

Trafficking, Prostitution, and Inequality^a

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ROMEO

[F]amine is in thy cheeks,
Need and oppression starveth in thine eyes,
Contempt and beggary hangs upon thy back;
The world is not thy friend nor the world's law;
The world affords no law to make thee rich;
Then be not poor, but break it, and take this.

APOTHECARY

My poverty, but not my will, consents.

ROMEO

I pay thy poverty, and not thy will.*

No one defends trafficking. There is no pro-sex-trafficking position any more than there is a public pro-slavery position for labor these days. The only issue is defining these terms so nothing anyone wants to defend is covered. It is hard to find overt defenders of inequality either, even as its legal definition is also largely shaped by existing practices the powerful want to keep.

Prostitution is not like this. Some people are for it; they affirmatively support it. Many more regard it as politically correct to tolerate and oppose doing anything effective about it. Most assume that, if not exactly desirable, prostitution is necessary or inevitable and harmless. These views of prostitution lie beneath and surround any debate on sex trafficking, whether prostitution is distinguished from trafficking or seen as indistinguishable from it, whether seen as a form of sexual freedom or understood as its ultimate denial. The debate on the underlying reality, and its relation to inequality, intensifies whenever doing anything effective about either prostitution or trafficking is considered.

^a This speech was originally given on Jan. 5, 2009, in Bihar, India. Many of the women whose situations are evoked in it attended; some spoke as well. The text memorably learned from later presentations in Johannesburg, Cape Town, Buenos Aires, Basel, and Cambridge, U.K., among others. Whitney Russell was helpful and insightful. Marijn Heemskirk, Nadia Ahmad and Rasmus Naeyé helped with specific research problems. Lisa Cardyn's exceptional research assistance was essential to the published version. Max Waltman provided the research and exacting translations of the Swedish and Norwegian materials and ongoing collegial dialogue. Since 1980, it has been women in prostitution who have taught me the most. Time to finish the writing and final research was supported in part by the Diane Middlebrook and Carl Djerassi Visiting Professorship in Gender Studies at Cambridge University in early 2011. The University of Michigan Law Library, as always, was the sine qua non of the work.

* WILLIAM SHAKESPEARE, *ROMEO & JULIET* act 5, sc. 1.

Wherever you are in the world, the debate, and usually the law as well, is organized by five underlying moral distinctions that divide the really bad from the not-so-bad. Adult is distinguished from child prostitution, indoor from outdoor, legal from illegal, voluntary from forced, and prostitution from trafficking. Child prostitution is always bad for children; adult prostitution is not always bad for adults. Outdoor prostitution can be rough; indoor prostitution is less so. Illegal prostitution has problems that legal prostitution solves. Forced prostitution is bad; voluntary prostitution can be not-so-bad. Trafficking is really, really bad. Prostitution—if, say, voluntary, indoor, legal, adult—can be a tolerable life for some people. Measured against known facts of the sex trade, these purported distinctions emerge as largely illusory, occupying instead points of emphasis on common continua with convergence and overlap among the dimensions. These moral distinctions are revealed as ideological, with consequences for law, policy, and culture that are real.

Within or across nations, the fundamental positions in this debate—to polarize somewhat, but this debate is remarkably polarized—are the sex work model and the sexual exploitation approach.¹ When prostitution is termed “sex work,” it is usually understood as the oldest profession, a cultural universal, consensual because paid, stigmatized because illegal, a job like any other denied that recognition, love in public, a form of sexual liberation.² Sex workers are expressing what its academic advocates term their

¹ Proponents of the sex work position include the Sex Worker Education and Advocacy Taskforce (“SWEAT”) in South Africa; Durbar Mahila Samanwaya Committee (“DMSC”) in India; the New Zealand Prostitutes Collective (“NZPC”) in New Zealand; Call Off Your Old Tired Ethics (“COYOTE”) in the United States; the Initiative Against Trafficking in Persons, also based in the U.S.; and the international Network of Sex Work Projects (“NSWP”), founded in 1991. The sexual exploitation approach is exemplified internationally by the Coalition Against Trafficking in Women (“CATW”) and Equality Now, as well as by Apne Aap in India, Embrace Dignity in Cape Town, South Africa, and similar organizations worldwide. Some U.S. groups pursuing this work are Girls Educational & Mentoring Services (“GEMS”), New York; End Demand Illinois, a campaign of the Chicago Alliance Against Sexual Exploitation (“CAASE”); Council for Prostitution Alternatives (“CPA”), Portland, Or.; Breaking Free, Minneapolis, Minn.; and Refuge House, Inc., Tallahassee, Fla.

² Carol Leigh, who also calls herself “Scarlot Harlot,” says she coined the term “sex work” in its contemporary usage. See Carol Leigh, *Inventing Sex Work*, in *WHORES AND OTHER FEMINISTS* 223 (Jill Nagel ed., 1997). Representative influential exponents of various facets of this view—among them activists, policymakers, and academics in a voluminous literature—are listed chronologically. See, e.g., Lars O. Ericsson, *Charges Against Prostitution: An Attempt at a Philosophical Assessment*, 90 *ETHICS* 335 (1980); David A.J. Richards, *Commercial Sex and the Rights of the Person: A Moral Argument for the Decriminalization of Prostitution*, 127 *U. PA. L. REV.* 1195 (1979); Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* 267 (Carole S. Vance ed., 1992); Margo St. James, *The Reclamation of Whores*, in *GOOD GIRLS/BAD GIRLS: FEMINISTS AND SEX TRADE WORKERS FACE TO FACE* 81 (Laurie Bell ed., 1987); Valerie Jenness, *From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem*, 37 *SOC. PROBS.* 403 (1990); GAIL PHETERSON, *THE PROSTITUTION PRISM* (1996); Priscilla Alexander, *Bathhouses and Brothels: Symbolic Sites in Discourse and Practice*, in *POLICING PUBLIC SEX: QUEER POLITICS AND THE FUTURE OF AIDS ACTIVISM* 221 (Ephen Glenn Colter ed., 1996); Priscilla Alexander, *Making a Living: Women Who Go Out*, in *WOMEN’S EXPERIENCES WITH HIV/AIDS: AN INTERNATIONAL PERSPECTIVE* 75

“agency.” Of the many meanings of this slippery piece of jargon that no one seems to think they have to define, agency here appears to mean freely choosing, actively empowering, deciding among life chances, asserting oneself in a feisty fashion, fighting back against forces of femininity, resisting moralistic stereotypes. Some who take this view see prostitution as an expression of agency, sometimes as potentially if not always actually a model of sex equality. The agentic actors, sex workers, most of them women, control the sexual interaction, are compensated for what is usually expected from women for free, and have independent lives and anonymous sex with many partners—behaviors usually monopolized by men, hence liberating for women. Some women graduate to the higher masculine role of selling other women to men for sex—which strains sisterhood, if perhaps less than women who have never been and never will be part of the sex industry effectively defending pimping does.

