NEVADA SEX TRADE: A GAMBLE FOR THE WORKERS

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I. INTRODUCTION

Prostitution has long been a source of controversy. Prostitution in the United States is usually associated with vice, sin, and loose sexual morals. People labeled as prostitutes are stigmatized and often looked down upon by communities. But not everyone agrees with this general characterization of prostitution and prostitutes. Prostitution is the subject of heated discussions and the source of deep divisions among many feminists. There are feminists who firmly believe that prostitution is the ultimate example of male dominance over women and those who firmly believe that women who choose prostitution as a profession are liberated rather than victimized. Prostitution endures despite the fact that it has, for the most part, always been illegal in the United States. Much of the recent feminist debate over prostitution centers on whether it should be decriminalized or legalized.

Currently prostitution is illegal everywhere in the United States except Nevada.¹ This Article will explore and analyze the differing views on

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¹ See ALA. CODE §§ 11-47-113, 13A-12-111 to 113 (1996); ALASKA STAT. §§ 11.66.100 to 11.66.130 (Michie 1996); ARIZ. REV. STAT. ANN. §§ 13-3201 to 3214 (West 1996); ARK. CODE ANN. §§ 5-70-102 to 106 (Michie 1995); CAL. PENAL CODE §§ 266-67, 309, 318, 647.1, 11225 (West 1996); COLO. REV. STAT. ANN. §§ 18-7-201, 18-7-205, 18-7-206, 18-7-402 to 405.5 (West 1997); CONN. GEN. STAT. §§ 19A-345, 53a-82 to 88 (1997); DEL. CODE ANN. tit. 11, §§ 1342-52, 1352-56 (1996); D.C. CODE ANN. §§ 22-2701 to 2713 (1996); FLA. STAT.
prostitution in relation to the only system of legal prostitution in the United States—the one that exists in the state of Nevada. Parts II and III provide a historical background on prostitution in the United States and outline the two main views on prostitution: the position that prostitution is work; and the position that prostitution is exploitation. Part IV describes the system in Nevada that allows local communities to legalize prostitution and regulate it within the confines of brothels. Part V analyzes the Nevada regulatory system from the perspectives of the two opposing views on prostitution. The Conclusion examines why the Nevada regulatory system is not a good model for changing the current situation of prostitution under either of the two views. In addition, it critiques the prostitution-as-work and prostitution-as-exploitation perspectives for lacking an analysis of prostitution within the larger context of society.

II. HISTORICAL BACKGROUND

Prostitution has existed in America since the colonial era. While prostitution is primarily an urban phenomenon, and America was predominantly rural before 1800, prostitution did exist in the nation. Many of the early colonies had a disproportionate number of men and this imbalance remained until the twentieth century. While some women were married, there

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4. See id. at 211.
were “always unattached females willing to look with favor on the sexual approaches of unattached males.” These unattached women were primarily of European descent, Native Americans, and slaves or former slaves.

Often women were servants or slaves who were not able to successfully challenge men’s sexual advances. Servants and apprentices were not allowed to marry. Many servants had relationships, but if they were caught having sexual relations they could be punished by being required to marry, required to pay a fine, or given corporal punishment. Usually a fine or whipping was given. If a woman became pregnant the law required the father of the child to pay for the child’s support and education.

The authorities were concerned about the problem of prostitution in colonial America. In early seventeenth-century New England, some residents were charged with running a brothel or being a prostitute. Sometimes prostitutes were “stripped to the waist, tied to the tail end of a cart, and whipped as the cart moved through town.” Sarah Ensigne, in Plymouth, was sentenced to this treatment for being found a prostitute and Alice Thomas, in Boston, for managing a brothel. Laws were enacted to prohibit and discourage prostitution, but it continued to exist due in part to lack of enforcement. Organizations such as the Society for the Suppression of Disorders were formed by people concerned about the lack of enforcement. The situation regarding prostitution was similar in the southern colonies as well. Initially, early settlements in places like Virginia were mostly comprised of men, but shiploads of women were soon sent to stabilize the colony.

By the end of the eighteenth century, increasing industrialization and urbanization had changed the previously unorganized state of prostitution. The creation of factories in New England and the Mid-Atlantic states, which employed many single women, drew women from rural areas as well as a large

5. Id.
6. See id. at 211-15.
7. See id. at 211, 215.
8. See id. at 211-12.
9. See id. at 212. According to law, if a woman in labor accused a man of being the father of her child, that man was deemed the father. If a servant was fined or needed to support a child, his master would have to pay. In this case, the servant would have to lengthen his contract to repay his master, but as a cost-saving measure, the child might be indentured to the master or sent elsewhere to be indentured. See id. at 212.
10. See id. at 212-14.
11. Id. at 212.
12. See id. at 212-13.
13. See id. at 213-14.
14. See id. at 214.
15. See id.
16. See id. at 214. Not all the women came voluntarily to America. Twenty-five prostitutes were sent to Louisiana from a Paris house of corrections in 1721. “It was assumed that the women would undergo a metamorphosis when they arrived in America; those who failed to do so were whipped or otherwise punished. Where there were not enough European women, Indians and Blacks served as prostitutes, often unwillingly. Slaves had little choice in the matter, and neither did many Indians.” Id. at 215.
17. See id. at 215-16.
number of newly-arrived immigrant women. Factory work was difficult and paid very little. Some of the women turned to prostitution “either for affection or to escape” and other women turned to prostitution as a temporary occupation hoping to find a husband. Cities provided prostitutes with a large pool of immigrant men who came from Europe and other places without their families. While many men worked hard and sent most of their money home to their families, some kept part of it to help ease the difficulty of hard work and loneliness. “[F]or many of the newly arrived immigrants the only feminine companionship readily available was that of prostitutes, either full or part time, although few women either planned to or did make a career out of it.” In a number of cities, prostitutes worked out of bawdy houses or brothels, as well as walking the streets.

Prostitution also existed in the western frontier where hardworking, single men usually far outnumbered women. Life in the American West was hard for men and women. There were limited possibilities for women since most of the jobs required strenuous physical labor. While women as a group may have come from different circumstances, they all needed employment. The limited employment options included laundresses, waitresses, theater girls, milliners, dressmakers, and actresses. But these jobs were scarce and the competition among women was high. One writer notes that:

Excluded from extensive direct employment within frontier industries, working women had to recognize the limited scope of their own economic possibilities. For some frontier women work in prostitution best suited their economic chances and interests. The configuration of western society and the distribution of population permitted women to pursue this professional opportunity in either an urban or rural setting.

18. See id. at 216. Women often preferred working in factories to working as domestic servants because factories provided more freedom, even though there was little for a woman to do after her shift at the factory ended, and conditions at the boarding house where most factory workers lived were cramped and unpleasant. See id.

19. Id. at 216.

20. Id. at 217.


22. See BULLOUGH, supra note 2, at 216.


As industry wrestled to harness the frontier, the occupations that evolved called for menial laborers to perform heavy, dirty, backbreaking work. The world of the western industries—lumbering, mining, freighting, cattle-driving—produced a masculine labor group. The very nature of the work, as well as the limited capabilities of women untrained in physical accomplishments, excluded females from direct employment in most frontier industries. A masculine ambiance and a masculine work force permeated the American frontier.

Id.

24. See id. at 2.

25. Id. at 3.
The diverse ethnic background of urban prostitutes working in houses of prostitution included women from European, African-American, Asian, and Mexican heritage. The two major differences between urban and rural prostitution were that rural prostitutes were usually white and rural houses of prostitution were established for soldiers or drivers along freight routes. One type of rural brothel was usually combined with operating a ranch and employed white prostitutes. Another kind of rural brothel was run by a saloon owner who brought in white and black prostitutes and was situated close to a military outpost. These brothels were referred to by the military as "Hog ranches." Prostitutes were also employed in western cattle and mining towns.

Prostitution in the United States in the early nineteenth century was generally tolerated as a "necessary evil" to keep virtuous women, married women in particular, safe from the sexual desires of men. While not everyone held the same belief, "[m]any accepted it as inevitable, but at the same time advocated celibacy as the ideal and publicly opposed prostitution." While many members of society condemned prostitutes, others, particularly religious groups, formed homes and missions. Protestant and Catholic organizations created homes for girls who might potentially fall into prostitution and missions for prostitutes themselves. Magdalene Societies or Female Reform Societies were formed during this time to provide prostitutes with a home, employment skills, and employment. The underlying religious principal behind these Magdalene Societies was that even prostitutes deserve compassion and can be redeemed. The Reverend John McDowall established the well-known Five Points Mission in New York City, and with financial help from a merchant established the New York Magdalene Society.

