 16422, 1001 RM Amsterdam, Holland, (020) 24-33-66.

<sup>20</sup> English Collective of Prostitutes, Nina Lopez-Jones, King's Cross Women's Centre, 71 Tonbridge Street, London WC1, 01-837-7509, 833-4817.

<sup>21</sup> WHISPER, Evelina Giobbe, Lake Street Station, Box 8719, Minneapolis, MN 55408, (612) 644-6301.

<sup>22</sup> The three prostitutes' organizations described in this article are all examples of what liberal, socialist, and radical feminism look like in practice. Because each group is a collection of people, they represent particular permutations of each theory. For example, the ECP represents a narrow, Marxist brand of socialist feminism. Many socialist feminists would not identify with the ECP, but would instead identify with the Red Thread and WHISPER.

ideological lenses.

Part II considers the ramifications of how organized prostitutes' groups have appropriated grand theories to package their positions for public dissemination. Each argument is available to be made within Western discourse (some more easily than others), yet they are not equally acceptable.<sup>23</sup> Part II highlights law's role in the social construction of prostitution and advocates for using law to promote feminist meanings of prostitution. In doing so, it considers and rejects (for the limited purposes of this argument) the postmodern feminist critique of truth-based feminist arguments.

This Article concludes that no one group provides the "true" meaning or law reform solution to prostitution. Although liberal feminist arguments are more easily accepted in Western societies than either socialist or radical feminist arguments, radical feminism more accurately accounts for the "facts" of prostitution. Radical feminist meanings of prostitution should inform current law reform efforts and should serve to guide feminist institutions like battered women's shelters and rape crisis centers to improve the lives of women in prostitution.

## PART I: THREE STORIES OF PROSTITUTION

In this part, I consider the structure, characteristics, and strategies for

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<sup>23</sup> For example, United States law does not currently incorporate any of the approaches suggested by liberal, socialist, and radical feminism. Instead, it criminalizes the behavior of women in prostitution. See, e.g., Mich. Comp. Laws § 750.448 (1992); N.J. Stat. Ann. § 2C:34-1 (West 1993); D.C. Code Ann. § 22-2701 (1993). Challenges to prostitution statutes based on privacy, equal protection, and First Amendment grounds have failed. *U.S. v. Moses*, 339 A.2d 46 (D.C. 1975) (privacy, equal protection, and First Amendment); *People v. Superior Court of Alameda County*, 562 P.2d 1315 (Cal. 1977) (privacy); *State v. DeVall*, 302 So.2d 909 (La. 1974) (equal protection); see Catherine D. Perry, *Right of Privacy Challenges to Prostitution Statutes*, 58 Wash. U. L.Q. 439 (1980). One court declared a prostitution statute unconstitutional on equal protection and privacy grounds in a case against a 14-year-old girl. *In re P*, 400 N.Y.S.2d 455 (1977). See Lan Cao, *Illegal Traffic in Women: A Civil RICO Proposal*, 96 Yale L.J. 1297 (1987), for a consideration of how women forced into prostitution can use the Racketeer Influenced and Corrupt Organizations Act as a basis for litigation.

For a discussion of legal approaches to prostitution around the world, see Pasqua Scibelli, *Empowering Prostitutes: A Proposal for International Legal Reform*, 10 Harv. Women's L.J. 117 (1987) (comparing prohibitionism, regulation, and abolitionism in the United States, Thailand, and France). For an overview of Canadian laws on prostitution, see Christine Boyle & Sheila Noonan, *Prostitution and Pornography: Beyond Formal Equality*, 10 Dalhousie L.J. 225 (1986) (arguing for a flexible, contextualized approach to equality in prostitution law rather than formal equality).

change of three different groups: the Red Thread, the English Collective of Prostitutes and Women Hurt in Systems of Prostitution Engaged in Revolt. The Red Thread, the ECP, and WHISPER each tell different "stories" of prostitution, which utilize the arguments of liberal, socialist, and radical feminism, respectively. This part develops a framework for thinking about prostitution that is used in the next part to evaluate the various arguments regarding prostitution in the West.

### **A. Structure and Characteristics**

The Red Thread (De Rode Draad), founded in the Netherlands in 1985 by prostitutes and ex-prostitutes, organizes women in prostitution to assert their civil rights. It educates the public, provides legal and health education to prostitutes, acts as a community center for women in prostitution, and advocates for decriminalization of prostitution for all parties.

The English Collective of Prostitutes argues that poverty is the cause of prostitution and that women need other economic options. It was founded in 1975 by prostitutes and ex-prostitutes involved in the International Wages for Housework Campaign. The ECP concentrates on public education through numerous campaigns and publications and advocates for decriminalization of prostitution and improved social services for women.

Women Hurt in Systems of Prostitution Engaged in Revolt, begun in 1985 by survivors of prostitution and women's advocates, views prostitution as violence against women and children that constitutes an integral part of a pervasive system of sex discrimination.<sup>24</sup> WHISPER educates the public and women in prostitution and advocates for social services for women attempting to escape sexual exploitation. It supports strengthened legal penalties against pimps and tricks<sup>25</sup> and expanded civil rights remedies for women and children.

Staffing levels are fairly similar at each of the three organizations. The Red Thread is a professional organization composed of a few paid staff members and numerous volunteers, many of whom are local university students. Margo Alvarez, head of the Red Thread, joked with me that she frequently considers returning to prostitution because it pays better than

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<sup>24</sup> WHISPER was founded in New York City in 1985 and moved to the Twin Cities in 1988.

<sup>25</sup> Throughout this article, I use the word "trick" to refer to the paying party in prostitution, because that is the term that many women in prostitution use. The term "john" is also common and captures the reality of many men or "everyman" using women in prostitution. The terms "client" and "customer" are problematic because using them means taking the position that prostitution is a job or a profession.



working for a non-profit group. The ECP also has a few paid staff members. It does not appear to use many volunteers, probably because few people can make the extensive ideological commitment to the Marxist-influenced ideas that speaking for the group requires.<sup>26</sup> Similarly, WHISPER has four paid staff members and few volunteers. Vednita Nelson, a WHISPER coordinator, says she hopes to make greater use of volunteers in the future.

The three groups receive funds from different types of sources. The Red Thread is subsidized heavily by the Dutch government. State funding is justified primarily as AIDS prevention and education money, but the importance of prostitution to the tourist industry cannot be doubted as the government's most significant motivating factor.<sup>27</sup> A local feminist foundation, Mama Cash, also provides support for the Red Thread.<sup>28</sup> The ECP is government-funded as part of the London Women's Centre and also profits from literature and button sales. When the Greater London Council was abolished in the mid-1980's, many progressive groups, including the Women's Centre, lost their funding base. WHISPER is funded primarily through local and regional foundation grants, and it receives some money from the Minnesota Department of Corrections. Some United States prostitutes' groups like the California Prostitutes Education Project (CAL-PEP) gain access to government money through AIDS education and prevention work. WHISPER also receives a minor portion of its funding base from memberships and newsletter subscriptions. None of the groups collect dues from women in prostitution.

The Red Thread, the ECP and WHISPER serve similar clients but have very different allies. Their clients are primarily women in the lower socioeconomic levels of prostitution, although each group seeks to represent all prostitute women. The ECP and WHISPER advocate primarily on behalf of street prostitutes rather than more highly paid women who work out of bars, hotels, massage parlors, or outcall services. The Red Thread serves mainly women who work in what is known as "window" prostitution in the Netherlands. In "red light" districts of Dutch cities, women sit behind picture windows facing the street to solicit business. Although street prostitution exists in the Netherlands, it is not as prevalent as window prostitution. Conversely, window prostitution does not exist in the United States or Britain.

Women of color disproportionately comprise the clientele of each

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<sup>26</sup> Allegra Taylor, *Prostitution: What's Love Got to Do With It?* 80 (1991).

<sup>27</sup> See *infra* note 195 and accompanying text.

<sup>28</sup> The head of Mama Cash, Marjan Sax, is also a member of the Pink Thread, an organization of feminist, non-prostitute supporters of the Red Thread.

group, mirroring their overrepresentation in lesser paid forms of prostitution in each country. Although most of the Red Thread's volunteers are white women and a few white men, approximately half of the women working in prostitution in the Netherlands are women of color, including numerous illegal immigrants from Thailand, the Caribbean, and parts of Africa and Central and South America.<sup>29</sup> In Britain and the United States, women of color are overrepresented in street prostitution.<sup>30</sup> The ECP's materials focus on the interrelationship of race, class, and prostitution and address specifically how prostitution disproportionately affects women of color.<sup>31</sup> WHISPER's publications also discuss women of color and offer an analysis of how white male supremacy makes women of color particularly vulnerable to coercion into prostitution. All three groups' staffs are racially diverse, partly reflecting their racially diverse clientele.

Each organization counts on different allies to help further its goals. They do not count one another as allies, and in fact partake in vigorous public disputes. Despite some tensions, the Red Thread works with the government, particularly the public health department, and other government-affiliated or funded groups. These include a prostitution research institute and library, the Mr. A. De Graaf Foundation, and an association of tricks (KLEP), that was founded by a psychologist at the prostitution research institute.

The Red Thread disagrees openly with socialist and radical feminists, but views itself as supporting feminist values. The Draft Statement from the Second World Whores' Congress in 1986, sponsored by the International Committee for Prostitutes' Rights, the umbrella organization of the Red Thread, highlights these tensions:

Historically, women's movements (like socialist and communist movements) have opposed the institution of prostitution while claiming to support prostitute women. However, prostitutes

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<sup>29</sup> Stefi Barna, *Health Aspects of Prostitution Policy in the Netherlands* 38 (unpublished manuscript, on file with author) ("up to one-half of the country's prostitutes are of foreign origin, an estimated one-half of whom do not have permanent legal resident status" (relying on 1990 estimates from the Mr. A. De Graaf Foundation)); Maria Isabel Casas et al., 'Here One Gives One's Life,' *Project Empowerment*, 1 *VENA* 8 (1989) ("In the municipalities of The Hague, Rotterdam and Amsterdam the highest number of sex workers within the visible area of window prostitution are migrant women of Latin America and the Caribbean.").

<sup>30</sup> It is estimated that 40% of the street prostitutes in the United States are women of color. *Sex Work*, supra note 6, at 197. Of prostitutes jailed, 85% are women of color. Moira K. Griffin, *Wives, Hookers, and the Law: The Case for Decriminalizing Prostitution*, *Student Lawyer*, Jan. 1982, at 21; see also Scibelli, supra note 23, at 120 (citing a study that found that African American women are 22 times more likely to be arrested for prostitution than white women).

<sup>31</sup> See infra notes 62--65, 74--75 and accompanying text.

reject support that requires them to leave prostitution; they object to being treated as symbols of oppression and demand recognition as workers. . . . [N]onetheless, many prostitutes identify with feminist values such as independence, financial autonomy, sexual self-determination, personal strength, and female bonding.<sup>32</sup>

The Red Thread denies the "victim" status it thinks is attributed to prostitutes by socialist and radical feminists. Instead, it defines prostitution as feminist because it is empowering.

The ECP aligns itself with other feminist groups that are committed to socialist analyses and solutions. They include Women Against Rape (WAR), Wages Due Lesbians, and International Black Women for Wages for Housework. The ECP's own descriptive brochure states: "[We] joined the Wages for Housework Campaign in 1975 because they are a section of the women's movement [that is] committed to the fight for economic independence for all women, and who recognise prostitute women's contribution to winning that fight."<sup>33</sup> The ECP is also affiliated with the United States Prostitutes Collective (U.S. PROS) of New York, founded in 1979 with the ECP's help by a group of African American sex workers.

The ECP has been publicly at odds with the Red Thread because of their ideological differences. Tensions flared at the First World Whores' Congress in Amsterdam in 1985, and the ECP boycotted the conference in 1986 in Brussels. The International Committee for Prostitutes' Rights, the Red Thread's umbrella organization, organized both conferences. In a newspaper article covering the dispute, the ECP stated that it would not work with any of the other prostitutes' groups.<sup>34</sup>

WHISPER views as its allies feminist institutions like rape crisis centers and domestic violence shelters that grew out of the radical branch of the feminist movement in the 1970s and 1980s. WHISPER's insights and advocacy efforts regarding prostitution originate from relationships to the battered women's movement. According to a WHISPER report: "By listening to survivors describe the tactics of control that kept them trapped in the sex industry and comparing this to our knowledge about battering,

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<sup>32</sup> International Committee for Prostitutes' Rights, International Committee for Prostitutes' Rights World Charter and World Whores' Congress Statements, in *Sex Work*, supra note 6, at 305, 307.

<sup>33</sup> English Collective of Prostitutes, *Who Are the ECP?* 1 (photo. reprint n.d.) (on file with author).