By contrast, the sexual exploitation approach sees prostitution as the oldest oppression, as widespread as the institutionalized sex inequality of which it is analyzed as a cornerstone. Prostitute, the noun, is seen to misleadingly and denigratingly equate who these people are with what is being done to them; the past participle verb form, by contrast, highlights the other people and social forces who are acting upon them. Based on information

(Lynell D. Long & E. Maxine Ankrah eds., 1996); Priscilla Alexander, *Feminism, Sex Workers and Human Rights*, in *WHORES AND OTHER FEMINISTS*, *supra*, at 83; Ann D. Jordan, *Commercial Sex Workers in Asia: A Blind Spot in Human Rights Law*, in 2 *WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW* 525 (Kelly D. Askin & Doreen M. Koenig eds., 2000); CAROL LEIGH, *UNREPENTANT WHORE: COLLECTED WORKS OF SCARLOT HARLOT* (2004); Carole Vance, *Innocence and Experience: Melodramatic Narratives of Sex Trafficking and Their Consequences for Health and Human Rights* (2004) (unpublished paper delivered as part of a panel on Sex Slaves and Media at Columbia University, New York, N.Y.) (on file with author); Belinda Brooks-Gordon, *Clients and Commercial Sex: Reflections on Paying the Price: A Consultation Paper on Prostitution*, *CRIM. L. REV.* 425 (2005); Ronald Weitzer, *The Growing Moral Panic over Prostitution and Sex Trafficking*, 30 *CRIMINOLOGIST* 1 (2005); BELINDA BROOKS-GORDON, *THE PRICE OF SEX: PROSTITUTION, POLICY AND SOCIETY* (2006); LAURA MARIA AGUSTÍN, *SEX AT THE MARGINS: MIGRATION, LABOUR MARKETS AND THE RESCUE INDUSTRY* (2007); Prabha Kotiswaran, *Born unto Brothels—Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area*, 33 *LAW & SOC. INQUIRY* 579 (2008); Marlise Richter, *Sex Work, Reform Initiatives and HIV/AIDS in Inner-City Johannesburg*, 7 *AFR. J. AIDS RES.* 323 (2008); Marlise Richter, *Pimp My Ride for 2010: Sex Work, Legal Reform and HIV/AIDS*, 7 *GENDER & MEDIA DIVERSITY J.* 80 (2009); Jo DOEZEMA, *SEX SLAVES AND DISCOURSE MASTERS* (2010); Ronald Weitzer, *The Movement to Criminalize Sex Work in the United States*, 37 *J.L. & SOC'Y* 61 (2010); Ronald Weitzer, *The Mythology of Prostitution: Advocacy Research and Public Policy*, 7 *SEXUALITY RES. & SOC. POL'Y* 15 (2010). Pro-prostitution writings have also been collected in several anthologies, including *A VINDICATION OF THE RIGHTS OF WHORES* (Gail Pheterson ed., 1989); *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* (Frédérique Delacoste & Priscilla Alexander eds., 2d ed. 1998); *GLOBAL SEX WORKERS: RIGHTS, RESISTANCE, AND REDEFINITION* (Kamala Kempadoo & Jo Doezema eds., 1998); *WHORES AND OTHER FEMINISTS*, *supra*; *SEX FOR SALE: PROSTITUTION, PORNOGRAPHY, AND THE SEX INDUSTRY* (Ronald Weitzer ed., 2d ed. 2010). For an analysis taking this perspective on New Zealand, see *TAKING THE CRIME OUT OF SEX WORK: 'NEW ZEALAND SEX WORKERS' FIGHT FOR DECRIMINALISATION* (Gillian Abel et al. eds., 2010), and on Africa, see Chi Mgbaka & Laura A. Smith, *Sex Work and Human Rights in Africa*, 33 *FORDHAM INT'L L.J.* 1178 (2010).

from the women themselves,³ women in prostitution are observed to be prostituted through choices precluded, options restricted, possibilities denied. Although the full scope and prevalence of prostitution's arrangements, with all its varieties of transactional sex, is not known, use of this term reflects an evaluation of considerable information on the sex industry, not an *a priori* attribution of victim status. Prostitution here is observed to be a product of lack of choice, the resort of those with the fewest choices, or none at all when all else fails. The coercion behind it, physical and otherwise, produces an economic sector of sexual abuse, the lion's share of the profits of which goes to others. In these transactions, the money coerces the sex rather than guaranteeing consent to it, making prostitution a practice of serial rape. In this analysis, there is, and can be, nothing equal about it. Prostituted people pay for paid sex. The buyers do not pay for what they take or get. It is this, not its illegality, that largely accounts for prostitution's stigma. People in prostitution, in this view, are wrongly saddled with a stigma that properly belongs to their exploiters.