26. See id. at 4-7
27. See id. at 4-8.
28. See id. at 8-9.
29. See id. at 8-9.
30. Id. at 8-9. Military installations also employed Native American women.
31. See, e.g., BULLOUGH, supra note 2, at 219-20.
32. See D'EMILIO & FREEDMAN, supra note 21, at 140; BULLOUGH, supra note 2, at 217.
33. BULLOUGH, supra note 2, at 217.
34. See id. at 218.
35. See id.
36. See DAVID J. PIVAR, PURITY CRUSADE: SEXUAL MORALITY AND SOCIAL CONTROL, 1868-1900 25-28 (1973); BULLOUGH, supra note 2, at 62-63, 218. According to Bullough, despite the Christian tradition of asceticism and hostility towards sex, Christians adopted a compassionate attitude towards prostitutes. This attitude is attributed to the importance of Mary Magdalene who was portrayed as a former prostitute. The story of Mary Magdalene is thought to be "the greatest example of a converted sinner in the New Testament." Id. at 63. There are differing versions of the life of Mary Magdalene, but the one thing they all have in common is that she was a prostitute. "This is important because in Christian tradition Mary Magdalene is, next to Mary, mother of Jesus, the most significant female figure." Id. Her story represents the message that prostitutes, who are considered to be "fallen women," are capable of repentance and salvation. "The legend of Mary Magdalene also emphasizes the difficulty of a woman making her way in the world alone without male guidance, and this appears in Christian attitudes towards prostitution as well." Id.
37. See BULLOUGH, supra note 2, at 218; PIVAR, supra note 36, at 26.
In the 1830s, at its beginning, Reverend McDowall’s work to save prostitutes gained much support within the religious and reform communities. He waged a public campaign to encourage other members of the clergy to join his work. Clergy leaders were soon replaced by women reformers from the New York Female Reform Society, which had 250 local groups by 1837. But as the anti-slavery movement grew stronger, the reform societies devoted less time and energy to work with prostitutes. At the same time, opposition to prostitution grew much stronger and supporters of McDowall withdrew their support due to public reaction. McDowall’s license as a Presbyterian minister was removed in 1836 and he died within the year.

In 1870, St. Louis enacted the first laws regulating prostitution, which were supported by doctors and public health officials. Even before the Civil War, people such as Dr. William Sanger advocated for the regulation of prostitution to prevent venereal disease. Under a regulatory system prostitutes would be licensed and undergo weekly inspections for venereal disease to receive a health certificate. In 1858 Sanger conducted a study of prostitution in New York. He wrote:

If history proves that prostitution can not be suppressed, it also demonstrates that it can be regulated, and directed into channels where its most injurious results can be encountered, and its dangerous tendencies either entirely arrested or materially weakened. This is the policy to which civilized communities are tending, and to aid the movement it is needful that the subject be examined, even at the risk of the world’s contumely.

By the end of the Civil War more and more members of the medical profession and police supported the idea of regulating prostitution. “Since they dealt almost exclusively with crime and disease as sanitary problems, morality was of only tangential significance.” Reformers who opposed prostitution on moral and social grounds applied traditional religious views aimed at eradicating prostitution. Regulationists applied a more practical approach, realizing that attempts to eradicate prostitution in the past had failed. Instead they urged the prevention of disease. A number of cities, including New York, Chicago, Cincinnati, San Francisco, Philadelphia, Baltimore, and Washington D.C., were unsuccessful in passing ordinances regulating prostitution. Only the city of St. Louis, most likely influenced by European experiments with regulation,
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The St. Louis regulatory system was challenged by members of the clergy and middle-class women who wanted the state to uphold the single standard of morality, which was chastity before marriage and fidelity within it. Many of the middle-class women who opposed legalized prostitution were moral reformers whose mission was to reform the female prostitute and "restore her to true womanhood." The moral reformers felt threatened by sex outside the family because it was not for reproduction or marital intimacy. Other women's rights activists from the suffrage movement opposed regulated prostitution because they saw the similarities between it and the earlier state-sanctioned slavery. Those who opposed the regulatory system gathered 100,000 signatures for their anti-regulation petitions and successfully pushed politicians to pass a bill repealing the regulated system of prostitution.

Much of the legal response to dealing with the issue of prostitution stemmed from the work of English activist Josephine Butler. Her efforts to repeal the Contagious Disease Prevention Act in England began an international movement to abolish government regulation of prostitution. The issue of involuntary prostitution, particularly of children, also became important at this time. In 1910, the United States Congress passed the Mann Act, which prohibited the transportation of a woman from one state to another for

46. See PIVAR, supra note 36, at 52-53. Paris, Berlin and Stockholm operated under a regulatory system and other European cities had experimented with it. Paris' system became a model. In Paris, the police issue a weekly health certificate after conducting inspections. A prostitute could not work without a license and was committed to a combination house of detention, correction, and hospital if she was found to be diseased. See id.

St. Louis regulationists argued that the government had no policy if there was no regulation and that there was de facto regulation even without legislation. They compared European cities which had regulation of prostitution and those that did not. Regulationists claimed that the lack of regulation of prostitution in England was a major source of uncontrolled crime and disease. See id. at 53.

47. See D'EMILIO & FREEDMAN, supra note 21, at 143-49.

48. See id. at 139.

49. Id. at 143.

50. See id. at 145.

51. See generally D'EMILIO & FREEDMAN, supra note 21. See also Catharine MacKinnon, Prostitution and Civil Rights, 1 MICH. J. GENDER & LAW 13 (1993). MacKinnon discusses the similarities between state-sanctioned slavery and state-sanctioned prostitution. "To apply the Thirteenth Amendment to prostitution is not to equate prostitution with the chattel slavery of African-Americans but to draw on common features of institutions of forcible inequality in the context of the Thirteenth Amendment's implementation." Id. at 21. The Thirteenth Amendment of the United States Constitution prohibits slavery or involuntary servitude. MacKinnon explains that the legal standards of involuntary servitude should apply to prostitution, as prostitutes are bought and sold like chattel and are subject to many of the characteristics of involuntary servitude that have been recognized in other situations. See id. at 21-31.

52. See BULLOUGH, supra note 2, at 195. The British Parliament passed the first of three Contagious Disease Prevention Acts in 1864 permitting police officers to designate those they believed to be common prostitutes and force them to undergo a physical examination. See id.

53. See id. at 263-71.

54. See id. at 265-79. Transportation of girls and women from one country to another for the purposes of prostitution became known as white slavery. See id.
“immoral” purposes. Starting in 1910, a number of large cities such as Chicago published vice commission reports on the extent of vices such as prostitution. Many states passed laws prohibiting living off the earnings of prostitutes, making pandering a criminal offense, and punishing those who were found guilty of forcing women and girls into prostitution. Many people in the United States considered prostitution and venereal disease to be a threat to the American troops going to fight in World War I.

Prostitution during times of war took on a new meaning in World War II. While preventing the spread of venereal disease to soldiers was still a priority, the method of providing prostitutes to troops was different. Women were forced into prostitution for that specific purpose during wartime. It was not until recently that Japan acknowledged forcing Korean women during World War II to be “comfort women” for the Japanese troops. During the Vietnam War many Vietnamese women were considered to be prostitutes even if they had not had sex for money. Many women living in small Vietnamese villages were raped by soldiers on both sides of the war. In traditional Asian societies a woman who has been raped is often unable to return to her community, as she is considered to have brought shame to her family and village. The sex industry was built upon sexual violence during wartime, where rape was used as a war strategy. The large numbers of United States soldiers continually deployed to Vietnam during the war increased the demand for prostitution. The slave trade and general commercialization of prostitution continued well after the war was over.


58. See WOOLSTON, supra note 57, at 33.


60. See BARRY, supra note 59, at 130-38.

61. See id. at 130. Even after the war, The Campaign of The Socialist Republic of Vietnam to rehabilitate the women and girls who had been forced into prostitution either by the slave trade or by economic hardship could not eliminate prostitution. See id. at 134-38.

62. See id. at 136-38.
During the second wave of feminism, as in the first wave, prostitution emerged as an area of concern, but reformers were not exclusively focused on its abolition. It is during this time that supporters of prostitution founded the first prostitutes' rights group. The general division that emerged among prostitution theories is between the prostitution-as-work perspective and the prostitution-as-exploitation view. These two views will be discussed in turn.

III. THEORETICAL BACKGROUND

A. The Prostitution-As-Work Perspective

Supporters of the prostitution-as-work perspective, also called the prostitutes' rights perspective, believe that a woman has a right to choose to engage in prostitution and should have the same rights as other workers.


Fechner is concerned with how feminist groups work to improve prostitutes' lives. She describes her approach as fairly traditional "by categorizing it into three branches of liberal, socialist, and radical feminism." Id. at 70. She explains that using these three categories is helpful because "prostitution has been undertheorized in law and feminism" and "these three groups either self-identify, or would not object to, the classification given to them." Id. Fechner's article presents three groups: the Red Thread from the Netherlands, the English Collective of Prostitutes (ECP), and Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER). After describing what she means by liberal, socialist, and radical feminism, Fechner identifies each of the three prostitutes' organizations with one of the feminist theories and explores the organization's position on decriminalization and legalization of prostitution. The article concludes with the opinion that WHISPER can provide the model for organizations working to improve the lives of prostitutes:

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.