<sup>34</sup> Simon de Bruxelles, *The Unhappy Hookers Shun Congress*, *The Observer*, Sept. 21, 1986, (quoting Nina Lopez-Jones criticizing both the Red Thread's and WHISPER's positions on prostitution: "women don't go on the game for kicks, or because they were raped as children, or because they like the life-style --- they do it for money").

we've come to recognize that prostitution is violence against women."<sup>35</sup> This relationship between prostitution and violence against women has led the Minnesota Coalition for Battered Women to hire WHISPER to recommend how battered women's programs could provide appropriate services to women escaping prostitution. In 1990, the National Coalition Against Sexual Assault passed a WHISPER-sponsored resolution to define prostitution as sexual abuse and subordination of women and children.<sup>36</sup>

## **B. Strategies for Change**

These groups are distinguished most by their advocacy strategies. The ECP, because of its ideological hostility towards government involvement, works outside the state. The Red Thread and WHISPER work within existing governmental institutions like the health care system and the criminal law system, but in different ways. WHISPER seeks legal reforms such as increased enforcement of the laws affecting pimps and tricks, and more stringent penalties for pimps and tricks than the existing laws provide. However, the Red Thread and the ECP seek decriminalization of prostitution for both women in prostitution and for tricks---the standard "liberal" law reform position. The Red Thread works with government institutions, which agree with its analysis and method of addressing issues of prostitution. WHISPER also works through government institutions, but many of these entities disagree with WHISPER's analysis that prostitution is a result of sexual violence and gender disparities. Both WHISPER and the ECP attempt to give their clients and the public unconventional interpretations of the experience of prostitution. The Red Thread, however, takes advantage of the liberal ideologies prevalent in the West and argues that it would be inconsistent to exclude prostitutes from the liberal promise to distribute civil rights to all members of society equally.

### *1. Liberal Feminism and the Red Thread*

Nobody should be forced into prostitution, but if you choose it yourself, you should be able to carry out your work freely and under proper conditions, without being looked down upon.<sup>37</sup>

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<sup>35</sup> WHISPER Progress Report 1985-1989 (WHISPER, Minneapolis, Minn.), at 1, 1.

<sup>36</sup> Susan Hunter, "Hey Mister, Get Off My Sister!," WHISPER (WHISPER, Minneapolis, Minn.), Winter 1990, at 5.

<sup>37</sup> The Red Thread, *De Rode Draad 1* (n.d.) (promotional booklet, on file with

The Red Thread employs a liberal feminist analysis of prostitution.<sup>38</sup> It is affiliated with the International Committee for Prostitutes' Rights (ICPR) and various sister organizations in the United States, particularly COYOTE in San Francisco.<sup>39</sup> Four themes pervade the Red Thread's materials and campaigns: prostitution as work, improving prostitutes' working conditions, maximizing and validating women's choices, and eradicating the social stigma of prostitution through such methods as public education and decriminalization of prostitution. Consistent with fundamental principles of liberalism, the Red Thread's story describes prostitution in terms of rights, independence, autonomy and self-fulfillment.<sup>40</sup>

The Red Thread's vision of equality insists that prostitution is work and that prostitutes deserve the same rights as other workers. As one member of the group put it: "If I'm a typist, I use part of my body and I get paid for it. If I'm a manager, they get part of my brain and I get paid for it. Everybody's a prostitute in that sense."<sup>41</sup> Members admit that prostitution is not a perfect job as "[e]very job has its plus and minus points, and that goes for prostitution as well."<sup>42</sup> But the Red Thread argues that prostitution is work deserving of equal rights.

The Red Thread's focus on rights-based advocacy makes improving working conditions for prostitutes a primary goal.<sup>43</sup> Consistent with this view, the Red Thread expects to evolve into a labor union when prostitutes

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author).

<sup>38</sup> The Red Thread does not label itself liberal feminist, but it does explicitly say that it identifies with liberal feminist values. See *supra* note 32 and accompanying text.

<sup>39</sup> Call Off Your Old Tired Ethics (COYOTE) and National Task Force on Prostitution (NTFP), Priscilla Alexander and Gloria Lockett, P.O. Box 26354, San Francisco, CA 94126, or 333 Valencia Street, Apt. 101, San Francisco, CA 94103, (415)558-0450. See generally Ronald Weitzer, *Prostitutes' Rights in the United States: The Failure of a Movement*, 32 Soc. Q. 23 (1991) (explaining COYOTE's failure as a social change agent as a result of the lack of resources needed to compensate for its lack of moral capital).

<sup>40</sup> For readers who doubt the distinction between liberalism and liberal feminism, see Lars O. Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment*, 90 Ethics 335 (1980); for a liberal, nonfeminist discussion of prostitution, see Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, 93 Ethics 561 (1983).

<sup>41</sup> 60 Minutes: Dutch Treat II (CBS television broadcast, Dec. 2, 1990), (interviewing Liz Pierole) [hereinafter 60 Minutes].

<sup>42</sup> Hansje Verbeek, *The Red Thread: A Prostitutes' Organization* 7 (1989) [hereinafter Verbeek].

<sup>43</sup> The Red Thread acknowledges that working conditions for prostitutes are not ideal. Verbeek, *supra* note 42, at 12 (reporting that club owners and clients put pressure on women in prostitution not to use condoms).

working in organized settings become legally recognized employees.<sup>44</sup> Unionization would signal that prostitutes are workers and would insure that they receive similar safety and health protections as those given to other unionized workers.

To achieve improved working conditions, the Red Thread ran two organizing campaigns. One involved an effort to promote the use of condoms for business (and secondarily in personal relations) in solidarity with the Government's "Safe Sex Sure" campaign. The Red Thread provides and promotes stickers that proclaim, "I do it with." The stickers depict a cartoon prostitute and customer dancing happily. The customer appears in the form of a condom and is also wearing a condom on his prominently displayed penis. I observed that a substantial proportion of women working in windows in the red light district in Amsterdam displayed the Red Thread's sticker.

Another campaign, featuring a "No Pictures" pamphlet, promotes the view that prostitutes are professionals selling a specific service and should not have to be photographed by tourists without their consent.<sup>45</sup> The Red Thread's pamphlet suggests that two issues are at stake: prostitutes' privacy rights and their right to make money unhindered by photographers who drive away customers. These campaigns of solidarity in condom use and freedom from intrusive photographers are two of the Red Thread's strategies to improve prostitutes' working conditions.

Maximizing women's choices is another central tenet of the Red Thread's liberal feminism. It argues that to achieve equality prostitutes' freely-made choices must be respected by society. The Red Thread emphasizes "the alternative image of the prostitute as a woman (or man) who is self-aware and chooses this work freely, instead of the old cliché of 'the bad woman' or the eternal 'victim.'"<sup>46</sup> The Red Thread contends that prostitutes earn substantial amounts of money in exchange for sexual services in contrast to most women in society who provide sexual services

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<sup>44</sup> Barna, *supra* note 29, at 26.

<sup>45</sup> The pamphlet states:

This is an action of DE RODE DRAAD (The Red Thread), a prostitutes' rights organization [sic]. We would like to tell you that prostitutes do not want to be photographed. Taking pictures is an abuse of our right of privacy and spoils our trade. Let us keep this area a nice and pleasant one where the prostitutes can sit outside, inviting customers without being 'shot at.'

It contains this message in four different languages: Dutch, English, German, and French, reflecting the international nature of tourism.

<sup>46</sup> Verbeek, *supra* note 42, at 7.

to men for free. Seen in this light, prostitution represents an improvement over most jobs women hold.

The Red Thread claims that prostitution can represent sexual liberation for women. Women must be able to decide how to use their bodies, including the possibility of earning a living by providing sexual services. According to the Red Thread, "Women on the street or in windows generally work independently. They can choose their clients themselves and decide what they will or won't do."<sup>47</sup> In other words, prostitution allows women to set their own terms and reclaim their sexuality.

The Red Thread attempts to convey a sense of dignity and sophistication about the "profession" of prostitution to the world and to women working in prostitution. Its numerous promotional materials, which include attractive brochures on subjects such as AIDS prevention, free legal advice and prostitutes' assertion of rights, portray an elegant image. It also began publishing an upscale magazine, *Blacklight*, in 1988. It is written by and for prostitutes about their own issues and community and contains feature stories, cartoons, an advice column, and other news and information.

The packaging of the Red Thread's message also takes the form of posters, postcards and condom/lubricant packages that attempt to destigmatize, if not glamorize, prostitution. Postcards, for example, portray a very attractive white woman dressed in high boots and panties smoking a cigarette while lounging on a bed.<sup>48</sup> In the background is an attractive white man (wearing a wedding ring) preparing to put a condom on his penis. The companion poster shows the same couple, including full frontal nudity of the woman, and states "Safe Sex" in both Dutch and English. It uses the same logo that is imprinted on condom/lubricant packages provided by the government and distributed through the Red Thread and KLEP, a customers' association that supports the Red Thread.

In a concerted effort to destigmatize prostitution, a psychologist at the Mr. A. DeGraaf Foundation, a prostitution research center based in Amsterdam, formed an association of customers called KLEP.<sup>49</sup> The

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<sup>47</sup> *Id.* at 12.

<sup>48</sup> The portrayal of a white model in this publicity campaign contrasts sharply with the reality that women of color comprise approximately half of the population of women in prostitution. See *supra* note 30 and accompanying text. Advocates of women of color in prostitution portray the Red Thread as an organization of (white) Dutch women. Casas et al., *supra* note 29, at 8 ("The lack of representation of migrant prostitutes in debates, policies and organisations on prostitution can be seen as evidence of the marginality of their position. For example, there is no formal organisational base which represents the interests of this group such as that which exists for the Dutch prostitute (De Rode Draad/The Red Thread)").

<sup>49</sup> Petrien Uniken Venema & Jan Visser, *Safer Prostitution: A New Approach in*

association participates in some of the Red Thread campaigns for change, including distributing condoms and the "No Pictures" pamphlet discussed above. Its rationale is that if prostitutes and clients "come out," then the social stigma surrounding prostitution will eventually dissipate. As psychologist Jan Visser explains his work: "What we've done for the last 10 years is to put a mirror in front of society and [say], 'You're dealing with prostitutes in a very hypocritical way,' . . . it would be [a] more fair and less hypocritical policy to give those women the same rights that any other person has."<sup>50</sup>

The Red Thread argues that problems for women in prostitution are caused by its stigmatization<sup>51</sup> and illegality, not its existence. "'I'm a prostitute.' But unfortunately, society's not ready yet to accept that as being normal," declared a Red Thread spokeswoman.<sup>52</sup> The group claims that social and legal reform must occur before prostitutes can enjoy the full benefits of the social contract.<sup>53</sup> Prostitution is illegal, the Red Thread claims, because of outdated moral beliefs that regard sex as bad. If people were free sexually, then prostitution would not be illegal or stigmatized.<sup>54</sup> Economic need, according to the argument, is not the major factor sustaining prostitution. Prostitution will not disappear even if women achieve social and political status equal to men.

To decrease the stigma of prostitution, the Red Thread supports the

Holland, in *AIDS, Drugs, and Prostitution* 41, 51 (Martin Plant ed., 1990) [hereinafter *Safer Prostitution*].

<sup>50</sup> 60 Minutes, *supra* note 41 (interviewing Jan Visser).

<sup>51</sup> According to the Red Thread:

Women working as prostitutes are considered inferior and are treated as second-class citizens. A lot of them lead double lives because they want to keep their jobs secret. They continually fear discovery, have difficulty making contacts and become socially isolated. Other prostitute women completely withdraw into the prostitute scene which, because of its separation from the rest of society, is also the place of other social outlaws.

Hansje Verbeek & Terry van der Zijden, *The Red Thread: Whores' Movement in Holland*, in *Sex Work*, *supra* note 6, at 297.

<sup>52</sup> 60 Minutes, *supra* note 41.

<sup>53</sup> Liz Pierole of the Red Thread also expresses this view:

If they make prostitution completely legal, to me that might be legal recognition, but the thing is legal recognition doesn't go without social recognition, and if society's not ready---I mean I might be ready, but society's not ready---then it's not going to work.

60 Minutes, *supra* note 41.

<sup>54</sup> Gail Pheterson, *The Whore Stigma: Female Dishonor and Male Unworthine* (1986).



repeal of laws against soliciting, engaging, or agreeing to engage in sex for money. The group also seeks an end to the criminalization of the relationship between a prostitute and a pimp. Instead, it emphasizes that other criminal laws, such as kidnapping and sexual assault laws, should be enforced against violent or threatening pimps. The Red Thread generally supports brothel-owning, but it is wary of a potential system of local government control because of continuing stigma against prostitutes in some localities.<sup>55</sup>

Recognizing the importance of law reform, the Red Thread seeks to influence prostitution laws on the books and in practice. It held a press conference to publicize its views on a bill that would legalize brothel-owning. It also serves on relevant government committees and is now regularly contacted by government officials to comment on related matters.

## *2. Socialist Feminism and the English Collective of Prostitutes*

"We want to make it clear that if there were no poor women, there would not be one woman on the game, not one."<sup>56</sup>

--The English Collective of Prostitutes

The English Collective of Prostitutes represents prostitutes' interests based on socialist feminist theories. The ECP attempts to recruit converts to its views through various forms of public education, including media attention and the publication and sale of numerous pamphlets and position papers. It advocates economic justice for all women and abolition of all laws against prostitution. The organization offers a feminist critique of the relationship between prostitution and capitalism and proposes socialist-inspired solutions. Three themes pervade its materials and organizing efforts: poverty is the cause of prostitution, women (particularly women of color and lesbians) are often poor, and the government supports these conditions by its inaction.

Poverty forces women into the sex industry, argues the ECP. "This is what prostitution is about--money and the lack of it," its leaders exclaim.

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<sup>55</sup> See Verbeek, *supra* note 42, at 13; see also Jan Visser, *The Situation in the Netherlands*, *World Wide Whore's News* (International Committee for Prostitutes' Rights, Amsterdam, the Netherlands), Dec. 1985, at 5, 5.

<sup>56</sup> Selma James, *Speech Before the House of Commons on Behalf of the English Collective of Prostitutes* (Mar. 5, 1979) (transcript on file with author) (the "game" is British slang for working in prostitution).