Each account has a corresponding legal approach. The sex work approach favors across-the-board decriminalization with various forms of legalization, usually with some state regulation, sometimes beginning with unionization. Its goal is to remove criminal sanctions from all actors in the sex industry so that prostitution becomes as legitimate as any other mode of livelihood. The Netherlands, Germany, New Zealand, Victoria in Australia, as well as ten counties in Nevada, United States, have adopted versions of this approach, although some are retreating from it.⁴

³ Melissa Farley of Prostitution Research & Education in San Francisco, California, has conducted authoritative studies with colleagues worldwide based largely on the testimony of prostituted people. See, e.g., MELISSA FARLEY, PROSTITUTION AND TRAFFICKING IN NEVADA: MAKING THE CONNECTIONS (2007) [hereinafter FARLEY, NEVADA]; Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRACTICE 33 (2003) [hereinafter Farley et al., *Nine Countries*]; Melissa Farley et al., *Prostitution in Five Countries: Violence and Posttraumatic Stress Disorder*, 8 FEMINISM & PSYCHOL. 405 (1998) [hereinafter Farley et al., *Five Countries*]. This methodology is also used, for example, by Evelina Giobbe, *Prostitution: Buying the Right to Rape*, in RAPE AND SEXUAL ASSAULT III: A RESEARCH HANDBOOK 143 (Ann Wolbert Burgess ed., 1991) and Susan Kay Hunter, *Prostitution is Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91 (1993).

⁴ For the Netherlands, see Staatsblad van het Koninkrijk der Nederlanden 464, Wet van 28 oktober 1999 tot wijziging van het Wetboek van Strafrecht, enige andere wetboeken en enige wetten (opheffing algemeen bordeelverbod) (Neth.); see also WORKING GROUP ON THE LEGAL REGULATION OF THE PURCHASE OF SEXUAL SERVICES, PURCHASING SEXUAL SERVICES IN SWEDEN AND THE NETHERLANDS: LEGAL REGULATION AND EXPERIENCES 27–29 (2004) [hereinafter WORKING GROUP, PURCHASING SEXUAL SERVICES]. On the recent shift toward stricter regulation of licensed brothels, see JULIE BINDEL & LIZ KELLY, A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN 13 (2003) (quoting Mayor of Amsterdam, “it appeared impossible to create a safe and controllable zone for women that was not open to abuse by organised crime”). Prior research showed that 80% of women engaged in window prostitution in the Netherlands were illegal immigrants, possibly supporting strictures that resulted in a 35% decline in commercial sex establishments. See S. AFRICAN LAW REFORM COMM'N, SEXUAL OFFENSES: ADULT PROSTITUTION 128 (2009) [hereinafter SALRC, SEXUAL OFFENSES]. Similar

The sexual exploitation approach seeks to abolish prostitution. The best way to end this industry is debated. But criminalizing the buyers—the demand—as well as the sellers (pimps and traffickers), while eliminating any criminal status for prostituted people—the sold—and providing them services and job training they say they want, is the approach being pioneered in Sweden,⁵ Iceland,⁶ and Norway,⁷ and recent changes in the U.K. that point in this direction.⁸ Movements in South Africa, which like South Korea⁹ re-

concerns underlay Amsterdam's municipal act—"Wet BIBOB"—authorizing local law enforcement to investigate businesses suspected of illegal activities, notably trafficking and money laundering, and to refuse to license dubious establishments, thereby leading to the closure of a number of Amsterdam's window brothels. See *Wet bevordering integriteitsbeoordelingen door het openbaar bestuur* [Act to Encourage Integrity Judgments by the Public Authorities] (2002) (Amsterdam, Neth.). A bill was introduced in 2010 in the Dutch Parliament to create a national framework for regulating prostitution. *Wet regulering prostitutie en bestrijding misstanden seksbranche* (voorstel van wet hangende onder dossiernummer 32 211) [Draft Bill for the Regulation of Prostitution and the Reduction of Abuses in the Sex Industry, pending under file number 32 211]. In Germany, an act effective January 1, 2002, deemed prostitution a legitimate occupation, legalizing promotion of sex for sale, pimping, and brothel operation. *Gesetz zur Regelung der Rechtsverhältnisse der Prostituierten* (Prostitutionsgesetz – ProStG) [Act Regulating the Legal Situation of Prostitutes] (Jan. 1, 2002) (F.R.G.). For signs of retreat from this policy, see JOACHIM RENZIKOWSKI, *REGLEMENTIERUNG VON PROSTITUTION: ZIELE UND PROBLEME* (2007) and *infra* note 107 and accompanying text. Prostitution was decriminalized in New Zealand by the Prostitution Reform Act (2003), available at <http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>. In Victoria, Australia, the Prostitution Control Act of 1994 legalized brothels and escort agencies. In Nevada, as of 1971, in unincorporated towns and cities, a county license board can grant licenses to individuals and businesses to maintain and work in legal brothels. See *NEV. REV. STAT.* § 244.345 (2009). Except when licensed, prostitution is a misdemeanor in the state. See *id.* § 201.354.

⁵ See *Lag om förbud mot köp av sexuella tjänster 405* (1998) ("A person who obtains casual sexual relations in exchange for payment shall be sentenced—unless the act is punishable under the Swedish Penal Code—for the purchase of sexual services to a fine or imprisonment for at most six months."). For the origin of the idea, see Catharine A. MacKinnon, *On Sex and Violence: Introducing the Antipornography Civil Rights Law in Sweden*, in *ARE WOMEN HUMAN? AND OTHER INTERNATIONAL DIALOGUES* 91 (2006), and Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, in *LETTERS FROM A WAR ZONE* 253 (1988). For subsequent modifications in the Swedish law, see *infra* notes 105–12 and accompanying text.

⁶ Iceland made the purchase of sexual services illegal in 2009. See *Lög um breytingu á almennum hegningarlögum*, nr. 19/1940, með síðari breytingum [Icelandic Law No. 54 of 2009] (2009) (Ice.).

⁷ As of January 1, 2009, citizens of Norway were prohibited from paying for sex domestically or abroad. See *Law Amending the Penal Code and Criminal Procedure Act of 1902*, No. 104 (2008) (Nor.), available at <http://www.lovdata.no/cgi-wift/ldes?doc=/all/nl-20081212-104.html>.

⁸ The U.K.'s new Policing and Crime Act (2009), amending the 2003 Sexual Offenses Act, prohibits buying any sex that is forced under its heading, Art. 14(1), the substance of the provision operatively defining any form of pimping, and including "any other form of coercion." *Policing and Crime Act*, 2009, c. 26 § 14 (Eng. & Wales).