64. See generally id. Out of the three groups chosen by Fechner, the Red Thread is the one that advocates that prostitutes should have the same rights as other workers. A Red Thread brochure states: "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." Id. This organization focuses on prostitution-as-work and improving working conditions for prostitutes. See also International Committee for Prostitutes' Rights, International Committee for Prostitutes' Rights World Charter and World Whores' Congress Statements, in SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY (Frederique Delacoste & Priscilla Alexander eds., 1987) [hereinafter SEX WORK]. The World Charter demands that society recognize that prostitutes have the same rights and liberties as other human beings. The draft statement from the Second World Whores Congress in 1986 states that prostitutes are effectively excluded from the European Convention on Human Rights, which became effective in 1953. See VALERIE JENNESS, MAKING IT WORK: THE PROSTITUTES' RIGHTS MOVEMENT IN PERSPECTIVE (1993). Jeness documents the modern prostitutes' rights
Fundamental to this view is that not all prostitution is forced prostitution. While many prostitutes' rights organizations and supporters acknowledge that some women have been coerced into prostitution, their general position is that women choose prostitution as a form of work. One view, the contractarian perspective, regards prostitution as a contract between two consenting adults that should be respected like any other contract. Another is that prostitutes are liberated women rather than victims. No matter what particular position a person within the prostitution-as-work perspective holds, most refer to those who work as prostitutes, strippers, escorts, and club dancers as sex industry workers. Since the view that prostitution is work is central to prostitutes' rights groups, this kind of language emphasizes the notion of work. The creation and use of the category “sex industry workers” is viewed as an important form of public education.

In the early 1970s, Call Off Your Old Tired Ethics (COYOTE), established itself as the first self-proclaimed prostitutes' rights organization. A number of local branches of COYOTE formed throughout the United States, and many affiliate organizations emerged in Europe. From its inception, one of COYOTE's principal concerns as a prostitutes' rights organization was to recharacterize the image of prostitutes as “fallen,” “other,” or “bad” women; social deviants; and victims. Proponents of prostitution-as-work challenge those images and seek to depict prostitutes as choosing legitimate service work. COYOTE's campaign for prostitutes' rights is based on three basic claims:

First, prostitution is first and foremost a work issue and thus the master concept of work should replace the master concept of crime as the fundamental stance of society towards prostitution. Moreover, it is service work that should be respected and protected like work in other legitimate service occupations. Second, most women who work as prostitutes choose to do so, even in a society where prostitution is illegal. Third, and finally, prostitution is work that people should have the right to choose.

This belief that prostitution is work is an essential claim that rejects the view that prostitution is simply the selling of a woman's body.

Supporters of the prostitution-as-work perspective, such as COYOTE, argue that prostitution is just like any other kind of work where people are paid for
Supporters consider being paid for sex to be the same as being paid to type, to be a doctor or lawyer, or to design buildings. They argue that most prostitutes voluntarily work as prostitutes and that it is legitimate work.

Some prostitutes, former prostitutes, and other sex industry workers have written about their work within the sex industry. Former prostitute Dolores French wrote that prostitution was a job like many others where women sell their services. Most women who enter prostitution do so for economic reasons. While other proponents of the prostitution-as-work perspective may acknowledge that most women who engage in prostitution do so to make money, they emphasize choice rather than economic necessity. They believe that prostitution is a victimless crime because a choice is involved. Building on the claims that prostitutes voluntarily choose prostitution and that it is a legitimate form of work, prostitution-as-work advocates demand that the rights of prostitutes be respected in the same way that other workers’ rights are respected.

Prostitution-as-work advocates attribute much of the police harassment and general violence perpetrated against prostitutes to society’s refusal to recognize that prostitutes have rights. They cite both gender and ethnic discrimination in police enforcement of laws against prostitution. They believe that if prostitutes were seen as legal, professional workers they would not be targeted by the police in the ways they are now.

71. See id. at 3. Other prostitutes’ rights organizations in the United States include: ASP (Association of Seattle Prostitutes), CAT (California Advocates for Trollops), DOLPHIN (Dump Obsolete Laws; Prove Hypocrisy Isn’t Necessary), 80s Ladies and Friends, FLOP (Friends and Lovers of Prostitutes), HIRE (Hooking Is Real Employment), Hooker’s Hookup, HUM (Hooker’s Union of Maryland), NTFP (National Task Force on Prostitution), PASSION (Professional Association Seeking Sexual Identification Observant of Nature), PONY (Prostitutes of New York), PUMA (Prostitutes’ Union of Massachusetts Association), SPARROW (Seattle Prostitutes against Rigid Rules over Women). See id.

72. See WENDY CHAPKIS, LIVE SEX ACTS: WOMEN PERFORMING EROTIC LABOR (1997) (interviews with and contribution from women in the sex industry); GAIL PHETERSON, A VINDICATION OF THE RIGHTS OF WHORES (1989) (anthology of the voices of prostitutes from around the world); SEX WORK, supra note 64.

73. See DOLORES FRENCH, WORKING: MY LIFE AS A PROSTITUTE (1988). See also generally CHAPKIS, supra note 72.; CLAUDE JAGET, PROSTITUTES: OUR LIFE (1980); SEX WORK, supra note 64.

74. See id. at 52-54. Female prostitutes are arrested in much greater numbers than the men who solicit them, and most of the women who are arrested are minority women. See SEX WORK, supra note 64, at 196-97. According to COYOTE statistics, 126,500 people were arrested in 1983 for prostitution in the U.S. About seventy percent of people arrested for prostitution are women, even though laws do not usually make distinctions based on gender. See id. Eighty-five to ninety percent of those arrested for prostitution are street prostitutes, even though only ten to twenty percent of all prostitutes walk the streets. See id. Fifty-five percent of arrested prostitutes are women of color, even though only forty percent of street prostitutes are women of color. See id. Eighty-five percent of those prostitutes who are sentenced to jail are women of color. See id. One theory for why more women of color are arrested for prostitution than white women is the racist attitudes of mostly white police officers. See id. at 196-97.
COYOTE argues that along with the right to choose prostitution as an occupation, prostitutes must have the right not to be subjected to public harassment, such as stigmatization, rape, violence, denial of health care, denial of protection by and under the law, and denial of alternative job opportunities. From this perspective, as workers prostitutes should be afforded equal protection under the law and should be free from violations of their civil rights, especially in the form of legal repression and public condemnation.\footnote{\textit{JENNESS}, supra note 64, at 72.}

In the World Charter for Prostitutes' Rights, the International Committee for Prostitutes' Rights demands that governments “guarantee prostitutes all human rights and civil liberties, including the freedom of speech, travel, immigration, work, marriage, and motherhood and the right to unemployment insurance, health insurance and housing.”\footnote{\textit{SEX WORK}, supra note 64.} The Charter also demands that there be no laws relegating prostitutes to particular zones or requiring mandatory health checks for prostitutes unless they are mandatory for all sexually active people.\footnote{\textit{Id.} at 305-06.} Some prostitutes' rights organizations advocate forming unions to improve the working conditions of prostitutes.\footnote{See \textit{Fechner}, supra note 63, at 38.}

Another principal goal of COYOTE is to decriminalize prostitution. COYOTE's call for decriminalization is the culmination of all the claims put forward by the organization and other prostitutes' rights supporters. Decriminalization is seen as a means to legitimize prostitution, according to former COYOTE leader Priscilla Alexander:

Ideally, decriminalization would mean the repeal of all existing criminal codes regarding voluntary prostitution, per se, between consenting adults, including mutually voluntary relationships between prostitutes and agents or managers (pimp/prostitute relationships), and non-coercive pandering (serving as a go-between). It could involve no new legislation to deal specifically with prostitution, but merely leave the businesses which surround prostitution subject to general civil, business, and professional codes that exist to cover all businesses. \ldots Decriminalization of prostitution and the regulation of pimping and pandering, it seems to me, offers the best chance for women who are involved in prostitution to gain some measure of control over their work.\footnote{\textit{SEX WORK}, supra note 64, at 209-10.}

Decriminalization is different from legalization because decriminalization calls for laws concerning prostitution to be repealed. Legalization, on the other hand, usually means regulating prostitution through specific laws and codes.

\footnote{\textit{JENNESS}, supra note 64, at 72.}
\footnote{\textit{SEX WORK}, supra note 64.}
\footnote{\textit{Id.} at 305-06.}
\footnote{See \textit{Fechner}, supra note 63, at 38.}
\footnote{\textit{SEX WORK}, supra note 64, at 209-10.}
Prostitution-as-work organizations argue that if the laws criminalizing prostitution were removed, prostitution would be more likely to be seen as a legitimate form of work. In addition, prostitutes would not have to suffer from the police brutality and harassment that result from the illegality of prostitution. COYOTE, like most prostitutes’ rights supporters, is only in favor of legalization where regulation would enforce fair and safe working conditions. Support for decriminalization of prostitution is widespread among prostitution-as-work proponents and many opponents of prostitution.

B. The Prostitution-As-Exploitation Perspective

While some current and former sex industry workers agree with the prostitution-as-work perspective, many of them do not. In 1985, former prostitutes and women’s advocates established Women Hurt in Systems of Prostitution Engaged in Revolt (known as WHISPER). While one of WHISPER’s primary goals, like COYOTE, is to decriminalize prostitution, its principal reason for decriminalization is that prostitution is based on a system of male supremacy:

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 itself is built along a continuum of coercion—fear, force, racism and poverty. For every real difference between women, prostitution exists to erase our diversity, distinction, and accomplishment while reducing us to meat to be bought, sold, traded, used, discarded, degraded, ridiculed, humiliated, maimed, tortured, and all too often murdered for sex.