"That lack, that poverty, is what is immoral and criminal."<sup>57</sup> By positing poverty as the cause of prostitution, the ECP argues that women are not free to choose prostitution as a work option: "Sex is supposed to be personal, always a free choice, different from work. But it's not a free choice when we are dependent on men for money."<sup>58</sup> Poverty turns sex into work out of necessity.

The ECP offers a feminist critique of capitalism that views sexuality as merely one more commodity to be sold on the market: "[S]exuality is a commodity all women are forced to 'sell' in one way or another. Our poverty as women leaves us little choice."<sup>59</sup> The ECP questions why it is respectable for wives and girlfriends to provide sex to men for free, but not for women to exchange sex for money.<sup>60</sup> It is the stigma of being poor, according to the ECP, that is also the stigma of working in prostitution. Prostitutes refuse to accept their poverty by making money from what most women give to men for free.<sup>61</sup>

Women live in poverty, particularly women of color<sup>62</sup> and lesbians,<sup>63</sup> argues the ECP, because women's work is mostly unpaid and

<sup>57</sup> Letter from Wilmette Brown et al., *The English Collective of Prostitutes*, to *Le Nid* in Paris, France 4 (Oct. 12, 1982) (on file with author).

<sup>58</sup> *English Collective of Prostitutes*, Address at the First National Conference of the Wages for Housework Campaign (Oct. 21, 1976) (transcript on file with the author); see *Call Girls' Conference*, *Daily Mail*, Nov. 27, 1978 (quoting Mary Valentino of the ECP, "Money makes choice possible.").

<sup>59</sup> Letter from Margaret Valentino, the *English Collective of Prostitutes*, to "sisters and friends" 1 (Feb. 17, 1979) (on file with author).

<sup>60</sup> Nina Lopez-Jones, *Workers: Introducing the English Collective of Prostitutes*, in *Sex Work*, supra note 6, at 271, 273 ("The prostitution laws aim to divide women between those of us who are 'respectable,' 'good' women and those of us who are 'loose,' 'bad' women for refusing poverty by working in the sex industry. Money, in the eyes of the Establishment, makes good (working class) women bad.").

<sup>61</sup> Rachel West, *U.S. PROstitutes Collective*, in *Sex Work*, supra note 6, at 279, 283.

Given the economic status of women, how many of us are forced to rent out bodies, stay in marriages we want to get out of, make deals with the landlord, shop keeper, put up with sexual harassment on the job, smile when we don't want to, put out or get fired, etc.? How many wives put in a greater effort at being sexy when they need extra money from their husbands? . . . How much do we all have to prostitute ourselves because women internationally have so little to show for the tremendous amount of work we do?

Id.

<sup>62</sup> See Wilmette Brown, *Money for Prostitutes is Money for Black Women 1* (1975) (promotional material for the *Black Women for Wages for Housework* campaign, on file with author). Wilmette Brown co-founded the *International Black Women for Wages for Housework*. From *Panthers to Parliament* . . . . [sic] the *Travels of Wilmette Brown*, *Gay News*, Mar. 22, 1979, at 7.

<sup>63</sup> From *Panthers to Parliament*, supra note 62, at 8 (quoting Wilmette Brown,

because women face pervasive unemployment and discrimination.<sup>64</sup> In a publication, "The Rights of Prostitutes are the Rights of Women," the ECP claims that: "Prostitute women are working to escape poverty, financial dependence on individual men and the low-wage ghetto reserved for women, particularly Black and immigrant women."<sup>65</sup> It proposes that women as a sex class must join together to reject race, class and sex oppression.

The ECP claims that prostitution will disappear only when women earn enough money to support themselves and their families without it. Presently, however, prostitution provides a viable economic opportunity for women:

Women are unquestionably the poorer sex. They are on the game for money. On the whole, men buy and women sell in this, the oldest profession. Men's time has a price. Women's time at home, as housewives providing an infinite variety of services, including sexual services, has no price. Women's time outside the home has a low price. Prostitutes are one exception, raising the value of all women's time.<sup>66</sup>

In this way, prostitution is a form of protest: "The existence of women who demand payment makes it clear to men that soon they will have to be grateful for anything they get from women."<sup>67</sup> The ECP's campaigns for economic justice for women reflect a structural analysis of society and corresponding structural strategies for change. For example, the ECP in conjunction with feminist groups around the world organized a protest of women to take time off from whatever work they do for one day to illustrate the importance of women's work. The purpose of "Time Off" was to "press governments to implement the U[nited] N[atations] decision to count all women's work, waged and unwaged, in the Gross National

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"Women who choose to live without men often find they are forced to live off them as prostitutes."); *Wages Due Lesbians, Supporting Statements by Wages Due Lesbians 1* (Jan. 1977) (unpublished photo. reprint n.d.) (on file with author) ("Whether gay or straight, we all need our own money to determine our lives and what our sexuality will be.").

<sup>64</sup> English Collective of Prostitutes, *Prostitutes: Our Life and Rights* (1981) (promotional material, on file with author) ("For many of us the 'game' is the only alternative to unemployment; it is one of the few jobs open to most women --- with or without qualifications.").

<sup>65</sup> English Collective of Prostitutes, *The Rights of Prostitutes are the Rights of Women 3* (1979) (unpublished draft statement, on file with author).

<sup>66</sup> *Id.* at 4.

<sup>67</sup> English Collective of Prostitutes, *For Prostitutes and Against Prostitution*. (unpublished photo. reprint n.d.) (on file with author). See also Barna, *supra* note 29.

Product of every country."<sup>68</sup> The ECP argued that counting prostitute women's work "unveils the sex work and emotional work all women are forced to do gratifying men's sexual needs and egos."<sup>69</sup> The ECP also attempted unsuccessfully to convince the national Trades Union Congress to consider prostitution as a trade issue.<sup>70</sup>

In the view of the ECP, the government is implicated in the oppression of women by failing to provide adequate social services and failing to value women's contributions to society. The government, the ECP claims, is the biggest pimp of all by taking advantage of women's labor (in the form of emotional and sexual services to men and physical and emotional care of families) and failing to compensate them for it as other services are compensated within a social welfare state. Thus, instead of providing solutions, the government remains part of the problem.

Increased social welfare benefits, increased wages for work by women, and wages for housework so that no woman is forced into prostitution form the basis of the ECP's solution. It argues for low-cost housing, higher wages and benefits, and greater social and legal services for women. In a brochure, it asserts that "contingency funds and housing must be made available by the Social Security and Social Services department for any woman who wants to get off the game or run away from a pimp or other violent man."<sup>71</sup> The ECP points out that seventy percent of women in prostitution are mothers and most are supporting families by themselves.<sup>72</sup>

The organization criticizes police harassment of and brutality against prostitute women and other oppressed groups like Blacks and immigrants. In a letter to a newspaper the ECP stated, "The police have in the past

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<sup>68</sup> Letter from Wilmette Brown et.al., International Wages for Housework Campaign, to "sisters and brothers" 1 (July 15, 1986) (on file with author).

The whole economy rests on what women do. It is estimated by the International Labour Office (part of the UN [sic]) that women do 2/3 of the world's work for 5% of the income and 1% of the assets. . . . Counting all women's work makes visible how much . . . we are entitled to, in both Third World and metropolitan countries.

Id. See also The International Wages for Housework Campaign, *The International Wages for Housework Campaign* (promotional pamphlet n.d.) (on file with author).

<sup>69</sup> The International Wages for Housework Campaign, *supra* note 68.

<sup>70</sup> "As your particular dispute is not between employers and workers or between workers and workers, but is a campaign against the laws on prostitution it cannot be defined as a trade dispute." Letter from J. Monks, Secretary, Organisation and Industrial Relations Department, Trades Union Congress, to Margaret Valentino, English Collective of Prostitutes 2 (June 17, 1980) (on file with author).

<sup>71</sup> English Collective of Prostitutes, *supra* note 33, at 1.

<sup>72</sup> Letter from Nina Lopez-Jones, English Collective of Prostitutes, to the Editor, *Hackney Gazette* 1 (Oct. 26, 1981) (on file with author).

harassed prostitute women and their families; they have often abused their powers to make prostitutes' lives a misery."<sup>73</sup> Police also use the laws against prostitution as an excuse to harass Blacks and immigrants.<sup>74</sup> According to Lopez-Jones, "There is a long tradition of using the protection of [white] women as a pretext for racist and repressive legislation and activities."<sup>75</sup> The ECP argues that Black and immigrant men are stereotyped as pimps and are subjected to police harassment.

The ECP campaigns against police brutality and racism because they think racism and classism are interconnected with sexism. It sponsored an occupation of the Church of the Holy Cross in 1983 to protest the treatment of poor, Black and immigrant prostitute women in the King's Cross red light district of London. Its efforts were supported by numerous other groups, particularly prostitutes' groups from other countries and women's peace groups.<sup>76</sup>

It supports its theory of prostitution through legal advocacy. In 1981 the ECP published and distributed "A Guide to the Rules of the Game: A to Z for Working Girls," a rights sheet for prostitute women.<sup>77</sup> The pamphlet explains in question and answer format the laws regulating prostitution. It covers issues such as advertising, fines and prison sentences, and brothelkeeping.<sup>78</sup> In 1982, the ECP opened the Legal Action for Women Network (LAW) to provide its clientele access to free legal advice from volunteer solicitors and trained laypersons.<sup>79</sup>

The ECP opposes vehemently people who try to make a living off of prostitutes, including professionals and academics who study prostitution: "As this movement grows, the careerists come forward to explain it, interpret it, judge it, sometimes under the guise of serving it; most of the time this serves primarily to belittle it and detach it from the rest of the

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<sup>73</sup> *Id.*

<sup>74</sup> Valentino, *supra* note 59, at 1.

The poorer we are, the more we are under attack. Those of us who are Black or immigrant are the ones most likely to work in the street, the most exposed and vulnerable to fines, arrests, taxes and having our children taken away from us because, they say, we are 'unfit' mothers.

*Id.*

<sup>75</sup> Nina Lopez-Jones, *Sexual Offences Bill: Protection for Women?*, Spare Rib, Apr. 1985, at 30.

<sup>76</sup> Stop Police Illegality and Racism, Network: News from the English Collective of Prostitutes (English Collective of Prostitutes, London, Eng.), July 1983, at 1, 1.

<sup>77</sup> English Collective of Prostitutes, *supra* note 33, at 2; Legal Action for Women, Legal Action for Women 2 (1983) (promotional material, on file with author).

<sup>78</sup> See English Collective of Prostitutes, *supra* note 64.

<sup>79</sup> Legal Action for Women (LAW), Network, *supra* note 77, at 2.

women's movement to which it is integral.<sup>80</sup> LAW was set up specifically to avoid grassroots careerism. The ECP says that academics, lawyers,<sup>81</sup> reformers, police, and others who make a living off of prostitutes are all pimps.

The ECP favors decriminalization--the complete abolition of all laws against prostitution. It perceives prostitution laws as punishing women for their refusal to be poor by criminalizing their acceptance of money for "sexual (house)work."<sup>82</sup> The ECP opposes legalization in the form of state control and regulation of prostitution because those solutions institutionalize and isolate prostitute women.<sup>83</sup> It also opposes legal penalties against tricks because it predicts that such laws will be misused by the State against Blacks, immigrants, and other oppressed people.<sup>84</sup>

### *3. Radical Feminism and Women Hurt In Systems of Prostitution Engaged in Revolt*

"Prostitution isn't like anything else. Rather everything else is like prostitution, because it is the model for women's condition, for gender stratification and its logical extension, sex discrimination. Prostitution is founded on enforced sexual abuse under a system of male supremacy that is itself built along a continuum of coercion--fear, force, racism and poverty."<sup>85</sup>

The most recently formed group of the three prostitutes' groups, WHISPER, argues from a radical feminist viewpoint.<sup>86</sup> It asserts that

<sup>80</sup> Brown, et al., *supra* note 57, at 2.

<sup>81</sup> According to the Legal Action for Women Network,

One of the first lessons taught by the prostitutes movement is the long history of how lawyers have pimped off prostitute women by means of the revolving door system of laws and fines which keeps prostitutes going in and out of court paying, and lawyers going in and out of court collecting fees.

Legal Action for Women Network, *supra* note 77, at 9.

<sup>82</sup> Valentino, *supra* note 59, at 1.

<sup>83</sup> English Collective of Prostitutes, Network: News from the English Collective of Prostitutes (English Collective of Prostitutes, London, Eng.), July 1983, at 2. See also West, *supra* note 61, at 279.

<sup>84</sup> Nina Lopez-Jones, Workers: Introducing the English Collective of Prostitutes, in *Sex Work*, *supra* note 6, at 271, 274. See Brown et. al., *supra* note 80, at 5.

<sup>85</sup> Sarah Wynter, WHISPER: Women Hurt in Systems of Prostitution Engaged in Revolt, in *Sex Work*, *supra* note 6, at 266, 268. Note that Evelina Giobbe of WHISPER was formerly known as Sarah Wynter. History & Philosophy, *supra* note 35, at 4.