⁹ South Korea's laws of March 22, 2004, are *Act on the Prevention of Prostitution and Protection of Victims Thereof*, Statutes of South Korea, Act No. 7212; and *Act on the Punishment of Procuring Prostitution and Associated Acts*, Statutes of South Korea, Act No. 7196 (criminalizing at article 21(1) "[a]nyone who sells sex or buys sex" while exempting "victims of prostitution" from punishment, at article 6(1)).

cently expressly criminalized buyers,¹⁰ a bill in Israel,¹¹ and debate in the Scottish Parliament¹² involve steps along similar lines. For the Swedish model, at least as crucial as criminalizing the buyers and enforcing that prohibition is decriminalizing prostituted people, which seems even more difficult to achieve.¹³ In a growing list of jurisdictions, the Swedish model is one initiative that, having shown promise, is increasingly favored by abolitionists at the principled and practical forefront of this movement.

Each person who confronts this issue decides which approach best reflects the reality known and experienced and best promotes the world one wants to live in. But apart from preferences, commitments, values, and politics, each position can be measured against evidence of what is known about the sex industry, including conditions of entrance, realities of treatment, and possibilities for exit.

Everywhere, prostituted people are overwhelmingly poor, indeed normally destitute. There is no disagreement on this fact. Urgent financial need is the most frequent reason mentioned by people in prostitution for being in the sex trade.¹⁴ Having gotten in because of poverty, almost no one gets out

¹⁰ See Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 § 11 (S. Afr.) (criminalizing purchase of sex from persons 18 years of age and older).

¹¹ See Rebecca Anna Stoil, *Knesset Bill Seeks to Ban Hiring a Prostitute*, JERUSALEM POST, Dec. 21, 2009, at 4.

¹² SCOTTISH PARLIAMENT, JUSTICE COMMITTEE, OFFICIAL REPORT OF 20 APRIL 2010 (Scot.), at cols. 2919, 2937, available at <http://www.scottish.parliament.uk/s3/committees/justice/or-10/jul10-1302.htm>. Ireland may consider the Swedish model, see, e.g., *Call to Follow Sweden on Vice Law Reform*, INDEPENDENT.IE, Feb. 7, 2011, available at <http://www.independent.ie/national-news/call-to-follow-sweden-on-vice-law-reform-2528518.html>, as may France, *France May Make Buying Sex Illegal*, RADIO FRANCE INTERNATIONALE (Mar. 31, 2011), <http://www.english.rfi.fr/france/20110331-france-may-make-buying-sex-illegal>. (“There is no such thing as prostitution which is freely chosen and consenting,” [Social Affairs Minister Roselyne] Bachelot declared. “The sale of sexual acts means that women’s bodies are made available, for men, independently of the wishes of those women.”).

¹³ New York State, for example, moved towards the Swedish model in 2007 by legislating penalties for buyers higher than for prostituted people, by creating the class B felony for “sex trafficking,” and by excluding victims from accomplice liability for trafficking. See N.Y. PENAL LAW §§ 230.34, 230.36 (2010). But the sold remained criminals. See *id.* § 230.00 (deeming “Prostitution” a class B misdemeanor).

¹⁴ See MIKE DOTTRIDGE, *KIDS AS COMMODITIES? CHILD TRAFFICKING AND WHAT TO DO ABOUT IT* 28 (2004) (“The principal reason why children, as well as adults, from particular communities end up being trafficked is the lack of alternative ways of earning a living for them and their families.”); CHANDRÉ GOULD & NICOLÉ FICK, REPORT TO THE SOUTH AFRICAN LAW REFORM COMMISSION: PRELIMINARY RESEARCH FINDINGS OF RELEVANCE TO THE DRAFT LEGISLATION TO COMBAT TRAFFICKING IN PERSONS AND LEGISLATION PERTAINING TO ADULT PROSTITUTION 12 (2007) (relating from focus group discussions with people in prostitution that “[i]n all cases financial responsibilities, or expectations from families or dependents led to entry into the industry”); SALRC, *SEXUAL OFFENSES*, *supra* note 4, at 27 (“None of us are doing this for pleasure. We are doing this for survival.”); SPECIAL COMM. ON PORNOGRAPHY & PROSTITUTION IN CAN., 2 *PORNOGRAPHY AND PROSTITUTION IN CANADA* 376–77 (1985) (“Overwhelmingly, prostitutes cite economic causes as the reason they are on the streets.”) [hereinafter 2 FRASER REPORT]; Farley et al., *Nine Countries*, *supra* note 3, at 34, 56, 65; Amber Hollibaugh, *On the Street Where We Live*, 5 *WOMEN’S REV. OF BOOKS* 1, 1 (Jan. 1988) (“The bottom line for any woman in the sex trades is economics. However a woman feels when she finally gets into the life, it always begins as survival—the rent, the kids, the drugs,

of poverty through prostituting.¹⁵ They are lucky to get out with their lives, given the mortality figures.¹⁶ It is not unusual for the women in the industry to get further into poverty, deeper in debt. In India, not only do they have few if any options to start with, landlords who keep them in houses charge exorbitant rent, take chunks of their earnings, and refuse to let them leave the house or do anything else, although they would make and keep more money pumping gas.

Disproportionately, people in prostitution are members of socially disadvantaged racial groups or lower castes.¹⁷ In Vancouver, prostituted women are First Nations women in numbers that far exceed their proportion of the population.¹⁸ In India, although caste is illegal, there are still prostitute

pregnancy, financing an abortion, running away from home, being undocumented, having a 'bad' reputation, incest—it always starts at trying to get by.”).

¹⁵ See, e.g., Dorchen Leidholdt, *Prostitution: A Violation of Women's Human Rights*, 1 CARDOZO WOMEN'S L.J. 133, 142 (1993) (“In the vast majority of cases, prostitution enables a woman at best to eke out a subsistence living.”); Cynthia Mayer, *The Last Trick: Prostitutes Who Want to Get Out Find That Someone Does Care*, CHI. TRIB., May 30, 1993, at 12 (“It’s a myth that women get rich doing this . . . I know of no one who is retired with a pension, sitting by a pool.”).