Supporters of WHISPER and others who often categorize themselves as radical feminists reject a number of prostitution-as-work positions. They reject arguments that a woman chooses to enter prostitution from among a number of work opportunities, that prostitution is empowering for women, and that women can become wealthy through prostitution.

80. See JENNESS, supra note 64, at 47-56.
81. See Fechner, supra note 63, at 38. Red Thread advocates for prostitutes forming unions when they become legally recognized as employees. Unionization would mean that prostitutes would be considered workers and this in turn would enable them to demand health and safety protection like other workers. See CHAPKIS, supra note 72, at 155-64. There is a distinction between policies intended to regulate prostitutes and those intended to regulate prostitution businesses. A licensing system is aimed at controlling prostitutes and may negatively affect prostitutes.
82. See generally Fechner, supra note 63; JENNESS, supra note 64; Sarah Wynter, Whisper: Women Hurt in Systems of Prostitution Engaged in Revolt, in SEX WORK, supra note 64.
83. Wynter, supra note 82, at 268.
84. See id. at 269.
In this prostitution-as-exploitation perspective, decriminalization of prostitution is the first step towards eliminating prostitution. Proponents of this perspective recognize prostitution as a clear example of exploitation. Some see the origin of the exploitation in economics while others see it in gender inequality. The prostitution-as-exploitation perspective challenges the prostitution-as-work perspective’s notion that prostitution is a victimless crime. Studies and interviews with current and former prostitutes document the fear and violence they experienced while being in prostitution. Opponents of prostitution refute the position that women choose to go into prostitution, claiming that most women are coerced or physically forced into a life of prostitution and cannot escape. Many link the high likelihood of becoming a prostituted woman to sexual abuse and incest experienced as a child. Kathleen Barry equates prostitution with sexual slavery.

The prostitution-as-exploitation view challenges the claim that prostitution is a valid employment opportunity for women. Members of WHISPER argue that the position that prostitution is work is part of the myth perpetuated to keep women in a state of inequality:

There has been a deliberate attempt to validate men’s perceived need, and self-proclaimed right, to buy and sell women’s bodies for sexual use. This has been accomplished, in part, by emphasizing prostitution as an occupation. Men have promoted the cultural myth that women actively seek out prostitution as a pleasurable economic alternative to low-paying, low-skilled, monotonous labor, conveniently ignoring the conditions that insure women’s inequality and the preconditions which make women vulnerable to prostitution. Men have been so successful in reinforcing this myth by controlling the culture that their central role in the commercial sexual exploitation of women has become invisible.

This position rests on the general belief in economic and gender exploitation that unites most opponents of prostitution. Adherents of the theory reject the opinion that women can become wealthy from engaging in prostitution.
Recognizing that inherent power inequalities exist does not necessarily mean that prostitution should be regarded as any different than non-sex-work. To regard prostitution or other sex-work as uniquely exploitative may be agreeing with a non-feminist position that female sexuality needs to be guarded. According to Heidi Tinsman:

Sex-work is not unique, but neither should sex be considered just one of many variables that affect women’s work. On the contrary, sex is central to the way in which all women are exploited in all types of work. Sexuality, the social meanings ascribed to procreative and biological differences, constitutes the fundamental power hierarchy between men and women that affects the sexual division of labor in all workplaces and is crucial to understanding all women’s work.

Tinsman argues that sex-work often involves extreme forms of exploitation but that it should not be considered to be more offensive than all other types of work. She explains that increasing workers’ empowerment would be an effective way of challenging the unequal and exploitative nature of sex-work without penalizing sex-workers.

Many proponents of the prostitution-as-exploitation perspective consider what prostitution means to women as a class, unlike prostitution-as-work theorists who focus on a woman’s right as an individual to choose what to do with herself. This fundamental difference is crucial to understanding the way these two opposing perspectives view the issue of consent. As a supporter of the prostitution-as-exploitation perspective, Catharine MacKinnon presumes that a woman has been coerced and that a woman’s ability to consent is always socially constrained. Prostitution-as-work proponents would criticize MacKinnon for being patronizing because, according to MacKinnon, women who believe being a prostitute is good would only be misleading themselves. For example, Jody Freeman explains MacKinnon’s analysis that women take part in their own oppression: “They internalize dominance and submission as

90. See generally Heidi Tinsman, Behind the Sexual Division of Labor: Connecting Sex to Capitalist Production, 17 Yale J. Int’l L. 241 (1992) (examining why sex-work is similar to other types of work that women engage in).
91. Id.
92. See id. at 2-3.
93. See id. at 3.
95. See MacKinnon, supra note 51, at 94-97. Freeman examines MacKinnon’s primary assumption that women are always coerced and therefore have difficulty consenting to anything. See Freeman, supra note 94, at 86-97.
96. See Freeman, supra note 94, at 94-96. This theory that women believe that being a prostitute is positive is usually called false consciousness. According to this theory a woman is unable to recognize her own self-interest because she has internalized male dominance. Therefore a woman does not truly come to the conclusion that prostituting herself is beneficial because it is actually a perception of male desire and not her own. See id.
'normal' sexuality and, therefore, find accounts of oppression incompatible with their perception of their own experience. MacKinnon implies that women are not aware of what is in their own self-interest, since they perceive their needs as a reflection of male desire.  

Other theorists have criticized MacKinnon. For example, Ruth Colker argues that there is a need for a theory of consciousness. She questions how a woman would be able to agree or disagree with MacKinnon because, according to MacKinnon, a woman could not trust her own perceptions of her situation. Jody Freeman critiques both MacKinnon and those in the prostitutes' rights camp because:

Neither radical feminism nor liberalism offers an account of the complexity of the underlying structural constraints on the meaning of consent. In liberal discourse, consent is assumed as a constant. If MacKinnon is right about the inevitability of collaborating in our own oppression, there is no hope for consent. Her critique denies the subjective ability of individuals to participate in its construction. For the radical feminist then, even saying "yes" in a given situation does not guarantee an absence of coercion. Neither does it incorporate the structure and fluidity of consent into the interaction.

While Freeman advocates for a theory of consciousness and a continued discussion about consent, she concludes that both radical and liberal feminists should support decriminalization of prostitution in the meantime. The debate over prostitution continues to be theoretical. It is necessary to analyze the debate in more concrete terms.

IV. NEVADA REGULATION OF PROSTITUTION

When prostitution was illegal, the debate over whether it should be legal in the United States was mostly theoretical. In 1973, prostitution was no longer a crime per se in Nevada because local communities were allowed to legalize prostitution. Although the City of Ely first enacted an ordinance controlling prostitution in 1908, legal prostitution was not allowed statewide until the Nevada statute permitted the licensing of prostitution. Pertinent sections state:

(1) Every natural person wishing to be employed as an entertainer for an entertainment by referral service and every natural person, firm, association of persons or corporation wishing to engage in the business of conducting a dancing hall, escort service, entertainment by referral service or gambling game or device permitted by law, outside of an incorporated city, must:

97. Id. at 95.
98. See id. at 96.
99. Id. at 97.
100. See id. at 109.
101. Although the City of Ely first enacted an ordinance controlling prostitution in 1908, legal prostitution was not allowed statewide until the Nevada statute permitted the licensing of prostitution. NEV. REV. STAT. ANN. § 244.345 (Michie 1995) (allowing for a person to seek a license to engage in the business of a house of prostitution in a county whose population is less than 400,000).
written about Nevada's regulatory system, and even less has been written about using the Nevada system as a model elsewhere in the United States. A look at legalized prostitution in Nevada in terms of prostitutes' rights and those who oppose prostitution is absent from the field of legal analysis or current social science research. This Article intends to explore that analysis and encourage subsequent discussion.

The current existence of regulated prostitution in Nevada seems to reflect an attitude of general tolerance by Nevadans. Nevada, the thirty-sixth state to enter the union, is not widely populated and relies heavily on gaming, mining, agriculture, and tourism as its principal industries. Prostitution in this frontier state originally existed around mining camps, railroads, and cattle towns. Some attribute the local attitude to a sense of tradition that included brothels and did not consider them to be a threat to the community. According to Helen Reynolds:

[B]rothels in operation today in Nevada are not the product of some newfound liberalism, or even libertarianism, but are a throw-back to an earlier time, a tradition that had not died out by the time legalized tolerance took the form of statewide statutes and local ordinances. In essence, the state and local laws merely reflect the general tenor of rural Nevada: prostitution has been around for a long time, the businesses of brothels seem to be fairly well controlled, and the houses serve some sort of social function.

Not everyone in Nevada welcomed the idea of allowing localities to choose whether or not to legalize prostitution. Some feared that it would draw unneeded attention to the gambling industry and allow organized crime to take over another "sinful" business.

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(a) make application to the license board of the county in which the employment or business is to be engaged in, for a county license of the kind desired. The application must be in a form prescribed by the regulations of the license board.

(b) file the application with the required license fee with the county license collector, as provided in chapter 364 of NRS, who shall present the application to the license board at its next regular meeting...

2. The board of county commissioners, and in a county whose population is less than 400,000, the sheriff of that county constitute the license board, and the county clerk or other person designated by the license board is the clerk thereof, in the respective counties of this state.