<sup>86</sup> The WHISPER National Advisory Board has included such prominent radical

prostitution is a system of exploitation and violence that differentially harms women. Because women suffer the harms of prostitution, WHISPER proposes social and legal reforms to shift the burden to men who benefit from it, particularly pimps and tricks.<sup>87</sup> It endorses the abolition of all laws that penalize women and children in prostitution and supports enhanced penalties for pimps and tricks, including new civil causes of action for women and children used in prostitution.<sup>88</sup> It opposes what it views as the sexual liberals' promotion of, and apology for, the commercial exploitation of women.<sup>89</sup>

WHISPER emphasizes that prostitution is exploitation of, and violence against, women. "The real harm of prostitution," its leaders claim, "is that it allows men to use women as sexual objects, [in] a rape-like mentality."<sup>90</sup> Prostitution makes all women objects for men's use and abuse: "For every real difference between women, prostitution exists to erase our diversity, distinction and accomplishment while reducing all of us to meat to be bought, sold, traded, used, discarded, degraded, ridiculed, humiliated, maimed, tortured, and all too often, murdered for sex."<sup>91</sup> Prostitution allows men unconditional sexual access to women and children limited solely by their ability to pay for it.<sup>92</sup>

Instead of naming prostitution as "deviance," WHISPER contends that prostitution, sexual assault and abuse, incest, sexual harassment, domestic violence, and pornography are all pervasive types of sexual oppression of women by men.<sup>93</sup> "If . . . the sexual act is predicated on ownership, as it was in traditional marriage, can be in modern marriage, and is vis-a-vis 'rental' in prostitution, the act itself and its subsequent effects are that of rape."<sup>94</sup> Prostitution takes on added significance as a radical feminist issue because sexuality is the linchpin of inequality based on sex, according to

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feminists as Catharine MacKinnon and Kathleen Barry. National Advisory Board, WHISPER Progress Report 1985--1989, *supra* note 35, at 4.

<sup>87</sup> See Wynter, *supra* note 85, at 270.

<sup>88</sup> 1990 N.C.A.S.A. Resolution on Prostitution, WHISPER (WHISPER, Minneapolis, Minn.), Winter 1990, at 5, 5. See MacKinnon, *supra* note 17, at 248.

<sup>89</sup> Evelina Giobbe, Prostitution: Sexual Commerce or Sexual Abuse?, WHISPER (WHISPER, Minneapolis, Minn.), Spring 1991, at 4, 6.

<sup>90</sup> Denise Gamache, Why Decriminalization Fails to Address the Real Harm of Prostitution, WHISPER (WHISPER, Minneapolis, Minn.), Summer 1991, at 1, 4.

<sup>91</sup> Wynter, *supra* note 85, at 268.

<sup>92</sup> See Gamache, *supra* note 90, at 4.

<sup>93</sup> Wynter, *supra* note 85, at 266--67. See generally Kathleen Barry, *Female Sexual Slavery* (1979).

<sup>94</sup> Evelina Giobbe, When Sexual Assault is a Job Description, WHISPER (WHISPER, Minneapolis, Minn.), Summer 1991, at 4, 4.

radical feminists.<sup>95</sup>

The mere exchange of money, claims WHISPER, cannot change acts of violence against women into work. "The fact that a john gives money to a woman or a child for submitting to these acts," states a WHISPER educational publication, "does not alter the fact that he is committing child sexual abuse, rape and battery; it merely redefines these crimes as prostitution."<sup>96</sup> As with rape, women are told to lie back and enjoy sexual abuse in the form of prostitution, particularly because money can be made in the process.<sup>97</sup>

The relevant issue for WHISPER is power. Men and women are not merely different from one another; rather, men are socially dominant and women are subordinate.

In the real world, [men's] gender and class [are] disproportionately rewarded with privilege and status. The danger for women in prostitution, and for all women, is to mistake this illusion [of power] for reality. This parallels the illusion of power that women are urged to accept in lieu of equality or real civil rights.<sup>98</sup>

The organization criticizes liberal supporters of prostitution who treat it as a pleasurable occupation freely chosen as an alternative to low-paying jobs.<sup>99</sup> "The sexual liberal analysis ignores those survivors of prostitution who have testified repeatedly that they did not experience prostitution as a career," states the group's leader.<sup>100</sup> WHISPER argues that addressing

<sup>95</sup> MacKinnon, *supra* note 17, at 113. Radical feminists acknowledge that male prostitutes exist, but they argue that male prostitutes primarily serve the sexual desires of men and are therefore feminized under a system of sexual inequality.

<sup>96</sup> Evelina Giobbe, *A Facilitator's Guide to Prostitution: A Matter of Violence against Women 3* (1990).

<sup>97</sup> Gamache, *supra* note 90, at 4.

<sup>98</sup> *Id.* at 1; see also Giobbe, *supra* note 89, at 6 ("In viewing prostitution as a base for women's power and an expression of her sexuality, the sexual liberals ignore the social construction of women's sense of self in relation to men as well as the power that pimps and johns wield over women used in prostitution.").

<sup>99</sup> See Giobbe, *supra* note 89, at 5--6. In Evelina Giobbe's words:

One neutralizing definition is the justification that prostitutes are like other working women, that everyone is immoral or dishonest in some way but prostitutes are less hypocritical about it than "squares." . . . Sociologists fail to explain where prostitutes learn this vocabulary of motivation --- from pimps and customers, and who benefits from it --- pimps and customers.

*Id.* (emphasis omitted). Another feminist commentator states, "Prostitution may be against the written law, but no prostitute has defied the prerogatives or power of men as a class through prostitution." Andrea Dworkin, *Right-Wing Women* 61 (1983).

<sup>100</sup> Giobbe, *supra* note 85, at 4.



prostitution as if it were an occupation buys into the myth perpetuated by men that women are available to serve men's sexual desires.

By documenting the violence and manipulation used to recruit and trap women in the sex industry, we've come to realize that prostitution is not a "career choice" or a "victimless crime," but rather that prostitution creates an environment in which crimes against women and children are defined as a commercial enterprise.<sup>101</sup>

Women cannot choose or consent to prostitution under current conditions of sex inequality, claims WHISPER.<sup>102</sup> Economics is one factor that limits women's choices: "If women are in prostitution to survive, then they truly haven't freely chosen to be in prostitution. It's seen as a way to feed themselves and their children."<sup>103</sup> WHISPER says that women's choices are so highly circumscribed before they enter prostitution that their "choice" of prostitution is virtually meaningless.

WHISPER compares the issue of consent in prostitution and marriage: "Unlike a labor contract, traditional marriage and prostitution are both predicated on ownership and unconditional sexual access to a woman's body."<sup>104</sup> As a married woman was historically said to have consented to sex with her husband under any circumstances,<sup>105</sup> prostitutes necessarily consent to all sex because they sell their body for money.<sup>106</sup> It is

<sup>101</sup> History & Philosophy, *supra* note 35, at 1; see also Toby Summer, *Women, Lesbians and Prostitution: A Workingclass Dyke Speaks Out Against Buying Women for Sex*, 2 *Lesbian Ethics* 33, 37 (1987).

<sup>102</sup> See also Carole Pateman, *The Sexual Contract* 31 (1988) (prostitution is the practice of women providing sexual services to men under societal conditions of coercion and duress).

<sup>103</sup> Gamache, *supra* note 90, at 4; see also Summer, *supra* note 101, at 34; Rosa Dominga Trapasso, *Clandestine Prostitution in Peru*, Address at the Trafficking in Women Conference, Oct. 23, 1988 (transcript on file with author) ("Poor women turn to prostitution for survival, because society --- patriarchal society --- has converted women into objects and has commercialized our bodies. In societies where sex is a commodity, prostitution is going to be a resource for women.").

<sup>104</sup> Giobbe, *supra* note 94, at 4. According to WHISPER, "the social function of prostitution [is] to extend to all men, in addition to the privileges enjoyed by husbands and fathers within marriage, the right of unconditional sexual access to women and girls." *Id.*

<sup>105</sup> The prevalence of marital exemptions in rape law statutes supports this contention. In Mississippi, husbands who are both legally married and living with their spouses cannot be prosecuted for any degree of sexual assault. See *Miss. Code Ann. § 97-3-99* (1980). Many other states exempt husbands from prosecution unless there is force or threat of force. See, e.g., *Nevada Rev. Stat. § 200.373* (1987).

<sup>106</sup> The widespread belief that prostitutes cannot be raped supports this proposition. Andrea Dworkin, *Pornography: Men Possessing Women* 203-06 (1979) (citing a number of sources for the proposition that it is women's nature to be whores; a whore

assumed that women in prostitution are legally and socially incapable of not consenting to sex.<sup>107</sup>

The organization devotes considerable attention to countering the classist and racist ideas that pervade common thinking about women in prostitution. It addresses how "racism and classism maximize oppressive conditions that make poor women, women of color, and white ethnic women particularly vulnerable to prostitution."<sup>108</sup> While still holding pimps accountable for subordinating women, it refutes the myths about African American male pimps. A WHISPER newsletter article concludes that the "racist paradigm of Black male as pimp diverts attention from the organized traffic in women which is primarily controlled by white businessmen . . . ." <sup>109</sup>

The group's initial project was a national newsletter focusing on prostitution as a form of violence and exploitation of women and children. It continues to serve as an educational and organizing tool. The group also produced a documentary video, an educational series aired on public radio, booklets discussing prostitution as a system of oppression of women, and a slide show for children affected by witnessing violence against their mothers.

WHISPER offers public education programs as well. It makes presentations at high schools, community groups, and conferences, and offers in-service training to rape crisis centers and battered women's shelters. WHISPER works actively to sensitize battered women's shelters to issues of prostitution and encourages women in prostitution to use shelters. The group is in the process of collecting oral histories of women currently or previously in prostitution. The information collected so far "presents a direct challenge to existing sociological and psychoanalytic paradigms which view prostitution as either a deviant occupation or a form of self-destructive behavior."<sup>110</sup> The group plans to compile the oral histories into a book in the near future.

One primary strategy of WHISPER is a free radical education group for women in prostitution. The group meets weekly and covers a six-month curriculum prepared by WHISPER. The sessions are led by a professional staffer who was recruited into prostitution herself at age eighteen through an ad in the newspaper seeking dancers. WHISPER distinguishes the

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cannot be raped, only used).

<sup>107</sup> MacKinnon, *supra* note 17, at 175.

<sup>108</sup> Giobbe, *supra* note 94, at 4.

<sup>109</sup> Evelina Giobbe, *Pimp as Predator: Victim-Blaming Theories and Racist Slurs*, WHISPER (WHISPER, Minneapolis, Minn.), Summer 1991, at 6, 8.

<sup>110</sup> *Accomplishments*, WHISPER Progress Report 1985--1989, (WHISPER, Minneapolis, Minn.), at 1, 2.

radical education program from the concept of a support group.<sup>111</sup> Instead of discussing individual women's problems at each session, the group focuses on a curriculum that aims to help women "free themselves from victim-blaming ideas they have encountered in our culture [about prostitution]."<sup>112</sup> The group also includes women who have successfully escaped prostitution.

WHISPER recruits members for its radical education group through word of mouth and through posters it hangs at bus stops and other locations that women in prostitution pass. The poster depicts two sullen, pained women---one African American, one white---sitting on a sofa in lingerie and high heels. One woman is filing her nails and the other is sipping a drink from a fast food restaurant. Both are being observed by a white male "customer" (wearing a wedding ring), who stands over the women apparently choosing which one he will buy. A sign in the background says "Sauna Open 24 Hours." Another sign lists the prices for 15, 30, 45, and 60 minutes, two girls, share-a-shower and (pornographic) movies. The caption states: "When you can't stand turning one more trick, turn to us," inviting women to seek help from WHISPER when the abuse of prostitution becomes overwhelming.

WHISPER argues for the abolition of all laws that penalize women and children used in prostitution. "[T]he continued criminalization of the act of prostitution leaves women doubly victimized: first, by the abuses of both pimps and johns, and second, by a criminal justice system that blames and punishes them for their victimization," it states.<sup>113</sup> Unlike the Red Thread and the ECP, WHISPER argues for greater penalties for pimps and tricks, including the use of forfeiture statutes.<sup>114</sup> One WHISPER staffer acts as an expert witness for the prosecution in trials against pimps. WHISPER opposes decriminalization for men because "[i]f we define the harm of prostitution as the commodification of women's bodies for sexual use and abuse, then proposals for legalization and/or decriminalization would not ameliorate the harm, but would codify it under law."<sup>115</sup> In addition,

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<sup>111</sup> WHISPER uses the word "radical" to describe its education program because it emphasizes the critical aspects of the process. It explicitly distinguishes radical education from the therapeutic work of groups' programs, such as the Minnesota Family and Children Services' program, "From Prostitution to Independence, Dignity and Equality (PRIDE)."

<sup>112</sup> Accomplishments, *supra* note 110, at 2.

<sup>113</sup> Giobbe, *supra* note 89, at 6.

<sup>114</sup> 76-year-old Man Challenges Constitutionality of Forfeiture Ordinance, WHISPER, (WHISPER, Minneapolis, Minn.), Spring 1991, at 3, 3. Cf. Cao, *supra* note 23 (arguing that civil RICO statutes should be used by women forced into prostitution to obtain recourse against their procurers).

<sup>115</sup> Giobbe, *supra* note 89, at 6.

WHISPER proposes civil causes of action to redress harm suffered through prostitution,<sup>116</sup> analogous to the Dworkin/MacKinnon anti-pornography ordinance.<sup>117</sup>

## PART II: FEMINIST MEANINGS OF PROSTITUTION

Part I described how three prostitutes' organizations frame the issue of prostitution and advocate for legal reforms. Each group claims to represent feminist values, yet each offers differing and sometimes contradictory analyses and solutions. Each group's paradigm of prostitution defines different aspects of prostitution as "problems." Feminists and lawmakers should evaluate the arguments discussed in Part I and other arguments about prostitution with the goal of identifying and remedying the problems of prostitution in the United States and around the world.