¹⁶ A Canadian study estimated a mortality rate as high as forty times the national average for prostituted women. See 2 FRASER REPORT, *supra* note 14, at 350 (1985). Homicide of women in prostitution vastly exceeds that of any other cohort in the United States. See Hilary Kinnell, *Murder Made Easy: The Final Solution to Prostitution?*, in SEX WORK NOW 141 (Rosie Campbell & Maggie O’Neill eds., 2006); Devon D. Brewer et al., *Extent, Trends, and Perpetrators of Prostitution-Related Homicide in the United States*, 51 J. FORENSIC SCI. 1101, 1101, 1107 (2006) (estimating conservatively that 2.7% of female homicide victims in the United States between 1982 and 2000 were prostitutes—the highest rate of victimization for any set of women ever studied); John J. Potterat et al., *Mortality in a Long-term Open Cohort of Prostitute Women*, 159 AM. J. EPIDEMIOLOGY 778, 783 (2004) (concluding, based on a study of prostituted women in Colorado Springs, Colo., that “[t]o our knowledge, no population of women studied previously has had a crude mortality rate, standardized mortality ratio, or percentage of deaths due to murder even approximating those observed in our cohort”); Jonathan Adam Dudek, *When Silenced Voices Speak: An Exploratory Study of Prostitute Homicide* (2002) (unpublished Ph.D. dissertation, Hahnemann University) (on file with author).

¹⁷ Research throughout the U.S. shows that African American women and girls are over-represented in the sex trade. See, e.g., JENNIFER JAMES, ENTRANCE INTO JUVENILE PROSTITUTION: FINAL REPORT 17, 19 (1980) (finding African American girls, 4.2% of the population in the geographic area of the study, were 25% of sample of prostituted girls interviewed in Seattle area ($n = 136$)). Interviews conducted with over 3000 “streetwalking prostitutes” for an outreach project in New York City found approximately half were African American, a quarter Hispanic, and the remaining quarter white. Barbara Goldsmith, *Women on the Edge*, NEW YORKER, Apr. 26, 1993, at 64, 65. A survivor activist states that “20 to 30% of prostitutes are women of color” in conditions exacerbated by racism and poverty. Carol Leigh, *Black Women and Prostitution*, 1 GAUNTLET 113, 113 (1994); see also Vednita Nelson, *Prostitution: Where Racism and Sexism Intersect*, 1 MICH. J. GENDER & L. 81, 83 (1993) (“Racism makes Black women and girls especially vulnerable to sexual exploitation and keeps them trapped in the sex industry.”).

¹⁸ See Melissa Farley et al., *Prostitution in Vancouver: Violence and Colonization of First Nations Women*, 42 TRANSCULTURAL PSYCHIATRY 242, 242, 249 [hereinafter Farley et al., *Vancouver*] (finding 52% of 100 prostituted women in Vancouver, British Columbia, of First Nations descent, a group constituting 1.7–7% of the population); 2 FRASER REPORT, *supra* note 14, at 347 (stating most prostitutes on prairies “are young native women”); see also Aboriginal Women’s Action Network, *Statement Opposing Legalized Prostitution & Total Decriminalization of Prostitution* (Dec. 2007) (opposing proposed legal brothels for 2010 Vancouver Olympics), available at <http://www.prostitutionresearch.com/racism/000153.html#more>. Sim-

castes. Women members of the Nat caste, for example, are selected to prostitute by men in their families; men of this caste are supposed to prostitute women to higher caste men.¹⁹ As this example suggests, the structure of who is in prostitution often derives from colonialism and persists after it.²⁰ No one chooses to be born into poverty or to stay in prostitution in order to stay poor. No one chooses the racial group or caste one is born into. No country freely chooses to be colonized or the post-colonial social pathologies that so often organize this industry. These circumstances, from the uncontested evidence of who the prostituted disproportionately are, most powerfully determine who is used in this industry. These circumstances are not chosen by any of them.

Another global commonality of prostitution—another that no one contests—is that people typically enter prostitution when they are young, often well below the age of majority.²¹ And the age of entry may be dropping.²²

ilar conditions prevail among American Indian and Native Alaskan women in the United States. See Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 621 (2010); Suzanne Koeplinger, *Sex Trafficking of American Indian Women and Girls in Minnesota*, 6 U. ST. THOMAS L.J. 129, 129 (2008), and Maori in New Zealand, see MIRIAM SAPHIRA & AVERIL HERBERT, *THE INVOLVEMENT OF CHILDREN IN COMMERCIAL SEXUAL ACTIVITY* 8 (2004); Libby Plumridge & Gillian Abel, *A 'Segmented' Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers*, 25 AUSTL. & N.Z. J. PUB. HEALTH 78, 79 (2001). Trafficking from less developed nations has been observed to focus “particularly on indigenous and aboriginal women who are from remote tribal communities” KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY: THE GLOBAL EXPLOITATION OF WOMEN* 178 (1995). Sex traffickers worldwide are known to target women and girls from ethnically disadvantaged populations. See, e.g., NATIONAL CRIMINAL POLICE (SWED.), *TRAFFICKING IN HUMAN BEINGS FOR SEXUAL PURPOSES: SITUATION REPORT NO. 8, JANUARY 1 – DECEMBER 31, 2005*, at 18 (2006) [hereinafter *SITUATION REPORT NO. 8*] (“Information about girls and women from Rumania and Slovakia indicates that they are gypsies”).

¹⁹ The vulnerability of Nat women and girls to compulsory prostitution through caste-based family networks is documented in K.K. MUKHERJEE & SUTAPA MUKHERJEE, *GIRLS/WOMEN IN PROSTITUTION IN INDIA: A NATIONAL STUDY* 25–26, 73, 95–96, 97, 141–42, 144–45, 275–76 (2004); MONI NAG, *SEX WORKERS OF INDIA: DIVERSITY IN PRACTICE OF PROSTITUTION AND WAYS OF LIFE* 131, 230–33 (2006); Christine Joffres et al., *Sexual Slavery Without Borders: Trafficking for Commercial Sexual Exploitation in India*, 7 INT’L J. FOR EQUITY IN HEALTH 22, 24 (2008); R.C. Swarankar, *Ethnographic Study of Community-Based Sex Work Among Nats, in PROSTITUTION AND BEYOND: AN ANALYSIS OF SEX WORK IN INDIA* 118 (Rohini Sahni et al. eds., 2008); Ramesh Chand Swarankar, *Traditional Female Sex Workers of Rajasthan, India: An Ethnographic Study of the Nat Community, in UNPACKING GLOBALIZATION: MARKETS, GENDER, AND WORK* 155 (Linda E. Lucas ed., 2007); Mohammad Kalam, *Hindu and Muslim Nuts are Equally Marginalized*, 1 RED LIGHT DESPATCH 1 (2007), available at http://www.apneap.org/redlight_despatch/?q=node/39; Ruchira Gupta & Apne Aap Team, *Thrice Oppressed: Prostitution of Nat Women in Bihar and Rajasthan* (Feb. 15, 2009) (privately printed paper) (on file with author); Whitney Russell, *The Nat of Khasmati, Rajasthan* (Feb. 2009) (unpublished paper) (on file with author).