3. (d)8. In a county whose population is 400,000 or more, the license board shall not grant any license to a petitioner for the purpose of operating a house of ill fame or repute or any other business employing any person for the purpose of prostitution.


105. REYNOLDS, supra note 102, at 98.

106. See id. at 99.
A. Location of Brothels

The choice of location, particularly the proximity to a major roadway, railroad, large city, or resort town, seems to be important to the survival and prosperity of a brothel.\(^\text{107}\) The highways provide the brothels with a clientele of truck drivers, hunters, and other traveling men en route to the five surrounding states.\(^\text{108}\) The Cities of Elko and Winnemucca, both situated on Interstate 80, allow prostitution within the city limits, while in the rest of the county prostitution is prohibited in the unincorporated areas.\(^\text{109}\) The busiest brothels are those near to a large city such as Reno or Las Vegas or a resort town like Lake Tahoe. Since both Las Vegas and Reno prohibit prostitution within the city limits,\(^\text{110}\) the operation of a brothel near these cities has been very profitable.\(^\text{111}\)

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107. See id. at 103, 107. According to Reynolds, the towns along the railroads have brothels within the town boundaries, and many are located in the towns themselves, as opposed to in the rural areas or outskirts of town. In many of these towns the brothels are located on "the wrong side of the tracks," away from the main part of town, but convenient to railroad workers. Often the houses are on unpaved streets away from other houses or buildings or on dead-end streets. Customers may have trouble finding these brothels since there are no signs pointing the way. Id.

108. See id. at 105-07. Interstate Highway 80 in the North and West, U.S. Highway 95 in the South and U.S. Highway 93 in the East all provide potential customers to the brothels, which are located along the highways, and in particular at major intersections. Id. at 103-07.

109. CITY CODE OF ELKO ch.9, § 4-9-2 & § 4-9-3 (1995) allow prostitution within a licensed brothel within a Restricted Commercial District. This chapter also provides for work permit registration and medical examination. In addition, chapter 10, on the licensing and regulation of sexually oriented business, defines and outlines the procedure for licensing these businesses.

The CITY OF WINNEMUCCA MUNICIPAL CODE ch. 5.24 (1996) establishes a Brothel Work Card system under which a licensed prostitute can work in a licensed brothel.

Also on U.S. 50 close to the Utah border, the City of Ely, in White Pine County, has an ordinance permitting prostitution. ELY CITY ORDINANCE 407 (1986) establishes a work card and health inspection system for prostitutes in licensed houses of prostitution. According to Brent Hutchings, the City Clerk/Administrator:

In the early days, prostitution was viewed as a way to saving the general public from crimes of rape and domestic violence. Today, the rape and domestic violence are all around us. There is more support in the City today not allowing prostitution within the City. The brothels have lost business to where the[re] are currently three brothels with two prostitutes each. In the 1950s and 1960s there were eight to twelve prostitutes each. They would hang out of windows yelling at passer byes to use their brothel. Now with the down turn in business, they are looking at going out of business. Letter from Brent Hutchings, City Clerk/Administrator, Ely City, Nev., to Nicole Bingham (Sept 15, 1997)(on file with author).

110. See LAS VEGAS MUN. CODE ch. 10.36, § 10.36.020 (1996) prohibits acts of prostitution or pandering, but § 10.36.010 defines an "order out corridor." This "order out corridor" is a specifically defined area within the city of Las Vegas. The LAS VEGAS MUN. CODE ch. 19.74, § 19.74.020 defines a Sexually Oriented Business as an adult bookstore, adult mini motion picture theater, adult motel, adult motion picture arcade, adult motion picture theater, adult paper rack, massage parlor, model studio, nude show, or sexual encounter center. REYNOLDS, supra note 102, at 107. According to Reynolds, there are several houses of prostitution that have airstrips close by to attract customers, but the proximity to an airstrip only seems to benefit the houses catering to the larger cities of Las Vegas or Reno. Reynolds says that the airstrips are not widely used except for those close to the Chicken Ranch near Las Vegas and the Mustang Ranch near Reno. Id. The Mustang Ranch I and II are the only sources of prostitution in Storey County and are located ten miles outside Reno. The Chicken Ranch, the nearest brothel to Las Vegas, is on the edge of Nye County. Along U.S.
The location of a brothel may determine the financial success of the brothel owner, but does not necessarily mean that prostitutes are better off under a system of regulated prostitution.

B. State and Local Law

Prostitution may no longer be per se criminal in Nevada but that does not mean that Nevada grants legal status to prostitution in general. Prostitution and solicitation remain illegal, as do pandering and living from the earnings of a prostitute. An exception is made for prostitution and solicitation of prostitution if it occurs within a licensed house of prostitution under the Nevada Revised Statute § 201.354. Article 19, Section 4 of the Nevada Constitution, which reserved the power of initiative and referendum to the people of each county or municipality, combined with Nevada Revised Statute § 244.345, which allows counties with a certain population size to apply for a license to run a house of “ill fame or repute,” better known as a house of prostitution, allow Nevada citizens to permit or prohibit prostitution at the county level.

The Supreme Court of Nevada, in *Nye County v. Plankinton*, held that Nevada Revised Statute § 244.345 repealed the common-law rule that houses of prostitution constitute a nuisance per se. In *Kuban v. McGimsey*, the court rejected a constitutional challenge to a Lincoln County ordinance prohibiting prostitution within the county and found that such an ordinance is within the power reserved for the people of its county by the Nevada Constitution. While the court was upholding a local ordinance prohibiting prostitution, it confirmed that the right to decide this issue is up to the counties as long as counties permit only licensed brothels.

Highway 50, outside Carson City, there are four brothels which draw customers from Reno and Lake Tahoe, both thirty to thirty-five miles away. Id. Another source of potential customers is a military base. The two bases near Las Vegas are close enough to the city so that brothels in the vicinity do not have to cater exclusively to a military clientele. But the Navy Air Base in the town of Fallon seems to be a major source of business for the brothels in that area. Id. at 107.

112. See NEV. REV. STAT. ANN. § 201.354 (Michie 1995) (allows for a penalty exception for a person who engages in or solicits in a licensed house of prostitution).

113. See NEV. REV. STAT. ANN. § 201.300 (Michie 1995) (prohibiting a person from inducing, persuading, encouraging, inveigling, enticing, or compelling a person to become a prostitute or to continue to engage in prostitution, to by threats or violence cause, induce, persuade, encourage, inveigle, entice, or compel a person to become an inmate of a house of prostitution); NEV. REV. STAT. ANN. § 201.310 (prohibiting placing a spouse in a brothel and includes this crime in the category of pandering punishable as a D felony); NEV. REV. STAT. ANN. § 201.330 (including detaining a person in a brothel because of debt in the definition of pandering); NEV. REV. STAT. ANN. § 201.340 (including furnishing transportation in the definition of pandering).

114. See NEV. REV. STAT. ANN. § 201.320 (Michie 1995) (prostitutes are not forbidden from living off their own earnings from prostitution).

115. See NEV. REV. STAT. ANN. § 201.354.

116. See NEV. REV. STAT. ANN. § 244.345 (Michie 1995).


118. *Kuban v. McGimsey*, 605 P.2d 623 (1980) (rejecting a Due Process challenge to the ordinance and finding that the county’s need to regulate brothels was sufficient to limit such businesses or ban them completely).

Since the choice whether to allow prostitution is left up to the counties themselves, there are variations among the local ordinances regarding prostitution. Currently, all seventeen county codes either permit and regulate or ban prostitution. Four counties prohibit prostitution (Carson City, Clark, Douglas, and Lincoln), six ban prostitution in the unincorporated areas of the county (Elko, Eureka, Humboldt, Pershing, Washoe, and White Pine), and seven counties permit prostitution in the county (Churchill, Esmeralda, Lander, Lyon, Mineral, Nye, and Storey).