The socialist and radical feminist perspectives are similar in that they both see women as a class. These views differ, however, in what they perceive to be the root cause of women's inequality. Socialist feminists look to women's inferior position in the economic system.<sup>118</sup> Radical feminists think that sex is the linchpin of gender inequality.<sup>119</sup> In contrast, liberal feminists focus on eradicating societal constraints imposed on individual women in prostitution. Liberal feminists seek to include women in the existing social contract.<sup>120</sup>

The purpose of this part is to focus attention on the law's role in the social construction of prostitution. Law is an important forum for promoting alternative meanings in society, including feminist interpretations, *whether or not* doctrinal law constrains legal actors and decisionmakers.<sup>121</sup> Legal doctrine can structure social life and legitimate

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<sup>116</sup> See 1990 N.C.A.S.A. Resolution on Prostitution, *supra* note 88, at 5.

<sup>117</sup> Amendment to the Minneapolis, Minn., Code of Ordinances, tit. 7, ch. 139 (Dec. 30, 1983) (vetoed by the mayor on January 5, 1984; reenacted in amended form on July 13, 1984; vetoed by the mayor on the same day); Indianapolis, Ind., City-County General Ordinance No. 24, ch. 16 (May 1, 1984), amended by Indianapolis, Ind., City-County General Ordinance No. 35 (June 15, 1984), and declared unconstitutional by *91 American Booksellers Ass'n, Inc. v. Hudnut*, 598 F. Supp. 1316 (S.D. Ind. 1984), *aff'd* 771 F.2d 323 (7th Cir. 1985), *aff'd mem.* 106 S. Ct. 1172 (1986).

<sup>118</sup> See *supra* notes 14--15 and accompanying text.

<sup>119</sup> See *supra* notes 16--18 and accompanying text.

<sup>120</sup> See *supra* note 13 and accompanying text.

<sup>121</sup> As Catharine MacKinnon observed, women have long looked to law as a means of social change. Catharine MacKinnon, *Reflections on Sex Equality Under Law*, 100 *Yale L.J.* 1281, 1285 (1991) ("Treacherous and uncertain and alien and slow, law has not been women's instrument of choice. Their view seems to be that law should not

certain categories and relationships in the world.<sup>122</sup> Law serves to justify our socially constructed world and make it appear natural.<sup>123</sup>

The prostitutes' groups assume that the legal solutions they advocate follow necessarily from the meanings they ascribe to prostitution. Evelina Giobbe of WHISPER articulated this commonly accepted premise when she stated that "[t]he way in which we frame a question ultimately shapes the type of public policy that we design in response to a social issue."<sup>124</sup> She assumes a causal relationship between how an issue is "framed" and the solutions proposed.<sup>125</sup>

The assumed causal relationship between meanings and solutions, particularly legal solutions, underlies this section. The three prostitutes' groups described above each seek to understand the theory of prostitution

be let off the hook, is too powerful to be ignored, and is better than violence --- if not by much.").

<sup>122</sup> Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 *Notre Dame L. Rev.* 886, 888 (1989).

Law is, among other things, a language, a form of discourse, and a system through which meanings are reflected and constructed and cultural practices organized. Law is a language of power, a particularly authoritative discourse. Law can pronounce definitively what something is or is not and how a situation or event is to be understood. The concepts, categories, and terms that law uses, and the reasoning structure by which it expresses itself, organizes its practices, and constructs its meanings, has a particularly potent ability to shape popular and authoritative understandings of situations. Legal language does more than express thoughts. It reinforces certain world views and understandings of events.

*Id.* (citations omitted); Paulo Freire, *Pedagogy of the Oppressed* 27--56 (Myra Bergman Rames trans., 1970) (stating that naming problems is a first step in challenging and overcoming them).

<sup>123</sup> See Katharine T. Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 829, 843--47 (1990) (arguing that "[doing] law' as a feminist means looking beneath the surface of law to identify the gender implications of rules and the assumptions underlying them and insisting upon applications of rules that do not perpetuate women's subordination."); Martha Albertson Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 *Fla. L. Rev.* 25 (1990) (emphasizing the totalizing effect of social construction); Holly B. Fechner, *Toward An Expanded Conception of Law Reform: Sexual Harassment Law and the Reconstruction of Facts*, 23 *U. Mich. J.L. Ref.* 475 (1990) (discussing law's role in the social construction of sexual harassment); see generally Peter L. Berger & Thomas Luckmann, *The Social Construction of Reality: A Treatise on the Sociology of Knowledge* (1966).

<sup>124</sup> Statement of Evelina Giobbe, Program Director, WHISPER, (WHISPER, Minneapolis, Minn.), Winter---Spring 1992, at 5, 5.

<sup>125</sup> But see Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, 5 *Berkeley Women's L.J.* 75, 107--109 (1989--1990) (arguing that liberal feminists and radical feminists should both support decriminalization of prostitution based on how they frame the issue of prostitution).

and improve women's lives through the practice of advocacy. The relationship between theory and practice, however, is often problematic. Instead of taking each groups' description of prostitution and legal reform at face value, I focus on meanings, rather than solutions, for purposes of analysis. My primary concern in this article is evaluating the proffered meaning of prostitution presented by each group. I do not address specific law reform proposals. My criteria is what best describes, and has the greatest potential to improve, the lives of women in prostitution.

This focus on the importance of meaning rather than legal doctrine is inspired, in part, by the critical legal studies movement.<sup>126</sup> Some "crits" argue that legal doctrine is radically indeterminate (it can mean anything);<sup>127</sup> others claim that it is at least multiply interpretable (it has many possible meanings).<sup>128</sup> If the crits are correct, then legal doctrine cannot constrain legal decisionmakers at all or it can only limit their decisions at the margins.<sup>129</sup> If the "rule of law"<sup>130</sup> is a myth, then legal reformers'--including prostitutes' groups'---devotion to doctrinal law reform as a strategy of material social change may be misplaced.<sup>131</sup>

A related discussion exists in feminist thought. Postmodern feminists critique versions of truth-based feminism, including liberal, socialist, and radical feminism. Like the crits, they question foundational issues such as whether truth exists and whether and how it is related to justice. Below, I consider the postmodern feminist critique of truth-based feminist arguments and its relationship to prostitutes' groups' arguments. The purpose of this discussion is to credit postmodern feminists for their

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<sup>126</sup> See generally *The Politics of Law: A Progressive Critique* (David Kairys ed., 1982); Mark Kelman, *A Guide to the Critical Legal Studies* (1987); 36 *Stanford L. Rev.* 1 (1984) (special issue on critical legal studies).

<sup>127</sup> Roger B.M. Cotterrell, *The Politics of Jurisprudence: A Critical Introduction to Legal Philosophy* 211 (1992). See, e.g., Mark V. Tushnet, *Following the Rules Laid Down: A Critique of Interpretivism and Neutral Principles*, 96 *Harv. L. Rev.* 781, 818, 824 (1983). But see Frederick Shauer, *Easy Cases*, 58 *So. Cal. L. Rev.* 399, 426--30 (1985).

<sup>128</sup> See Duncan Kennedy, *Freedom and Constraint in Adjudication: A Critical Phenomenology*, 36 *J. Legal Educ.* 518, 560-62 (1986).

<sup>129</sup> See Duncan Kennedy, *Legal Formality*, 2 *J. Legal Studies* 351, 354, 387--88 (1973).

<sup>130</sup> See generally John Locke, *Two Treatises of Government*, 366--68 (Peter Laslett ed., 1960); Herbert Wechsler, *Principles, Politics, and Fundamental Law: Selected Essays* (1961); Lon L. Fuller, *The Morality of Law* (1969).

<sup>131</sup> Carol Smart, *Feminism and The Power of Law* 2 (1989) (proposing that "law is so deaf to core concerns of feminism that feminists should be extremely cautious of how and whether they resort to law.") But see Ken Kress, *Legal Indeterminacy and Legitimacy*, 77 *Cal. L. Rev.* 283 (1989), for a critique of the crits' reliance on indeterminacy in law as a basis for claiming that law is not legitimate.

important insights into the epistemological weaknesses of traditional feminist theory, but to convince the reader that despite these weaknesses, liberal, socialist, and radical feminism provide useful ways to think about prostitution.<sup>132</sup>

### A. Feminism and "Truth"

The Red Thread, the ECP and WHISPER all advocate for new meanings of prostitution.<sup>133</sup> As I have shown in Part I, these three groups appropriated various grand theories--liberalism, socialism, and radical feminism--to package their positions for public dissemination. It is not surprising that the groups use these theories. These theories are convenient and familiar to the groups themselves though possibly more important to their audiences as a shorthand means of communicating each position. But how do we decide which description is true? Are they all true? Are none of them? Is one more true than the others? Are they all partly true? Does truth matter? These are questions of epistemology--what counts as knowledge and who counts as a knower.<sup>134</sup>

In basing their arguments on liberal, socialist, and radical feminist theories, the Red Thread, the ECP, and WHISPER all make truth-based arguments. Each group's discourse filters its own truths about the world.<sup>135</sup> Liberalism holds that through our capacity for reason, humans can progress and come closer to a transcendent truth. Socialism understands truth as the progression of history. Ultimately, domination will cease as humans become perfected over time.<sup>136</sup> Radical feminism offers a slightly different truth-based argument. Through consciousness-raising, women can achieve a more accurate picture of gendered reality.<sup>137</sup> Each

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<sup>132</sup> For a useful challenge to one of the central dichotomies of recent feminist theory, essentialism/social constructionism, see Diana Fuss, *Essentially Speaking: Feminism, Nature & Difference* (1989).

<sup>133</sup> Doctrinal legal reform is, of course, one significant means to convey a group's preferred meaning of prostitution.

<sup>134</sup> Mary E. Hawkesworth, *Knowers, Knowing, Known: Feminist Theory and Claims of Truth*, 14 *Signs* 533 (1989). Sandra Harding, *Introduction: Is There a Feminist Method?*, in *Feminism and Methodology* 1, 3 (Sandra Harding ed., 1987); Sandra Harding, *Whose Science? Whose Knowledge? Thinking from Women's Lives* 106--110 (1991).

<sup>135</sup> One author has described how most people in the United States now think about prostitution from the viewpoint of conservative moralism. Cooper, *supra* note 1, at 101. I prefer to think prostitution's overwhelming characteristic is its refusal to acknowledge women's lives.

<sup>136</sup> Jane Flax, *Thinking Fragments: Psychoanalysis, Feminism, and Postmodernism in the Contemporary West* 5--6 (1990).

<sup>137</sup> Rather than seeking a transcendent truth, radical feminists argue that women

of these three claims asserts the truth of its own position and questions the validity of other descriptions. Recently, postmodern feminists have criticized certain feminists' reliance on truth-based arguments.

### 1. *The postmodern feminist critique*

Postmodern feminists question whether it is possible to discover true knowledge about the world. This critique developed historically because as feminists criticized traditional ways of knowing as androcentric,<sup>138</sup> they recognized the tendencies of feminism, itself, to falsely universalize *some* women's experiences and make unwarranted claims to objectivity.<sup>139</sup> In this way, postmodern feminists question attempts to tell one true version of feminism.<sup>140</sup>

must understand gendered power relations within our world and work to change them.

Feminism aspires to represent the experience of all women as women see it, yet criticizes antifeminism and misogyny, including when it appears in female form. This tension is compressed in the epistemic term of art "the standpoint of all women." We are barely beginning to unpack it. Not all women agree with the feminist account of women's situation, nor do all feminists agree with any single rendition of feminism. Authority of interpretation --- the claim to speak as a woman --- thus becomes methodologically complex and politically crucial for the same reasons. Consider the accounts of their own experience given by right-wing women and lesbian sadomasochists. How can patriarchy be diminishing to women when women embrace and defend their place in it? How can dominance and submission be violating to women when women eroticize it? Now what is the point of view of the experience of all women? Most responses in the name of feminism, state in terms of method, either (1) simply regard some women's views as "false consciousness," or (2) embrace any version of women's experience that a biological female claims as her own. . . . Both responses arise because of the unwillingness, central to feminism, to dismiss some women as simply deluded while granting other women the ability to see the truth. These two resolutions echo the object/subject split: objectivity (my consciousness is true, yours false, never mind why) or subjectivity (I know I am right because it feels right to me, never mind why). . . . So our problem is this: the false consciousness approach cannot explain experience as it is experienced by those who experience it. The alternative can only reiterate the terms of that experience. This is only one way in which the object/subject split is fatal to the feminist enterprise.

Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *Signs* 635, 637 n.5 (1983).

<sup>138</sup> Lugones & Spelman, *supra* note 7, at 574, 578.

<sup>139</sup> A number of theorists have charged convincingly that feminism falsely universalizes white women's experiences. Elizabeth V. Spelman, *Inessential Woman* (1988); Patricia Williams, *The Alchemy of Race and Rights: Diary of a Law Professor* (1991); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan. L. Rev.* 581 (1990); Deborah H. King, *Multiple Jeopardy, Multiple Consciousness: The Context of Black Feminist Ideology*, 14 *Signs* 42 (1988).