²⁰ This point is analyzed by Deer, *supra* note 18.

²¹ See, e.g., DEBRA BOYER ET AL., *SURVIVAL SEX IN KING COUNTY: HELPING WOMEN OUT* 3 (1993) (reporting 15 of 16 subjects interviewed entered prostitution between ages 12 and 14); COMM. ON SEXUAL OFFENSES AGAINST CHILDREN, 2 *SEXUAL OFFENSES AGAINST CHILDREN: REPORT OF THE COMMITTEE ON SEXUAL OFFENSES AGAINST CHILDREN* 229, 991 (1984) [hereinafter 2 *BADGLEY REPORT*] (conducting in-depth interviews with 229 sexually exploited youth in Canada recounting turning first trick between ages 8 and 19—most were 15 or 16, many aged 13 or 14); CECILIE HØIGARD & LIV FINSTAD, *BACKSTREETS: PROSTITUTION,*

Most of the women and girls I met in India were first prostituted at age ten. This is not a time when you are fully empowered to make a choice about the rest of your life. It is not a time when, if you decide not to let family members or other adults do something to you, you have much power to stop them. In most countries where prostituted people have been studied in any depth, sexual abuse in childhood prior to entry into prostitution is a major precondition.²³ In many places, including the United States, you only very

MONEY, AND LOVE 76 (1992) (calculating 15.5 as the mean age of first prostitution in sample of 26 women in commercial sex in Oslo, Norway); JAMES, *supra* note 17, at 17 (describing sample of 136 prostituted girls in Seattle area whose mean age of entry was 15, with 36% being 14 or younger); MIMI H. SILBERT ET AL., SEXUAL ASSAULT OF PROSTITUTES: PHASE ONE FINAL REPORT 39 (1980) [hereinafter SILBERT ET AL., SEXUAL ASSAULT FINAL REPORT] (presenting study of 200 women presently and formerly involved in prostitution in San Francisco Bay area showing 78% started on the streets as minors (here defined as under 18), 62% at 16 or younger); Chris Bagley & Loretta Young, *Juvenile Prostitution and Child Sexual Abuse: A Controlled Study*, 6 CANADIAN J. COMMUNITY MENTAL HEALTH 5, 11, 17–19 (1987) (studying 45 Canadian women formerly involved in prostitution of whom 51.1% began at age 15 or younger); Farley et al., *Nine Countries*, *supra* note 3, at 39–41 (reporting 47% ($n = 353$) of a sample of prostituted women in nine countries entered the sex trade before age 18); Diana Gray, *Turning Out: A Study of Teenage Prostitution*, 1 J. CONTEMP. ETHNOGRAPHY 401, 404, 412 (1973) (interviewing 17 teenage girls engaged in commercial sex in Seattle, Washington, among whom the average age at first prostitution was 14.7); Susan M. Nadon et al., *Antecedents to Prostitution: Childhood Victimization*, 13 J. INTERPERSONAL VIOLENCE 206, 213 (1998) (finding average age of entry of 14.1 years in a sample of prostituted adolescents); Mimi H. Silbert & Ayala M. Pines, *Entrance into Prostitution*, 13 YOUTH & SOC'Y 471, 483 (1982) (analyzing 200 women presently and formerly in prostitution of whom 62% began before age 16, 78% before age 18, with “[a] number under 9, 10, 11, and 12”); Herbst, *Male Sex Workers in Pretoria: An Occupational Health Perspective* 167 (June 2002) (unpublished Ph.D. dissertation) (on file with University of South Africa) (indicating all participants in study of males in Pretoria, South Africa’s commercial sex industry were first prostituted between ages 10 and 16, most commencing at 12). For analysis of the issues raised by these numbers, see Michelle Stransky & David Finkelhor, *Fact Sheet: How Many Juveniles Are Involved in Prostitution in the U.S.?* (2008), available at http://www.unh.edu/ccrc/prostitution/Juvenile_Prostitution_fact-sheet.pdf.

²² The United Nations Office on Drugs and Crime (“UNODC”) and the United Nations Interregional Crime Research Institute (“UNICRI”) report on trafficking victims in the Czech Republic and Poland states, “[c]hanges in the profile of victims were characterized by the experts as follows: the age of victims is decreasing; the emphasis is particularly on young girls living in socially and economically disadvantaged conditions” IVANA TRÁVNÍKOVÁ ET AL., TRAFFICKING IN WOMEN: THE CZECH REPUBLIC PERSPECTIVE 81 (2004). If adequate longitudinal studies of age cohort samples do not yet exist to substantiate this trend in other settings, the sexualization of girls at ever younger ages, see generally AM. PSYCHOLOGICAL ASS'N, TASK FORCE ON THE SEXUALIZATION OF GIRLS, REPORT OF THE APA TASK FORCE ON THE SEXUALIZATION OF GIRLS (2007), available at <http://www.apa.org/pi/women/programs/girls/report.aspx>; GETTING REAL: CHALLENGING THE SEXUALISATION OF GIRLS (Melinda Tankard Reist ed., 2009); SHARNA OLDFMAN, THE SEXUALIZATION OF CHILDHOOD (2009); PATRICE A. OPLIGER, GIRLS GONE SKANK: THE SEXUALIZATION OF GIRLS IN AMERICAN CULTURE (2008), supports it logically.