There are also variations among counties in terms of the specific form of regulations within each county. Some county codes that allow prostitution have detailed rules concerning health, licensing, and other issues relating to prostitution. Nye County, for example, a rural county located in central Nevada, has a code that outlines a number of specific licensing requirements and restrictions. All houses of prostitution must display “one sign no larger than twenty-four square feet, to be located on the entrance of the house of prostitution and to contain the following words and no others: ‘Brothel’ or ‘House of Prostitution’ (name of the establishment).” This code not only has sign requirements, but also specifies that a licensed house of prostitution can have no more than three red exterior lights with a total wattage not exceeding two hundred watts per bulb. Nye County has the only code that mentions

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120. See generally Reynolds, supra note 102.
121. According to Reynolds, in 1982 all counties except for Eureka County had an ordinance on prostitution. See id. at 96. All seventeen counties currently have codes on prostitution. See infra notes 124-26.
123. The counties that prohibit prostitution in the unincorporated areas of the county are: Elko County, Elko County Code ch. 7, § 7-1-6 (1994); Eureka County, Eureka County Code ch. 9.16, § 9.16.010 (1988); Humboldt County, Humboldt County Code ch. 5.08, § 5.08.030 (1994), Pershing County, Pershing County Ordinance 53 (1972); Washoe County, Washoe County Code 50.238-50.242 (1995); and White Pine County, White Pine County Ordinance 106 (1980) (amending the code by adding a new chapter, ch. 10.28, on prostitution). But see Humboldt County Code ch. 17.30 (General Commercial District) & ch. 17.68 (Conditional Use Permits).
124. The counties that permit prostitution in the county are: Churchill County, Churchill County Code ch. 5.20, §§ 5.20.010-5.20.280 (1997); see also Churchill County Ordinance 34 (1978) and (1974); Esmeralda County, Esmeralda County Ordinance 124 (1972); Lander County, Lander County Code ch. 5.16, §§ 5.16.010-5.16.140 (1994); Lyon County, Lyon County Code ch. 3, §§ 5.03.01-5.03.17 (1992); Mineral County, Mineral County Code ch. 5.12, §§ 5.12.010-5.12.500 (1980); Nye County, Nye County Ordinance ch. 9.20, §§ 9.20.010-9.20.290; see also Nye County Ordinances 157 (1994), 175 (1995), 183 (1996), and 187 (1995) (amending the Nye County Code ch. 9.20); and Storey County, Storey County Code ch. 5.16, §§ 5.16.010-5.16.200 (1991).
126. See Nye County Code, supra note 124, at § 9.20.130.
127. Id. at § 9.20.130(c)(1). The Nye County Code ch. 9.20, § 9.20.130(d)(8) requires the use of condoms in a house of prostitution, and a sign stating “CONDOMS ARE MANDATORY” must be conspicuously displayed.
128. See id. at § 9.20.130(d)(4).
male prostitutes. Two other central Nevada counties, Mineral and Churchill, prohibit male employees in licensed houses of prostitution except for maintenance and repair work.

A Board of County Commissioners holds a significant amount of power to issue requirements and revoke licenses. Local sheriffs control unincorporated parts of a county, and public officials often have their own extralegal rules which they apply to prostitutes. Some of those rules involve regulating when prostitutes go into town, changing employment, or discouraging freelancing and promoting control over prostitutes. In addition to these rules, the madam who runs the individual brothel may have her own set of rules concerning procedure and conduct within the brothel. In incorporated towns, the local chief of police usually sets the rules, which are generally followed by the city council.

C. Health

The most heavily regulated area of prostitution is health. Both the Nevada Statutes and the Nevada Administrative Code require people engaged in prostitution to submit to HIV testing. A Nevada statute requires anyone who is arrested for violating Nevada Revised Statute § 201.354, which prohibits engaging in prostitution or solicitation except in a licensed house of prostitution, to submit to a State Board of Health HIV test and receive the results. While this regulation may protect both the prostitute and the patron, it seems to be primarily concerned with keeping prostitution contained inside brothels. A person who engages in prostitution, including a prostitute in a licensed brothel, or solicitation after testing positive for exposure to HIV is guilty of a class B felony and will be punished by imprisonment for a minimum of two and a maximum of ten years, a fine of $10,000, or both under Nevada Revised Statute § 201.358.

129. See id. at § 9.20.020. This definition section of the code specifies that "prostitution means a male or female person who for a fee engages in sexual intercourse, oral-genital contact or any touching of the sexual organs or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either person."

130. See MINERAL COUNTY CODE, supra note 124, at § 5.12.430; CHURCHILL COUNTY CODE, supra note 124, at § 5.20.190. The Churchill County code in the same section also prohibits a male from residing on the premises.

131. See REYNOLDS, supra note 102, at 92.

132. See id. at 92.

133. See id.

134. See id.

135. See NEV. REV. STAT. ANN. § 201.356 (Michie 1995); see also NEV. ADMIN. CODE § 441.140 (1996) (allowing a person who is authorized to draw blood pursuant to NRS 652.210 to do so on behalf of the arresting law enforcement officer); NEV. ADMIN. CODE § 441.150 (1996); NEV. ADMIN. CODE § 441A.300 (1996) (allowing for the health authority to disclose information of a personal nature to a number of people, including the person who has been exposed, the parent or legal guardian, health care provider, employer, person in charge of a medical facility, school, child care facility, correctional facility, or licensed house of prostitution).

136. See NEV. REV. STAT. ANN. § 201.358 (Michie 1995).
penalty of imprisonment will probably do little to protect a prostitute who works in a licensed brothel from being exposed to a customer, also known as a john, who is HIV positive and who either does not know it or who knows it but continues to frequent legal brothels.

In addition to these statutes, the Nevada Administrative Code establishes a number of regulations specifically targeted at prostitutes which require them to submit to invasive procedures. The Code requires a person seeking employment as a prostitute in a licensed house of prostitution to submit to a medical lab test for HIV, syphilis, and gonorrhea, monthly HIV and syphilis tests, and weekly gonorrhea and chlamydia tests. The Code requires a person employed as a prostitute in a licensed house of prostitution to require a patron to use a latex prophylactic. In addition, the Code requires the person in charge of a licensed house of prostitution to post a health notice and to report the presence of a communicable disease to the health authority. While these regulations are meant to serve as protection, the question of who they are meant to protect remains open.

V. THE NEVADA MODEL IN TERMS OF THE PROSTITUTION DEBATE

A. Decriminalization v. Legalization

Both those advocating the prostitution-as-work position and those advocating the prostitution-as-exploitation position agree that

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137. Human Immunodeficiency Virus (HIV) causes the AIDS (Acquired Immunodeficiency Syndrome) and can be detected through a series of two blood tests. See TABER’S CYCLOPEDIC MEDICAL DICTIONARY 915, 53-55 (18th ed. 1997).

138. Syphilis is a venereal disease usually transmitted by sexual contact and characterized by symptoms such as lesions, headaches, fever, and malaise. Relapses are frequent and the disease may exist without symptoms for years. A diagnosis for syphilis is based on three procedures: microscopic, biopsy, and serologic tests for syphilis. Since a person who contracts gonorrhea may also have been exposed to syphilis and the symptoms of gonorrhea may occur first, it is important to test for syphilis for four months after treatment for gonorrhea. See TABER’S CYCLOPEDIC MEDICAL DICTIONARY, supra note 137, at 1891-92.

139. Gonorrhea is a contagious inflammation of the genital mucous membrane of either sex caused by infection by the gonococcus. The symptoms in men include a yellow discharge from the penis, and painful, slow urination. For women, the symptoms include urethral or vaginal discharge, painful or frequent urination, lower abdominal pain, and acute pelvic inflammatory disease. Since this disease may be asymptomatic in both men and women, a serological test for syphilis should be given before any antibiotic treatment is started, as it may mask a syphilis infection. See TABER’S CYCLOPEDIC MEDICAL DICTIONARY, supra note 137, at 813.

140. Chlamydia is a type of intracellular parasite which has three species. The C. Trachomatis organism is the most common sexually transmitted pathogen in industrialized countries. Men with this infection experience urethritis and penile discharge. Women experience urethral or vaginal discharge, painful or frequent urination, lower abdominal pain, or acute pelvic inflammatory disease which may result in infertility. To diagnose chlamydia a test for chlamydia-specific antibodies is given. See TABER’S CYCLOPEDIC MEDICAL DICTIONARY, supra note 137, at 368.


142. See NEV. ADMIN. CODE §§ 441.130, 441A.805 (1996). These sections state that each person employed as a prostitute in a licensed house of prostitution shall require each patron to wear and use a latex prophylactic while engaging in sexual intercourse, oral-genital contact, or any touching of the sexual organs or other intimate parts of a person.

decriminalization, rather than legalization, is for the most part the correct approach. Legalization usually means some form of state-regulated prostitution, whereas decriminalization means the removal of laws prohibiting prostitution. Some opponents of prostitution advocate decriminalization for prostitutes but continued criminalization for pimps and johns. Even those who advocate this position agree that arresting prostitutes is an ineffective way to curb prostitution and secondarily victimizes women. Prostitution, with the exception of Nevada and a brief period of regulation in St. Louis, has not been regulated by legislation in the United States. State and local governments have spent thousands of tax-payer dollars in law enforcement efforts to eradicate it with little success. Theorists and supporters on both sides of the debate advocate decriminalization to prevent the frequent harassment, stigmatization, and violence perpetrated against prostitutes.

Prostitutes’ rights organizations advocate decriminalization because of their basic belief that there is nothing wrong with prostitution, and that women who choose to engage in this type of work should have the same rights and protection as other workers. In the opinion of Priscilla Alexander, a co-founder of COYOTE:

Decriminalization of prostitution and the regulation of pimping and pandering, it seems to me, offers the best chance for women who are involved in prostitution to gain some measure of control over their work. It would make it easier to prosecute those who abuse prostitutes, either physically or economically, because the voluntary, non-abusive situation would be left alone. Decriminalization allows for the possibility that the lives of prostitutes can become less dangerous.

Decriminalization would reduce the stigma attached to prostitution and prostitutes and allow them to better bargain for the rights and protection they deserve. Supporters of the prostitution-as-work perspective oppose legalization in the form of state enforced regulations unless they regulate third parties and improve the working conditions of prostitutes.