<sup>140</sup> See also Lugones & Spelman, *supra* note 7, at 576; and Judith Butler, *Gender*



Political theorist and psychoanalyst Jane Flax, for example, has argued that universal categories, including "woman," represent attempts by those using them to dominate others.<sup>141</sup> She said that feminists' claims about *all* women are as problematic as claims of the androcentric theorists they criticize. Flax contended that feminists who demonstrated the socially contingent nature of reality should not participate in a process of truth-claiming and false universalization of their own.<sup>142</sup>

Flax identifies with the postmodernist critique of modernism. Postmodernists argue that no transcendent truth exists; rather, truth or falsity can only be evaluated according to the norms created by communities within a specific discourse or practice.<sup>143</sup> According to Flax: "'Truth' is simply an effect of the rules of discourse. Because there are no non-discourse-generated rules, there is no external standpoint from which we can claim to judge the truth, falsity, or 'adequacy' of a discourse in its entirety."<sup>144</sup> As a result, true (or even less false) knowledge is unavailable to feminists or anyone else. Attempts to universalize "woman's"<sup>145</sup> experience reflect suppression of other versions.<sup>146</sup>

The postmodernist critique has political implications. If "[t]he 'view from nowhere' is replaced by admittedly partial and fragmentary multiples of one,"<sup>147</sup> then no one is privileged to argue from truthful knowledge. Flax claimed that the use of power cannot be made innocent by discovering

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Trouble: Feminism and the Subversion of Identity (1990).

<sup>141</sup> Flax, *supra* note 136 at 27--28.

<sup>142</sup> Marie Ashe, *Mind's Opportunity: Birthing a Post-Structuralist Feminist Jurisprudence*, 38 *Syracuse L. Rev.* 1129, 1146--47 (1987); Clare Dalton, *Where We Stand: Observations on the Situation of Feminist Legal Thought*, 3 *Berkeley Women's L.J.* 1, 6--8 (1989).

<sup>143</sup> See, e.g., Richard Rorty, *Philosophy and the Mirror of Nature* (1979).

<sup>144</sup> Flax, *supra* note 136, at 206.

<sup>145</sup> Feminists appear to be increasingly rejecting the notion that they can speak for all women. Early liberal feminist Mary Wollstonecraft referred to the universal "woman" in her writing. Wollstonecraft, *supra* note 12. Contemporary feminists use the term "women." Postmodern feminists would have us delineate more specifically to which women we are referring.

<sup>146</sup> Flax, *supra* note 136, at 27.

Each person who tries to think from the standpoint of women may illuminate some aspects of society that have been suppressed within the dominant view. But none of us can speak for "woman" because no such person exists except within a specific set of already gendered relations --- to "man" and to many concrete and different women.

Id.

<sup>147</sup> Id. at 21 (citation omitted).

true knowledge.<sup>148</sup> The "end of innocence" of truth poses political problems for feminists.<sup>149</sup> Like everyone else, feminists must admit that we want power in the world and will take it, rather than trying to convince those with power that our truth merits more power.

## 2. *The relevance of truth-based feminism in law*

Do liberal, socialist, and radical feminist theories state some truth or less false knowledge about prostitution? Does that knowledge convince people to think and act differently with respect to prostitution? Do these theories improve the lives of women in prostitution, or are they merely attempts to dominate, as Flax suggests? Is the postmodern feminist critique of grand theories so successful as to convince us that liberal, socialist, and radical feminist analyses of prostitution are useless?

Truth-based arguments about prostitution are useful for two related strategic political reasons---even if one accepts the validity of epistemological aspects of the postmodern feminist critique. First, Western legal systems discriminate among arguments based on an Enlightenment conception of truth. Post-modernism is useful as critique,<sup>150</sup> but a vision of truth is necessary to promote social change through law. Second, claims to knowledge are powerful politically in this historical time and place, and feminists must take advantage of that fact. Despite the relevance of postmodern feminist criticisms, truth-based feminist arguments remain important, particularly for using law to promote social change.<sup>151</sup>

First, law is an important locus of meaning in society that provides feminists with an opportunity to create and promote alternative, counter-hegemonic meanings.<sup>152</sup> The legal system in the United States is based,

<sup>148</sup> Id. at 28.

<sup>149</sup> Id. at 29.

<sup>150</sup> Postmodern feminism is valuable to critique the weaknesses and assumptions of each story of prostitution. Flax reminds us of the costs of essentializing any one group's experience in addressing prostitution: through telling one story, we may be denying other valid versions. The "[postmodernists'] task is to disrupt and subvert rather than (re)construct totalities or grand theories." Id. at 20--21.

<sup>151</sup> As Lucinda Finley suggests, feminists cannot avoid or ignore law. Finley, *supra* note 122, at 907 ("Since law inevitably will be one of the important discourses affecting the status of women, we must engage it. We must pursue trying to bring more of women's experiences, perspectives, and voices into law in order to empower women and help legitimate these experiences."). But see Carol Smart, *Feminism and the Power of Law 2* (1989) (arguing that "law is so deaf to core concerns of feminism that feminists should be extremely cautious of how and whether they resort to law.").

<sup>152</sup> Antonio Gramsci, *Selections from the Prison Notebooks* (Quinton Hoare & Geoffrey Nowell Smith, eds., 1971). With regard to counterhegemony, see Ernesto

in large measure, on Enlightenment ideas about truth and justice.<sup>153</sup> Within the existing political and legal structure, grand theories make claims to truth (or at least less false knowledge) that can justify and increase the political power of persons or groups using them.<sup>154</sup> As many feminists know, the power to narrate (tell your own version of a story) is the power to construct reality.<sup>155</sup>

Prostitution illustrates why postmodern feminism is disempowering politically. Law can be a powerful forum for improving the lives of women in prostitution. Women in prostitution and feminist supporters need to tell a coherent feminist story to make both statutory legal changes and to alter how legal decisionmakers apply law.<sup>156</sup> Our postmodern understandings about truth are difficult, if not impossible, to apply through the modern institution of law.<sup>157</sup>

Law demands answers to many questions. What is the status of women in prostitution? How do laws contribute to that status? How will changes in doctrine affect women in prostitution? Postmodern feminists deny the relevancy of answers to these questions because they think a 'more just society cannot be created through better knowledge. Because feminism is a modern practice as well as a theory (unlike postmodernism, it would seem), it cannot ignore the political implications of using the legal system for social change.<sup>158</sup>

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Laclau & Chantal Mouffe, *Hegemony and Socialist Strategy: Toward a Radical Democratic Politics* (1985). For a thoughtful discussion of hegemony and gender relations, see Arlene Elowe MacLeod, *Hegemonic Relations and Gender Resistance: The New Veiling as Accommodating Protest in Cairo*, 17 *Signs* 533, 544-45 (1992).

<sup>153</sup> Gordon S. Wood, *The Creation of the American Republic, 1776-1787*, 8-10, 293-96 (1969).

<sup>154</sup> See *infra* notes 159-163 and accompanying text.

<sup>155</sup> Other articles that focus on the importance of narrative in law include Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 *Harv. L. Rev.* 1749, 1757, 1799-1815 (1990); Martha A. Fineman, *Dominant Discourse, Professional Language, and Legal Change in Child Custody Decisionmaking*, 101 *Harv. L. Rev.* 727 (1988).

<sup>156</sup> See Lance W. Bennett & Martha S. Feldman, *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture* (1981) (finding that jurors are more likely to believe a story that is coherent).

<sup>157</sup> Robin West, *Feminism, Critical Social Theory and Law*, 1989 *U. Chi. Legal F.* 59, 81-84. See also Drucilla Cornell, *The Doubly-Prized World: Myth, Allegory and the Feminine*, 75 *Cornell L. Rev.* 644, 647-48 (1990) (explaining West's critique that the legal system denies women's experiences).

<sup>158</sup> "[H]ow could a feminist theory completely take leave of Enlightenment assumptions and still remain feminist? The critics are right that feminism must at least in part stand on Enlightenment ground. Most obviously, feminist Postmodernists join those they criticize in believing in the desirability and possibility of social progress, and

In her review of Catharine MacKinnon's *Feminism Unmodified*, legal theorist Frances Olsen emphasized this pragmatic approach by arguing for the political utility of "grand theory" arguments.<sup>159</sup> Olsen attempted to refute criticism of MacKinnon's version of radical feminism. She argued that MacKinnon's work contains gaps and fissures like any other grand theory, but that a more complex or subtle analysis could lose strategic political force by being misunderstood or not taken as seriously.<sup>160</sup> If one follows Olsen's logic, feminists should not hesitate to advocate for and defend an unambiguous position with regard to prostitution.

Grand theories are useful to feminists for another related reason. Although claims to less false knowledge may not be "true" or useful throughout time and place, they are convincing in the West in this historical time period.<sup>161</sup> Because Enlightenment thought defined truth as simultaneously universal and benign, societies can use it to resolve conflict without domination.<sup>162</sup> Grand theories are transitional, and advocates should use those theories that are convincing in their own time and place.<sup>163</sup>

Harding supports what she calls feminist standpoint theory.<sup>164</sup> She thinks that women (and members of other oppressed groups) have access to less distorted views of the world and are privileged to less partial knowledge.<sup>165</sup> Harding argues that postmodernists "appear to assume that

that improved theories about ourselves and the world around us will contribute to that progress." Harding, *Whose Science? Whose Knowledge?*, supra note 134, at 186.

<sup>159</sup> Frances Olsen, *Feminist Theory in Grand Style*, 89 *Colum. L. Rev.* 1147 (1989) (reviewing Catharine A. MacKinnon, *Feminism Unmodified* (1987)).

<sup>160</sup> *Id.* at 1170--77; see Kathryn Abrams, *Ideology and Women's Choices*, 24 *Ga. L. Rev.* 761, 776--77 (1990); see also Kathryn Abrams, *Feminist Lawyering and Legal Method*, 16 *Law & Social Inquiry* 373, 384 (1991) (questioning whether grand theories may not create strategic drawbacks even as they overcome them).

<sup>161</sup> Cf. Sandra Harding, *Whose Science? Whose Knowledge?*, supra note 134, at 132--33, 186 (discussing the impact of history on thought and knowledge, and reasons that the current historical time period is conducive to feminist research).

<sup>162</sup> Flax, supra note 136, at 8--9, 230. Flax admits that it is "tempting for those who have been treated as incapable of autonomy and rationality to insist on the extension of these powers to themselves and to believe in reason as their ally in the struggle." Linda J. Nicholson, *Introduction*, at 6, *Feminism/Postmodernism* (1990).

<sup>163</sup> See Margaret J. Radin, *The Pragmatist and the Feminist*, 63 *S. Cal. L. Rev.* 1699, 1700 (1990); Joan Williams, *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, 1992 *Wis. L. Rev.* 131.

<sup>164</sup> Other feminist who argue standpoint arguments include Dorothy E. Smith, *The Everyday World as Problematic: A Feminist Sociology* (1987); and Hilary Rose, *Hand, Brain, and Heart: A Feminist Epistemology for the Natural Sciences*, 9 *Signs* 1 (1983).

<sup>165</sup> Harding, supra note 134, at 126--27. Like Harding, members of the Critical Race Theory (CRT) movement also argue against the indeterminacy of law posited by the critical race theorists and postmodern feminists. See generally Gerald Torres, *Critical Race Theory: The Decline of the Universalist Ideal and the Hope of Plural*

if one gives up the goal of telling one true story about reality, one must also give up trying to tell less false stories."<sup>166</sup> She thinks that women need to tell less false stories about reality to increase their political power and improve their material conditions.<sup>167</sup>

Law provides a powerful forum for telling stories and constructing new meanings of prostitution.<sup>168</sup> Because postmodern feminism over-emphasizes feminism as a discourse and underemphasizes it as a practice, it is not particularly useful in the face of a long-ignored feminist issue like prostitution. The postmodern feminist response to gender subordination in prostitution--proliferating multiple meanings to decenter it--does not provide an effective counterbalance to embedded acceptance of women's subordination as evidenced by prostitution. Law as a site of creation and dissemination of meanings in societies can help improve the lives of women in prostitution. It should unambiguously promote a feminist perspective.

## B. Deciphering Meaning

If grand theories can be useful to feminists, which one is most useful in addressing the situation of women in prostitution in the West? Liberal, socialist, and radical feminist theories attempt to represent women's lives

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Justice -- Some Observations of an Emerging Phenomenon, 75 *Minn. L. Rev.* 993 (1991); Patricia J. Williams, *The Obliging Shell: An Essay on Formal Equal Opportunity*, 87 *Mich. L. Rev.* 2128 (1989); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 *Women's Rts. L. Rep.* 7 (1989); Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 *S. Cal. L. Rev.* 1763, 1768--71 (1990).

These authors attempt to reclaim truth-based arguments that lead to rights claims. Proponents of CRT suggest that people of color cannot afford to give up rights they never had. Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 *Harv. C.R.-C.L. L. Rev.* 401 (1987); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 *U. Chi. Legal F.* 139. They question the academic turn toward indeterminacy and multiple interpretations just as historically oppressed groups of people of color are beginning to assert their rights under liberalism. Feminists must question this development in relation to women as well. See Harding, *Whose Science? Whose Knowledge?*, *supra* note 134, at 153 ("Historically, relativism appears as a problematic intellectual possibility only for dominating groups at the point where the hegemony of their views is being challenged.").

<sup>166</sup> Sandra Harding, *Whose Science? Whose Knowledge?*, *supra* note 134, at 187. See also MacKinnon, *supra* note 137, at n.5.

<sup>167</sup> For a critique of standpoint epistemology and an argument for "positionality," see Katharine T. Bartlett, *Feminist Legal Methods*, 103 *Harv. L. Rev.* 829 (1990).