²³ Numerous studies have documented the pervasiveness of child sexual abuse in the life histories of prostituted women. See, e.g., BOYER ET AL., *supra* note 21, at 3 (reporting from interviews with currently and recently prostituted women in Washington State, 100% ($n = 16$) stated they had been sexually abused as girls); ENABLERS, INC., JUVENILE PROSTITUTION IN MINNESOTA 22–23 (1978) [hereinafter ENABLERS, JUVENILE PROSTITUTION]; JAMES, *supra* note 17, at 29; SAPHIRA & HERBERT, *supra* note 18, at 4 (presenting study of 47 prostituted people in New Zealand of whom 59% disclosed childhood sexual abuse); SILBERT ET AL., SEXUAL ASSAULT FINAL REPORT, *supra* note 21, at 26 (stating 60% of subjects ($n = 200$))

rarely meet a woman in prostitution who was not sexually or physically²⁴ abused before, frequently in her intimate circle. In India, the women told me that their first sexual abuse—their first sexual experience period—occurred in prostitution, mind you at age 10. If they resisted then or later, they said they were gang-raped and tortured.

Depending, it seems, upon social and cultural circumstances—we really do not know what causes cultural variance in prevalence and incidence of sexual abuse in childhood, or even for certain if it does vary—children can be sexually abused prior to prostitution, or it can simply be socially assumed that a life of sexual use is your destiny. In this connection, caste functions in India like sexual abuse in childhood does in other places where it is documented: *it tells you what you are for*.²⁵ In Kolkata, scores of girls around thirteen years old line the streets of the red light areas I visited.

“were sexually exploited as juveniles by an average of two people each”); Bagley & Young, *supra* note 21, at 5, 11–13 (concluding 73% of 45 Canadian women formerly involved in sex trade had prior sexual abuse histories); Farley et al., *Nine Countries*, *supra* note 3, at 42–44, 57 (finding 63% of currently prostituted interviewees acknowledged being victims of child sexual abuse, positing comparatively low number (rates ordinarily fall between 65% and 95%) reflects patterns of denial and minimization common with ongoing traumatization); Farley et al., *Vancouver supra* note 18, at 242, 249, 255 (finding 82% of prostituted women surveyed had been sexually abused in childhood by an average of 4 perpetrators); Evelina Giobbe, *Confronting the Liberal Lies About Prostitution*, in *THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM* 67, 73 (Dorchen Leidholdt & Janis Raymond eds., 1990) (stating that 74% of participants in the WHISPER Oral History Project said they had been sexually abused between ages 3 and 14); Mimi H. Silbert & Ayala M. Pines, *Early Sexual Exploitation as an Influence in Prostitution*, 28 *SOC. WORK* 285, 286 (1983) (interviewing 200 street prostitutes of whom 60% identified sexual abuse as girls as a precursor to prostitution in adulthood); Mimi H. Silbert & Ayala M. Pines, *Sexual Child Abuse as an Antecedent to Prostitution*, 5 *CHILD ABUSE & NEGLECT* 407, 407, 409 (1981); Ronald L. Simons & Les B. Whitbeck, *Sexual Abuse as a Precursor to Prostitution and Victimization Among Adolescent and Adult Homeless Women*, 12 *J. FAM. ISSUES* 361, 375 (1991) (concluding that “child sexual abuse increases the probability of involvement in prostitution irrespective of any influence exerted through other variables”); Cathy Spatz Widom & Joseph B. Kuhns, *Childhood Victimization and Subsequent Risk for Promiscuity, Prostitution, and Teenage Pregnancy: A Prospective Study*, 86 *AM. J. PUB. HEALTH* 1607, 1607, 1609 (1996) (identifying strong correlation between sexual abuse of girls and subsequent female prostitution). As one survivor participating in a focus group in 1993 put it, “[w]e’ve all been molested. Over and over, and raped. We were all molested and sexually abused as children” BOYER ET AL., *supra* note 21, at 16.

²⁴ Prior physical abuse of women in prostitution is documented across populations by diverse methodologies. See Farley et al., *Nine Countries*, *supra* note 3, at 42, 43 (reporting 59% of prostituted respondents in nine countries beaten to the point of injury by caregivers as children); ENABLERS, *JUVENILE PROSTITUTION*, *supra* note 23, at 22, 29; JAMES, *supra* note 17, at 29; SILBERT ET AL., *SEXUAL ASSAULT FINAL REPORT*, *supra* note 21, at 20; Bagley & Young, *Juvenile Prostitution and Child Sexual Abuse*, *supra* note 21, at 11, 12–13 (1987); Giobbe, *supra* note 23, at 73 (discussing oral histories conducted with prostituted women of whom 90% recalled being battered as children); Hunter, *supra* note 3, at 99 (finding 90% of subjects acknowledged physical abuse in childhood); Widom & Kuhns, *supra* note 23, at 1607, 1609 (finding early history of physical abuse alone or with neglect “a significant predictor of prostitution for females”).

²⁵ A strikingly convergent observation is made by Vednita Nelson concerning the role of zoning in largely black neighborhoods in encouraging the perception that black women and girls are available for purchase, in particular by white men: “[W]e got the message growing up, just like our daughters are getting it today, that this is how it is, this is who we are, this is what we are for.” Nelson, *supra* note 17, at 84.

Once, glancing down a narrow alley, I saw a tiny naked girl of about six with her legs being spread wide, crotch out. So when, exactly, does she choose?

Defining prostitution is not necessary if it is not being made illegal, but given the terms on which it is defended, it might be clarifying to define sex. Sex is supposed to be chosen and wanted; presumably this is the reason prostitution's supporters defend it in these terms. When you are having sex with someone you want to be having sex with, you aren't generally paying each other. Being one of those things money cannot buy, the real thing is neither bought nor sold. In this light, if sex is for survival—as in the term “survival sex,”²⁶ sometimes used to describe forms of prostitution—the sex is coerced by the need to survive. Where women have sex equality rights, the law of sexual harassment recognizes this transaction as sex discrimination, a human rights violation.²⁷ The point being, what you get out of sex as such is that you are doing it. Just as I was beginning to wonder if nobody thought this but me, or if this was hopelessly naïve in a sex-unequal world, I encountered a study of the law in Namibia that crisply defines prostitution as sexual acts “for a consideration which is non-sexual.”²⁸ How simple: the consideration for sex is sex. Where sex is mutual, it is its own reward. Apparently there are a good many men out there with whom sex is not its own reward, because they are paying mainly women to have sex with them in exchange for other things, much of which goes to other men.