Kathleen Barry, a proponent of the prostitution-as-exploitation theory, also advocates the decriminalization of prostitution. In 1995, Barry revised her previous position on decriminalization from decriminalization for prostitutes


145. A Coalition Against Trafficking in Women brochure states it believes “in depenalizing the prostitute, penalizing the customer and anyone who promotes sexual exploitation, particularly pimps and procurers.” See Fechner, supra note 63, at 48, 52.

146. See Pivar, supra note 36, at 52-57.

147. See id.

and customers to decriminalization for only prostitutes and continued criminalization for customers.\footnote{149. See Barry, supra note 59, at 298.}

In the late 1970's, writing Female Sexual Slavery before a feminist movement developed to confront prostitution, I proposed decriminalization as the appropriate legal strategy to confront the sexual enslavement of women. Concerned with women's victimization by police under conditions where prostitution is criminalized, and with pimping that produces slavery of women in prostitution, I saw the urgent need to take the laws off prostitute women, as the abolitionists have argued, without promoting prostitution as the regulationists do. But at that time my proposal to decriminalize prostitution implicitly meant decriminalizing men who buy women's bodies. The error in proposing blanket decriminalization was that it decriminalizes the customers as well as the prostitute, leaving the customer, the direct perpetrator of sexual exploitation, virtually sanctioned.\footnote{150. Id. at 298.}

Barry believes that this approach would render the customer, not the prostitute, the criminal. At the same time, she proposes that prostitutes be recognized as victims of sexual exploitation by the customer.\footnote{151. See id.} Opponents of prostitution, such as Barry, reject the idea that decriminalization is necessary so that prostitution can be recognized as a valid form of work. In fact, Barry believes that using the term "sex work" is a sign of hopelessness when used by women in prostitution who would leave it if they were able.\footnote{152. See id. at 296.} She states that "sex work language has been adopted out of despair, not because these women promote prostitution but because it seems impossible to conceive of any other way to treat prostitute women with dignity and respect than through normalizing their exploitation."\footnote{153. Id.} Opponents of prostitution argue that prostitution is not inevitable and that the way to stop it is to provide prostitutes with resources to enable them to escape prostitution and sustain themselves economically.\footnote{154. See id. at 297-99.}

Nevada uses a regulatory approach to prostitution rather than a decriminalization approach. Prostitution remains criminalized in Nevada, but local communities may permit a highly controlled and limited type of prostitution to exist in a limited geographical area. Under this model, the state enters into an area of regulating adult sexual relationships, an area that some question whether the state should regulate.\footnote{155. See generally Arlene Carmen & Howard Moody, Working Women: The Subterranean World of Street Prostitution (1985).} State and local statutory systems are not a recognition of prostitution as a viable employment option for anyone
who chooses it. Instead, these systems are an attempt to control an illegal activity that will not be eradicated despite the efforts of officials.

Under Nevada’s regulatory system, the “pimp/prostitute” relationship is redefined. It is clear that the only kind of prostitute who is legal and protected is the licensed brothel prostitute. Equally clear is that individual pimps controlling a number of prostitutes are replaced by a small number of legal brothel owners who are closely monitored by the government. The only legal pimps then become these limited numbers of brothel owners who have direct links with the local government. Some might consider this arrangement to mean that the state becomes the pimp by exploiting and abusing prostitutes through the system of licensed brothels. In any case, prostitutes are divided into two categories, licensed prostitutes who are legal, and all other prostitutes who are illegal. Therefore, non-licensed prostitutes do not gain anything from the regulatory system, since most prostitution remains illegal. Street prostitutes in the large cities are still more numerous than legal prostitutes in brothels, indicating that the regulatory scheme neither reduced prostitution nor brought the industry under state control.

B. Regulation or “Freedom” for Prostitutes

A regulatory system such as Nevada’s provides the state with a controlled means to sell women’s sexual services and eradicates choice for prostitutes themselves, rather than providing a way for prostitutes to gain a degree of control over their lives. The few references in articles about prostitution written either by prostitutes themselves or leading theorists, seem to confirm that being a licensed prostitute in one of the brothels in Nevada is not a liberating experience. Laura Anderson, a former brothel worker, states that the system results in mandatory exploitation. “Prostitutes are giving up too much autonomy, control, and choice over their work and lives. Because prostitutes are not allowed to work independently, or outside the brothel system, Nevada has essentially institutionalized third-party management with no other options.” According to another prostitute who worked at the Mustang Ranch outside of Reno, it was “just like a prison.”

Prostitutes under the brothel system are considered “independent contractors” and not full-time employees. Therefore, prostitutes do not gain the benefits of health care, vacation pay, retirement benefits, or any of the other benefits and rights many workers have. When a prostitute receives a license,

156. See BARRY, supra note 87, at 106.
157. See REYNOLDS, supra note 102, at 123-27 (describing the problem of street prostitution in Las Vegas).
158. CHAPKIS, supra note 72, at 163.
159. BARRY, supra note 59, at 232.
160. See CHAPKIS, supra note 72, at 163.
161. See generally DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, PUBLICATION 15-A (1997). A worker’s classification can effect both the employer and employee in terms of taxes, social security
she gives up some of her rights, including the right to freely travel when and wherever she wants, her right to refuse testing for sexually transmitted diseases, and her right to live and work where she wants. Prostitutes have little or no say in choosing their customers or the numbers of hours they work. A typical shift in a brothel is twelve to fourteen hours a day, every day for three weeks. A legal prostitute must share her earnings with the brothel, unlike the unlicensed prostitute who can try to work on her own and keep her earnings. By the time a prostitute is finished paying for all her expenses, her share of her earnings is about fifty percent. Each prostitute has to pay for room and board, maid services, supplies (including condoms), mandatory tipping for house employees, one dollar for each pair of panties washed, twenty dollars for the weekly venereal disease checkup, two dollars for each prescription, and any additional cost to have it filled. While a prostitute may be able to make a decent income if there is a steady stream of customers, it is clear that the brothel and the county benefit far more than the individual prostitute.

While legal prostitutes in Nevada may no longer suffer the stigma of being criminals, they are stigmatized by the licensing scheme and the widespread belief that prostitutes are the source of disease. Many prostitutes do not want to risk further stigmatization by going public as a prostitute and obtaining a license, or give up their freedom by working in a brothel, so the vast majority of prostitutes remain illegal. While legal prostitutes may not be stigmatized by arrests, they may suffer a similar stigma by being licensed. Just because something is not criminal does not necessarily remove the stigma of being considered an “other” woman or a source of “filth” and contagion. In fact, a significant part of the regulations passed surrounding prostitution concern the spread of disease.

C. Scapegoating Prostitutes for the Spread of HIV

The regulations requiring mandatory HIV tests for all licensed prostitutes serve to perpetuate the image of the prostitute as a transmitter of HIV and are an

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162. See generally BARRY, supra note 59; CHAPKIS, supra note 72; REYNOLDS, supra note 102.
163. See CHAPKIS, supra note 72, at 163.
164. See id.
165. See id. at 162-63; REYNOLDS, supra note 102, at 116.
166. See CHAPKIS, supra note 72, at 163; REYNOLDS, supra note 102, at 116.
167. See BARRY, supra note 87, at 113; BARRY, supra note 59, at 232; CHAPKIS, supra note 72, at 163;
REYNOLDS, supra note 102, at 116.
168. See generally REYNOLDS, supra note 102; CHAPKIS, supra note 72.
ineffective method of reducing the spread of the disease. Historically, prostitutes have been scapegoated for the spread of venereal disease.  

According to Kathleen Barry, “creating the illusion of controlling venereal disease in order to promote the prostitution market was the original basis of regulated prostitution.”Prostitutes were first blamed for the spread of syphilis and now for the spread of HIV and AIDS. By labeling prostitutes as the source of disease, policies and regulations focus on prostitutes as the infectors, instead of prostitutes as victims of infection.

Women have a higher likelihood of contracting AIDS from men than men from women. Furthermore, men who buy sex in prostitution are members of the very population that engages in the promiscuous sexual behavior that is likely to transmit it widely throughout the female population. Whenever men get HIV infected, they carry the virus to prostitutes and to wives and other women. In other words, it is men’s promiscuity that is responsible for the spread of AIDS to the population of women made available for male promiscuity.

While legal prostitutes and those arrested for illegal prostitution or solicitation are subjected to mandatory HIV tests, those who seek the services of licensed prostitutes are not subjected to any test. This scheme perpetuates the notion that prostitutes are to blame and underscores the fact that prostitution is still illegal except when it occurs within a regulated brothel.

VI. CONCLUSION

Whether one agrees with the prostitution-as-work or prostitution-as-exploitation perspective, the current condition of prostitution in the United States does not significantly benefit prostitutes. For the majority of major cities, prostitution is a problem that seems to endure despite numerous attempts to eradicate it. Law enforcement officials continue to chase prostitutes from neighborhood to neighborhood or attempt to contain them in a particular area of

170. See generally BARRY, supra note 59; CHAPKIS, supra note 72; JENNESS, supra note 64; PHETERTON, supra note 72.

171. BARRY, supra note 59, at 242. While Barry recognizes the connection between controlling prostitution and venereal disease she is criticized for her position on promoting condom use among prostitutes. “She thinks it is wrong to promote condom use among prostitutes because, she says, since condoms sometimes fail, giving them condoms increases the women’s risk.” Priscilla Alexander, Feminism, Sex Workers, and Human Rights, in WORES AND OTHER FEMINTS 90 (Jill Nagle ed., 1997). “Barry’s recommendation that we cease promoting condoms and instead rescue women from prostitution is not only absurd, it is genocidal for women who continue to work as prostitutes. The prostitutes who are the most vulnerable to HIV infection are usually the poorest women with the worst working conditions, which are conditions most countries ignore. Because no country treats prostitution as a ‘form of work like any other,’ none has used such tools as occupational safety and health regulations to improve prostitutes’ working conditions.” Id.