<sup>168</sup> Richard Delgado & Jean Stefancic, *Images of the Outsider in American Law and Culture: Can Free Expression Remedy Systemic Social Ills*, 77 *Cornell L. Rev.* (1992).

in theory. Each theory represents different women's lives<sup>169</sup> because they are all formulated from the standpoint of some women.<sup>170</sup> The relevant question is not which theory is the truth (because none of them are) but rather which, if any, represents most closely the experiences of women in prostitution in a particular time and place. For purposes of this article, I ask which most closely represents the experiences of women in prostitution now in the West, particularly the United States.

The grand theories of liberal, socialist and radical feminism are blunt instruments indeed. Each appears to overstate its case, and each could benefit from insights of the others. Because it is so misunderstood, however, analyzing prostitution through these broad ideological lenses is productive. In that sense, this article serves a remedial purpose and hopefully will initiate a richer discussion of prostitution among a broader community.<sup>171</sup>

What Martha Fineman has said about motherhood appears equally applicable to prostitution. Thus, prostitution is a colonized concept—an event physically practiced and experienced by women, but occupied and defined, given content and value, by the core concepts of patriarchal ideology.<sup>172</sup> All efforts by prostitutes' groups to challenge this colonization of their experiences represent important sources of resistance to male domination. Radical feminist efforts, however, offer a more encompassing critique than liberal or socialist feminism. As the example of the Red Thread demonstrates, liberal feminism, in the case of prostitution, serves to support the interests of dominant institutions in a society controlled by men.

According to one study, approximately twelve percent of United States' women are or have previously been in prostitution.<sup>173</sup> Another source

<sup>169</sup> Flax, *supra* note 136, at 27.

Each person who tries to think from the standpoint of women may illuminate some aspects of society that have been suppressed within the dominant view. But none of us can speak for "woman" because no such person exists except within a specific set of already gendered relations --- to "man" and to many concrete and different women.

Id.

<sup>170</sup> Harding, *Whose Science? Whose Knowledge?*, *supra* note 134, at 284--85, 310 ("[T]he subject of feminist knowledge . . . must be multiple and even contradictory.").

<sup>171</sup> In this way, I view this article as part of the larger project of feminists to examine women's "gendered lives." Martha Albertson Fineman, *Feminist Theory in Law: The Difference It Makes*, 2 *Colum. J. Gender & L.* 1, 15--19 (1992).

<sup>172</sup> Martha Albertson Fineman, *Images of Mothers in Poverty Discourses*, 1991 *Duke L.J.* 274, 289--90.

<sup>173</sup> MacKinnon, *supra* note 17, at 143; Catherine A. MacKinnon, *Feminism Unmodified: Discourses in Law and Life* 52 (1987); Griffin, *supra* note 30, at 20.

suggests a lower but still astounding figure---that at any one time, one million women are in prostitution and five million are or have been in the past.<sup>174</sup> Approximately sixty percent of adult men in the United States have used prostitutes.<sup>175</sup> These figures show that prostitution is a fundamental fact of life for many women, and in no sense is it "gender neutral."<sup>176</sup> As women are prostituted, men are the beneficiaries---both individually and as a class.

As men benefit from prostitution, women suffer its harms, primarily in the form of violence. Violence against street prostitutes is pervasive, and women in all types of prostitution endure substantial levels of violence. Pimps, tricks, and police all serve as perpetrators of violence against women in prostitution.<sup>177</sup> Prostitutes are frequently raped, robbed, or brutalized in some other way by pimps<sup>178</sup> and tricks.<sup>179</sup> Serial murder-

<sup>174</sup> Mark Satin, *Some of Our Daughters, Some of Our Lovers, New Options*, Oct. 29/Nov. 26, 1990, at 1, 1.

<sup>175</sup> Nancy Erbe, *Prostitutes: Victims of Men's Exploitation and Abuse*, 2 *Law & Ineq. J.* 609, 624 n.117 (1984) (citing Jennifer James, *Prostitutes and Prostitution*, in *Deviants: Voluntary Actors in a Hostile World* 398, 402 (Edward Sagarin & Fred Monanimo eds., 1977)).

<sup>176</sup> Pateman, *supra* note 40, at 564 (1983) ("The expression of sexuality and what it means to be feminine and a woman, or masculine and a man, is developed within, and intricately bound up with, relations of domination and subordination.").

<sup>177</sup> Priscilla Alexander, *Prostitution: A Difficult Issue for Feminists*, in *Sex Work*, *supra* note 6, at 184, 201--202. See Erbe, *supra* note 175, at 609 (arguing that prostitution is not a victimless crime; women in prostitution are victims of pervasive violence by customers, pimps, and police); Scibelli, *supra* note 23, at 132; Report on Adult Prostitution in Portland, 65 *City Club of Portland Bull.* 42 (1984).

<sup>178</sup> Weisberg, *supra* note 3, at 108--109; Wynter, *supra* note 85, at 266--270. In *Ordeal*, a book by Linda Marchiano (Lovelace) about her life as a prostitute and star of the pornographic film *Deep Throat*, the intricate connections between pornography, rape, domestic violence, and prostitution become apparent. Linda Lovelace and Mike McGrady, *Ordeal* (1980). According to another first-hand account by a former prostitute, all women exist in an atmosphere of prostitution. June Levine & Lyn Madden, *A Story of Prostitution* (1987). Lyn Madden, a Dublin prostitute for twenty years, tells a story similar to Marchiano's of rape, torture, and brutalization at the hands of her pimp/lover. In addition, Madden speaks of the personal connection for her between child sexual abuse and prostitution. She was sexually abused by her father beginning at age four. *Id.* at 268. See generally Center for Prostitution Alternatives, Inc., *Annual Report 2--3* (1991) [hereinafter CPA] (based on a survey of 1077 women in prostitution in Oregon from 1985 to 1991, pimps were responsible for the following types of attacks on prostitutes: 48% of the rapes at an average of 16 times per year, 63% of the aggravated assaults at an average of 58 times per year, 31% of the kidnappings at an average of five times per year, 44% of the episodes of torture at an average of 49 times per year, and 27% of the mutilations at an average of three times per year).

<sup>179</sup> Weisberg, *supra* note 3, at 109--110; Erbe, *supra* note 175, at 619 (citing Silbert & Pines); Trapasso, *supra* note 103, at 2 (describing bribes and pay-offs

ers often select women in prostitution as their targets.<sup>180</sup> Numerous cases of rape and extortion by police officers have been documented.<sup>181</sup>

It is a myth that women in prostitution are independent businesswomen. They generally do not select their customers or the sexual acts in which they engage. Pimps often wield considerable control over their lives.<sup>182</sup> Homelessness, lack of education and employment, and drug addiction also restrict efforts to become independent.<sup>183</sup> Although prostitution is big business, women in prostitution do not reap the financial benefits. In 1990, prostitution provided an estimated fourteen billion dollars to the United States economy;<sup>184</sup> yet, unlike depictions by liberal feminist prostitutes' groups, few prostitutes succeed financially.<sup>185</sup>

It is also a myth that women choose prostitution as a career. The violence and harm of incest and prostitution are connected.<sup>186</sup> Approximately seventy-five to eighty percent of juvenile prostitutes in the United States were sexually abused and coerced into prostitution at a young age.<sup>187</sup> It is under these coercive conditions that women and girls in

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demanding by police and government officials in Peru); Barbara Milman, *New Rules for the Oldest Profession: Should We Change Our Prostitution Laws?*, 3 *Harv. Women's L.J.* 1, 34 (citing Jennifer James, *A Formal Analysis of Prostitution in Seattle*, Final Report: Part 1-A, Basic Statistical Summary (1971)). CPA, *supra* note 178, at 2--3 (according to the study, johns were responsible for the following types of attacks on prostitutes: 79% of rapes at an average of 33 times per year, 81% of aggravated assaults at an average of 45 times per year, 47% of kidnappings at an average of five times per year, 43% of episodes of torture at an average of five times per year, and 21% of mutilations at an average of four times per year).

<sup>180</sup> Deborah Cameron & Elizabeth Frazer, *The Lust to Kill: A Feminist Investigation of Sexual Murder* 19, 122--38 (1987) (discussing the connection between violence and sex); Erbe, *supra* note 175, at 618.

<sup>181</sup> Erbe, *supra* note 175, at 618 (citing a study by Silbert & Pines that found that approximately 41% of prostitutes reported assaults by police officers); Milman, *supra* note 179, at 34.

<sup>182</sup> See Freeman, *supra* note 125, at 91; Cooper, *supra* note 1, at 114 (1989); Weisberg, *supra* note 3, at 96--97; CPA, *supra* note 178, at 3 (84% of prostitutes reported being coerced into prostitution by pimps).

<sup>183</sup> CPA, *supra* note 178, at 2 (survey in which 87% of prostitutes reported homelessness at some time in their lives lasting on average over four years; 62% reported serial homelessness; 69% did not have a high school education; 85% reported no employment; and 85% suffer from severe drug or alcohol addiction).

<sup>184</sup> 1990 N.C.A.S.A. Resolution on Prostitution, *supra* note 88; Erbe, *supra* note 175, at n.62 (noting that prostitution constituted a seven to nine billion dollar industry in 1978).

<sup>185</sup> See CPA, *supra* note 178, at 2 (citing high percentages of homelessness among prostitutes).

<sup>186</sup> Weisberg, *supra* note 3, at 91--93.

<sup>187</sup> Alexander, *supra* note 177, at 204; Ruth Rosen, *The Lost Sisterhood* 174 (1982) (most girls and women in prostitution enter prostitution as teenage runaways); CPA,



prostitution are said to have chosen their profession. Although it may appear that individual women have power over men through prostitution, that power is illusory because women as a group do not have meaningful choices about entering prostitution given the pervasive sex inequality in society that all women and girls face.<sup>188</sup>

Women in prostitution also suffer because their physical and mental health care needs are not met adequately.<sup>189</sup> They have particular health care problems such as exposure to sexually transmitted diseases, bladder infections, and physical and psychological injuries from frequent sexual contact, beatings, and rapes. Many women in prostitution avoid seeking medical treatment because of the judgment and blame they receive from health care providers.<sup>190</sup> Female prostitutes are also blamed for the spread of AIDS, although a number of studies refute this conclusion.<sup>191</sup>

Liberal feminists seek to improve the working conditions of prostitutes by promoting public acceptance through policies such as those of the Red Thread. In doing so, however, they further entrench the idea that women's "natural" role is to provide sex to men. Although liberal feminist policies may offer some benefits for women in prostitution, they offer even greater benefits for pimps and tricks. In the Netherlands, in particular, liberal feminist ideas also support the interests of the government and the tourist

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supra note 178, at 41, 2--3 (85% of prostitutes reported being victims of childhood sexual abuse; the average age of entry into prostitution was 17.5 years).

<sup>188</sup> "Many misconceptions about prostitutes are founded on the fantasy of their mythical sexual prowess and erotic control over men. . . . This perspective ignores the power differential between the prostitutes and the johns as individuals, and as men and women in a male supremacist society." Giobbe, supra note 89, at 5.

<sup>189</sup> Weisberg, supra note 3, at 116--117; Dirk De Schampheleire, *MMPI Characteristics of Professional Prostitutes: A Cross-Cultural Replication*, 54 *J. Personality Assessment* 343 (1990). Women in prostitution have high suicide rates. Erbe, supra note 175, at 623 (citing a study that found that 75% of a sample of call girls had reported suicide attempts); CPA, supra note 178, at 3 (73% of prostitutes had reported suicide ideations, 65% had seriously attempted suicide, and 38% had made multiple attempts).

<sup>190</sup> Elizabeth Fry Society of Toronto, *Streetwork Outreach with Adult Female Street Prostitutes*, Final Report 8 (1987).

<sup>191</sup> Beth Bergman, *AIDS, Prostitution, and the Use of Historical Stereotypes to Legislate Sexuality*, 21 *J. Marshall L. Rev.* 777, 783 (1988) ("Current statistics reveal that prostitutes are an unremarkable source of AIDS infection, even given the strong correlation between prostitution and intravenous use of drugs."); Scibelli, supra note 23, at 129 (citing studies which show that prostitutes are only a minor cause of the spread of venereal diseases); George F. Rivera, Jr., et. al., *Prostitutes, AIDS, and the Law: Social Control and Knowledge about AIDS in Mexico* 8 (1991) (unpublished manuscript, on file with author) ("Prostitutes in this study [in central Mexico] were willing to use condoms, but men were the major barrier to their use. . . . As long as men insist on not using condoms in their relations with prostitutes, both they and the women whom they frequent will be at risk.").

industry.

The Red Thread and KLEP, an association of tricks, seek to decrease the stigma of using women in prostitution. These groups promote normalization of using women in prostitution favored by brothel owners. When asked whether he was a pimp, the owner of the well-known sex club, the Yab Yum Club, said, "I make a perfect building, perfect interior, and I give the girls completely free the possibility to make money in my house with my customers. I make advertising and all the things, and the girls have the profit from it. I'm a businessman . . . ." <sup>192</sup> In accepting and promoting the idea that prostitution is work, this brothel owner highlights the perceived benefits of prostitution for women, ignores its harms and never questions the gender inequalities of the underlying practice.