172. See generally CHAPKIS, supra note 72.

173. BARRY, supra note 59, at 243.

174. See NEV. REV. STAT. ANN. §§ 201.356, 201.358.
town. Licensed brothels and prostitutes may have allowed government to control the number of prostitutes in some rural areas of Nevada, but not in the major cities where prostitutes continue to work the streets. In Nevada and other parts of the United States two tiers of prostitutes remain: in Nevada, those who work in brothels and those who work the streets; and in the rest of the country, those who work for escort services or similar businesses and those who work the streets. Prostitutes continue to face harassment and violence on a daily basis. In sum, the current situation concerning prostitution needs to change. The question remains as to what model, if any, should be adopted.

Nevada's system of legalized prostitution may, at first glance, seem to legalize prostitution in the state of Nevada and be a model for prostitutes' rights groups and possibly for those who believe that prostitution is exploitation. However, the Nevada model fails to satisfy the concerns of either group. The system in Nevada only allows for a highly regulated and limited form of prostitution. Legalized prostitution may conjure up the image of women freely offering and rendering sexual acts wherever and whenever they please. But that image is far from the reality in Nevada. The individual counties dictate where, when, and to a certain extent how prostitutes are to perform their services. Since prostitutes are considered independent contractors and not employees they do not enjoy the benefits that other workers who are employees enjoy.

In addition to far less freedom than the image of legal prostitution suggests, prostitutes in Nevada earn a meager living by the time they pay for all the expenses they are required to pay. These prostitutes do not earn an adequate income even though prostitution, in a limited sense, is condoned by the government. A prostitute, unlike a McDonald's cashier or a waitress, is essentially a prisoner in a brothel for a three-week shift and cannot collect unemployment insurance if she is fired. While all three workers have to follow health regulations, only a prostitute must submit to regular physical examinations and blood tests. Legal prostitutes may have more medical check-ups than most illegal prostitutes and non-prostitutes, but these mandated check-ups are meant to protect the customer from infection by a prostitute, not a prostitute from a customer. Licensed prostitutes in Nevada appear to gain little by the limited governmental permission to engage in prostitution and suffer almost all of the disadvantages of being an exploited worker in a capitalist society.

Both prostitution-as-work and prostitution-as-exploitation perspectives fail to discuss the work-as-exploitation perspective. Prostitution does not occur in a vacuum but instead takes place, at least in the United States, within a capitalist society where exploitation is often an essential component. The majority of workers, whether they work in the sex industry or not, are exploited. The prostitution-as-work perspective argues that prostitution should be considered as work like any other job but does not discuss the fact that work, particularly for women, is always problematic. The percentage of women in the waged labor force continues to increase in most of world but women still earn less than their male counterparts and are increasingly a larger portion of the world's
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poor. The prostitution-as-exploitation perspective, on the other hand, also fails to realize that individuals who leave prostitution to search for other work will still be exploited. As one sex worker comments:

I believe that no one should be forced to do any type of work they detest or find degrading in order to keep food in their stomachs or a roof over their heads. Yet most of the arguments against sex work are not criticisms of 'wage slavery' or of economic systems that exploit the labor of some for the benefit of others. A thoroughgoing critique of the global economic system would have to encompass not only men who exploit poor women for sex but also residents of wealthy nations who benefit from the cheap factory and agricultural labor of poor residents of developing countries—exactly the types of labor that are often proposed as worthy alternatives to sex work.

Thus, any analysis of prostitution that fails to include the larger context of capitalism and exploitation falls short of a realistic and comprehensive analysis. Neither perspective, for the most part, discusses or mentions male, lesbian, bisexual, transvestite, or transgender prostitution.

In addition, any analysis that assumes that no woman can ever choose to engage in prostitution is too simplistic. Proponents of prostitution-as-exploitation do not discuss the possibility of some prostitutes, or others working in the sex industry, enjoying and choosing to perform that kind of work. Prostitutes’ rights theorists do not deny that forced prostitution exists or that some prostitutes dislike working as prostitutes. They do argue that for those who do not fall into those categories sex work is often better paying, more flexible, and puts women more in control than other forms of work. This argument is not confirmed under the Nevada model. Many prostitution-as-work adherents also emphasize the need to accept expressions of sexuality that are considered beyond the mainstream or “sex positive” thinking. Carol Queen, a

175. See Joni Seager, The State of Women in the World Atlas 66-69, 78-79, 118-119, & 121 (1997). Women account for approximately 36% of the paid labor force. More women work for pay but most are paid less than men and jobs defined as women’s work tend to be low in pay and status.


177. See generally Cudere L. Snell, Young Men in the Street: Help-Seeking Behavior of Young Male Prostitutes (1995). Snell reports that the scant national attention spent on the more than two million runaway children and young adults is focused on females rather than males. According to the 1983 Committee on the Judiciary, more than half of the reported runaways are male, which contradicts the long held belief that more females than males run away from home. Id. at 1.


179. See Carol Queen, Sex Radical Politics, Sex-Positive Feminist Thought, and Whore Stigma, in Whores and Other Feminists, supra note 171, at 125-35. Someone who is sex positive is open to all forms of sexual expression as long as it is consensual. According to Queen, “‘sex-positive feminists,” as many of us have taken to calling ourselves, embrace the feminist analysis of gender inequality, but challenge the silence or conservative positions of Dworkin and MacKinnon-influenced feminism on sexual issues. Many sex-positive feminists are veterans of the feminist sex wars over pornography and S/M, and many are current or former sex workers. See id. at 128.
self-identified sex positive sex industry worker, argues that if anti-sex-work activists wanted to improve the lives of sex workers, they would encourage sex positive discussions. While attitudes towards sexual expression may be slow to change, there is one legal shift that would significantly alter the lives of prostitutes on a daily basis.

Decriminalization of prostitution would help provide prostitutes the same legal protection as other workers. It should be seen as a first step in any program directed at helping prostitutes radically change their lives whether someone agrees with the prostitution-as-work or -as-exploitation theory. Decriminalization would allow a prostitute to seek protection under the laws that already exist since it would no longer be a criminal act. It would also allow prostitutes to legally enter into the discussion of employee versus independent contractor status. In Nevada the status of independent contractor prevents legal prostitutes from asserting rights as employees. Decriminalization may also serve to decrease the stigmatization of being a prostitute. Looking at prostitution from a societal context, the necessities of housing, education, job training, and health care must be available and accessible in order for a prostitute to leave prostitution or remain in prostitution and live a safer and more stable life.

If exploitation is no longer regarded as unique to prostitution, but recognized as inherent to U.S. society and its institutions, then perhaps the prostitution debate could offer viable solutions to the current situation. Adopting the regulatory system in Nevada as a model for the rest of the United States would not be the answer. Like many movements that propose “band-aid” solutions, those who advocate for legalization of prostitution are simply seeking another public and legal sanction of exploitation. Organizations such as WHISPER advocate for public awareness of the violence perpetrated against prostitutes, as within the larger context of violence against, and inequality of, women. Programs and policies that aid prostitutes individually, through crisis centers and shelters, should also be seen as working towards effecting social change in general. The debate over prostitution and the question of legalization or decriminalization should be considered as part of the larger debate over capitalism. Prostitution may be a clearer example of sexual exploitation to

180. See id. at 129.

If these [anti-sex-work] activists truly wanted to improve the lot of sex workers (which, of course, they don’t; they merely want to do away with the sex industry) they would insist upon thorough and nonjudgmental sex information for clients as well as whores. One basic piece of information would be that women—and whores—do not exist to be sexually used by men, but that any sexual interaction, including a paid one, benefits from negotiation. This would facilitate the climate of respect that anti-sex work demagogues claim is absent in a paid act of sexual entertainment or gratification. The paucity of sex-positive discussion about what is possible in a commodified context often negatively affects sex workers themselves.

In fact, when we whores see a client or when a peepshow worker or stripper, interacts with a customer, the presence or absence of respect has much to do with how sex-positive the client or customer is—and something to do with our own sex-positivity. It also depends upon each person’s degree of self-respect and presence or absence of sexual shame.

Id.
advocates of prostitution-as-exploitation, but it is certainly not the only one. Under the work-as-exploitation perspective prostitution would be characterized as exploitative along with most other forms of work in a capitalist society. The discourse of sexuality which prostitutes' rights advocates point out is lacking in the prostitution-as-exploitation perspective should not overshadow the discourse of economic exploitation. Instead these discussions should be considered as both separate and intertwined. In the words of one sex worker: "the peepshow does not subvert the culture, it mirrors it." 181