Prostitution is not only accepted in the Netherlands, it is promoted by the government. For example, the government published a book by Gail Pheterson of the ICPR, the Red Thread's umbrella organization, which focused on destigmatizing prostitution. <sup>193</sup> The problem is not prostitution itself, Pheterson argued, but society's condemnation of prostitutes. <sup>194</sup> But the government's primary interest in destigmatizing prostitution appears to be its own financial interests. According to two social scientists at the Mr. A. De Graaf Foundation, "[t]he Amsterdam red light district with its overt and provocative window prostitution is one of the major tourist attractions of the Dutch capital." <sup>195</sup> The government's main concern is in protecting the tourism industry, particularly from the public relations problem of women as spreaders of diseases.

Currently in the West, liberal feminism is the most accessible and widely dispersed feminist perspective on prostitution. However, liberal feminism, by promoting the emancipation of women through prostitution, rather than in spite of it, downplays the inequality, violence, and harm inflicted upon women in prostitution. The Red Thread argues erroneously that prostitution is harmful only because of society's moral condemnation of prostitutes. <sup>196</sup> In doing so, it ignores gender-based inequality and

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<sup>192</sup> 60 Minutes, *supra* note 41.

<sup>193</sup> Pheterson, *supra* note 54.

<sup>194</sup> This view is analogous to the liberal feminist analysis of pornography as reflected in the Feminist Anti-Censorship Taskforce brief, submitted to present arguments in opposition to the Dworkin/MacKinnon anti-pornography ordinance. The real harm of pornography, they claim, is that it stereotypes women and denies their individuality. Nan D. Hunter & Sylvia A. Law, Brief Amici Curiae of Feminist Anti-Censorship Taskforce, et al., in *American Booksellers Assoc. v. Hudnut*, 21 U. Mich. J.L. Ref. 69, 122--32 (1987).

<sup>195</sup> Venema & Visser, *supra* note 49, at 41.

<sup>196</sup> In contrast, WHISPER emphasizes the actions, as well as the ideas, that harm

violence that women in prostitution face.<sup>197</sup>

The Red Thread does attempt to promote the health of women in prostitution as evidenced by its promotion of condom use.<sup>198</sup> However, in the process, many of the Red Thread's materials also serve to glamorize prostitution and reify women as sexual objects. Its posters and postcards depict women as bodies available to fulfill men's sexual desires. Its most widely distributed poster uses a classic technique of pornography by featuring a headless, naked woman's body. Women are reduced to the essential body parts needed to service men. They are depicted as enjoying and taking pride in their "profession."

In practice, pornography is often used to normalize sexual abuse, including prostitution.<sup>199</sup> Tricks frequently use pornography to order "sexual services" from women in prostitution by pointing to or describing pornography and saying that they want what is depicted in the pictures.<sup>200</sup>

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women.

Identifying "stigma" as what is wrong is a re-naming of reality that unfocuses perception of real harm to women in prostitution. Most people recognize harm when they see it. Whatever the response, the harm is noticed. The shift from seeing harm to criticizing emotional responses emanating from the perception of harm targets a nonprimary issue. It is a smoke-screen, used so that no one will challenge the actual harm.

See Summers, *supra* note 101, at n.1 (emphasis omitted).

<sup>197</sup> Boyle & Noonan, *supra* note 23, at 247 (critiquing gender-neutral treatment of prostitution as ignoring the subordination of women). See *supra* text accompanying notes 172--181.

<sup>198</sup> Verbeek, *supra* note 42, at 12 ("Our first concern [of the 'I do it with' sticker campaign] was to support our colleagues who are not free to work how they want to, i.e. with condoms.").

<sup>199</sup> See, e.g., Kathleen Barry, *Female Sexual Slavery* 99--101 (1984); Dworkin, *supra* note 99, at 223; MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, *supra* note 173, at 180--81; James V.P. Check & Ted H. Guloien, Reported Proclivity for Coercive Sex Following Repeated Exposure to Sexually Violent Pornography, Nonviolent Dehumanizing Pornography, and Erotica, in *Pornography: Research Advances and Policy Considerations* 159, 177--178 (Dolf Zillman & Jennings Bryant eds., 1989); Neil M. Malamuth & James V.P. Check, The Effects of Aggressive Pornography on Beliefs in Rape Myths: Individual Differences, 19 *J. Res. Personality* 299, 299 (1985); Diana E.H. Russell, Pornography and Rape: A Causal Model, 9 *Pol. Psychol.* 41, 51--63 (1988).

<sup>200</sup> Margaret Baldwin, *Pornography and the Traffic in Women: Brief on Behalf of Trudee Able-Peterson, et al., Amici Brief for the Defendant and Intervenor-Defendants, Village Books v. City of Bellingham*, 1 *Yale J.L. & Feminism* 111 (1989) (presenting an amicus brief filed by organizations and individuals who are experts on the effects of pornography on women and girls in prostitution arguing in support of the Dworkin/MacKinnon anti-pornography ordinance).

WHISPER founders were active in an effort to pass an anti-pornography ordinance by illustrating the interrelationship between prostitution and pornography. According

Although liberal feminist prostitutes' rights groups are opposed to child pornography and violent depictions of women, they generally support pornography and think that women should produce more of it.<sup>201</sup> They define sex work to include stripping and modeling for pornography.<sup>202</sup> Sexual self-determination for prostitutes is linked closely by liberal feminists with other issues of bodily autonomy, including abortion and other reproductive rights, lesbian rights, the right to be celibate, and the right to create pornography.<sup>203</sup>

Prostitution illustrates limitations of liberal feminist theory. Rather than addressing prostitution on a structural level, liberal feminists seem content to address only problems that surface in prostitution like working conditions and physical health concerns.<sup>204</sup> They focus on remedying symptoms rather than eliminating the root of prostitutes' problems: sex-based inequality and violence.<sup>205</sup>

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to Evelina Giobbe, ex-prostitute and spokeswoman for WHISPER, prostitution and pornography are inextricably interrelated: "It is impossible to separate pornography from prostitution. The acts are identical except that in pornography there is a permanent record of the woman's abuse." Sarah Wynter, WHISPER: Women Hurt in Systems of Prostitution Engaged in Revolt, in *Sex Work*, supra note 6, at 266, 268. WHISPER members testified at hearings held on this ordinance about how pimps use pornography to season new prostitutes. WHISPER defined it as "the narrowest picture of the traditional female sex role," Evelina Giobbe, supra note 89, at 4, 5; Statement of WHISPER Action Group Members, WHISPER (WHISPER, Minneapolis, Minn.), Winter/Spring 1992, at 3, 3. See also Paul Brest and Ann Vandenberg, *Politics, Feminism and the Constitution: The Anti-Pornography Movement in Minneapolis*, 39 *Stan. L. Rev.* 607, 617--29 (1987) (describing how victims of pornography testified on behalf of the anti-pornography ordinance by telling their stories to legislators and the public).

<sup>201</sup> Cf. 1985 Policies on AIDS, Drugs, Pornography, and Prostitution Laws, 1985 COYOTE Convention 3 (May 30--June 2, 1985) (on file with author); Background Paper, 1985 COYOTE Convention, at 2 (on file with author) (COYOTE opposes implementation of the Dworkin/MacKinnon anti-pornography ordinance).

<sup>202</sup> International Committee for Prostitutes' Rights and World Whores' Congress Statements, supra note 32, at 309.

<sup>203</sup> *Id.* at 309--312.

<sup>204</sup> *The Red Thread: Whores' Movement in Holland* in *Sex Work*, supra note 6, at 297, 299.

<sup>205</sup> In an ironic but understandable twist, established women's law reform organizations, today's primary purveyors of liberal feminism, do not address prostitution as an issue of concern. There is no community of support between institutional liberal feminism and groups like the Red Thread or COYOTE. But see Jennifer James et al., *National Organization of Women, The Politics of Prostitution: Resources for Legal Change* (1975) (an altogether too rare example of an institutional liberal feminist organization addressing the issue of prostitution). Today, prostitution is not defined by establishment liberal feminists as a feminist issue, rather it is considered a social eyesore. See Frances Olsen, *The Stigma of Money* 6 (March 22, 1986) (unpublished paper on file with the author) ("Liberal men --- and some liberal

The ECP offers an important critique of the underlying economic realities of prostitution, but it fails to address gender inequality as an issue separate from economic inequality. As the statistics cited above demonstrate, men are the beneficiaries of women in prostitution.<sup>206</sup> The socialist feminist view names economic inequality as the primary reason women are in prostitution.<sup>207</sup> This view does not account for the disparity between the number of women and the number of men in prostitution. In addition, given the pro-capitalistic orientation of the United States, socialist feminism offers the fewest advantages in terms of practical salability. The ECP's particular Marxist brand of socialism is marginalized in England and is even less convincing in the United States.

Among the three feminist theories discussed, radical feminism, embodied in the programs of WHISPER, is the only theory that grapples directly with the problem of violence against prostitutes. WHISPER emphasizes that gender inequality is the major cause of prostitution, and that violence plays an inherent role in the maintenance of women in subordinate positions. WHISPER's direct focus on violence has led to concrete programs to raise the public's consciousness of violence against prostitutes, to support prostitutes who have experienced violence, and to strengthen the ability of women's shelters and crisis centers to better provide for women in prostitution.

Radical feminists recognize the importance of economic inequality to our thinking about prostitution, but they argue that gender inequality is the more basic cause of prostitution and concomitant economic inequality.<sup>208</sup> They promote awareness of the economic situation of women in prostitution without attempting to glamorize them.

Prostitution highlights why radical feminism is an important theoretical development within feminism. Liberal feminism addresses prostitution as an issue of freedom; socialist feminism views prostitution as an economic issue. Only radical feminism treats prostitution as an issue of sex inequality.<sup>209</sup> Radical feminism frames prostitution within a larger system of male domination. Seeing prostitution, sexual assault and abuse, incest, sexual harassment, domestic violence, and pornography as interrelated

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women --- see prostitution as an 'eyesore' --- like pornography. They recognize that prostitution hurts their neighborhood, but they don't see that it hurts women's lives.").

<sup>206</sup> See *supra* notes 175--179 and accompanying text.

<sup>207</sup> See *supra* part I.B.2.

<sup>208</sup> MacKinnon, *supra* note 17, at 168.

<sup>209</sup> The separation of meaning from doctrinal reform is significant in that it shows how radical feminists and conservatives of the religious right treat questions of sex equality differently. Although they may support some of the same doctrinal proposals, they do so for very different reasons.

examples of sex inequality can serve as a powerful political basis upon which to unite women as a class. It can also serve as a framework for ending all forms of gender-based inequality.

As a theoretical matter, radical feminism focuses on telling stories of women's subordination, particularly through sex and sexuality. Some feminists criticize radical feminism for affirming sexual difference as total victimization. Drucilla Cornell, for example, criticizes Catharine MacKinnon's *Toward a Feminist Theory of the State* for reducing women to victims.<sup>210</sup> Cornell questions how feminists can put forth a positive agenda of change if women are utterly subjected. MacKinnon highlights the epistemological issues that others like Cornell find so difficult in creating a positive feminist agenda out of radical feminism:

Feminism criticizes this male totality without an account of women's capacity to do so or to imagine or realize a more whole truth. Feminism affirms women's point of view, in large part, by revealing, criticizing, and explaining its impossibility. . . . This is not a dialectical paradox. It is a methodological expression of women's situation, in which the struggle for consciousness is a struggle for world: for a sexuality, a history, a culture, a community, a form of power, an experience of the sacred.<sup>211</sup>

Although MacKinnon and some other radical feminists represent oppression of women as virtually totalizing, the practices of groups like WHISPER show that feminists can effect social change, particularly within institutions that they created.

Despite its emphasis on describing and publicizing women's victimization in prostitution, WHISPER offers concrete solutions to improve women's lives. That WHISPER can turn around its critique and implement solutions to prostitution in feminist institutions is a testament to radical feminism's affirmative role in social change. WHISPER appears to recognize and act on the postmodern insight that power is dispersed widely rather than concentrated in any one location. Their radical education groups seek to provide women with the means to critically analyze prostitution's role in society and to mobilize women to improve their lives and the lives of other women in prostitution.

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<sup>210</sup> Drucilla Cornell, *Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State*, 100 *Yale L.J.* 2247, 2248 (1991) (book review).

<sup>211</sup> MacKinnon, *supra* note 17, at 115.

## CONCLUSION

Law is an important forum in society for promoting feminist meanings. Prostitutes' groups in the West recognize and attempt to make use of law's role in the social construction of reality. The Red Thread, the English Collective of Prostitutes, and Women Hurt in Systems of Prostitution Engaged in Revolt all make useful contributions to our thinking about prostitution. A radical feminist view of prostitution as represented by WHISPER, however, best comports with the facts of prostitution by directly confronting the problems of gender inequality, violence, economic disparities, poor health, and inaccurate public perceptions without propagating myths that glamorize prostitution. Promoting a radical feminist vision of prostitution, in part through doctrinal law reform, will help improve the lives of women in prostitution by strengthening the drive for social and legal change.

Although feminists cannot control how proposed doctrinal reform solutions are implemented, they do have more control within feminist institutions. It is less likely that their efforts will be co-opted and used against them. WHISPER's promotion of a gender inequality-based meaning of prostitution in rape crisis centers, battered women's shelters, and other feminist institutions can serve as a model for other efforts.

As women in prostitution gain more political and social space, they will tend to use grand theories less as a source for creating feminist knowledge about prostitution and use their own lives more. Hopefully, we will one day recognize the harm done to women in prostitution without blaming them for it. We will see them as survivors of their subordinate position in society rather than as simply perpetrators or victims.