Women in prostitution in Kolkata told me they service twenty to thirty men a day on average, with no choice over the sex or the men. So do the math. Each woman, assuming two days a week off (a mercy few are shown), services as many as 8,000 men a year, maybe a few less for repeat customers. I speak here of the demand. They are why this industry exists. Research shows these are average men who feel entitled to buy women for sex.²⁹ Some are aggressive; many are contagiously ill.³⁰ They are invisible

²⁶ According to the United Nations Population Fund (“UNFPA”), “survival sex” denotes “sex . . . exchanged for food, shelter or protection.” UNAIDS Inter-Agency Task Team on Gender & HIV/AIDS, *Fact Sheet: HIV/AIDS, Gender and Sex Work 1* (2008), available at www.unfpa.org/hiv/docs/factsheet_genderwork.pdf.

²⁷ See, e.g., *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); Declaration on the Elimination of Violence against Women art. 2(b), G.A. Res. 48/104, U.N. Doc. A/RES/48/104, (Dec. 20, 1993); U.N. Comm. on the Elimination of Discrimination against Women, General Recommendation No. 19 to Convention on the Elimination of All Forms of Discrimination against Women, 11th Sess. (1992) (commenting on Art. 11, ¶¶ 17–18).

²⁸ FERNANDO HENRIQUES, 1 PROSTITUTION AND SOCIETY: A SURVEY 17 (1962).

²⁹ See, e.g., JAN MACLEOD ET AL., CHALLENGING MEN'S DEMAND FOR PROSTITUTION IN SCOTLAND: A RESEARCH REPORT BASED ON INTERVIEWS WITH 110 MEN WHO BOUGHT WOMEN IN PROSTITUTION 4, 5, 14, 20, 24 (2008) [hereinafter MACLEOD ET AL., CHALLENGING]; JULIA O'CONNELL DAVIDSON, PROSTITUTION, POWER AND FREEDOM 150, 152–53 (1998); Noël Bridget Busch et al., *Male Customers of Prostituted Women: Exploring Perceptions of Entitlement to Power and Control and Implications for Violent Behavior Toward Women*, 8 VIOLENCE AGAINST WOMEN 1093, 1101–07 (2002); Ann Cotton et al., *Attitudes Toward Prostitution and Acceptance of Rape Myths*, 32 J. APPLIED SOC. PSYCHOL. 1790, 1790, 1791 (2002); Melissa Farley, ‘Renting an Organ for Ten Minutes’: What Tricks Tell Us about Prostitution, Pornogra-

in the sense that they can go anywhere and not stand out as buyers of women. They enjoy the true privacy of anonymity. Linguistically, in most languages I have encountered, they also have the dignity of an identity with no unique non-slang descriptor noun. All the words that apply to them, such as customer or client or buyer, are shared with non-buyer-users of women. In the United States, he is given a common real man's name. We call him "john."

Because of johns—called "tricks," or "dates," "punters" in the U.K., "passengers" by Nat women (my favorite)—women are in prostitution. He makes their lives unhealthy and dangerous, including continually subject to sexually transmitted diseases. However you understand the sexual interactions that *are* paid, many prostituted women are, in addition, raped—meaning, in this setting, *not* paid.³¹ They are also beaten by criminal gangs, pimps, and landlords if they show any resistance, express ideas of leaving, or when abuse is the sex the buyer wants to buy.³² The johns in India just crash

phy, and Trafficking, in PORNOGRAPHY: DRIVING THE DEMAND IN INTERNATIONAL SEX TRAFFICKING 144, 150–51 (David E. Guinn & Julie DiCaro eds., 2007) [hereinafter Farley, 'Renting an Organ']; Sven-Axel Månsson, *Men's Practices in Prostitution: The Case of Sweden, in A MAN'S WORLD? CHANGING MEN'S PRACTICES IN A GLOBALIZED WORLD* 135, 143–44 (Bob Pease & Keith Pringle eds., 2001).

³⁰ See, e.g., JANICE G. RAYMOND & DONNA M. HUGHES, *SEX TRAFFICKING OF WOMEN IN THE UNITED STATES* 11 (2001); Susan Moore, *Characteristics, Attitudes and Risk Behaviours of Australian Men Who Visit Female Sex Workers*, 12 *VENEREOLOGY* 7, 7, 13 (1999) (determining that johns engage in multiple risk-taking behaviors, particularly in relation to HIV/AIDS, that expose women they buy to extreme danger); see also *infra* note 116.

³¹ Following years of intensive investigation, Dr. Mimi Silbert concluded that prostituted women were "the most raped class of women in history." Hunter, *supra* note 3, at 92. Other studies of varying sample sizes and methodologies in diverse locations found 40% to 85% of women reported being raped in prostitution. See RUTH PARRIOTT, *HEALTH EXPERIENCES OF TWIN CITIES WOMEN USED IN PROSTITUTION: SURVEY FINDINGS AND RECOMMENDATIONS* (1994) (85%), available at <http://www.angelfire.com/mn/fjc/documents/HealthExp.pdf>; INE VANWESENBECK, *PROSTITUTES' WELL-BEING AND RISK* 91 (1994) (40%); Farley et al., *Nine Countries*, *supra* note 3, at 43 (57%; 59% of those more than five times); Farley et al., *Vancouver*, *supra* note 18, at 242, 255 (78%); Hunter, *supra* note 3, at 92 ("nearly once a week"); Jody Miller, *Gender and Power on the Streets: Street Prostitution in the Era of Crack Cocaine*, 23 *J. CONTEMP. ETHNOGRAPHY* 427, 449 n.5 (75% by one or more tricks, 62.5% in other contexts on the streets, 43.8% by men identifying themselves as police); Mimi H. Silbert, *Compounding Factors in the Rape of Street Prostitutes*, in *RAPE AND SEXUAL ASSAULT II* 75, 79, 80 (Ann Wolbert Burgess ed., 1988) (73%); M.H. Silbert & A.M. Pines, *Victimization of Street Prostitutes*, 7 *VICTIMOLOGY* 122, 127 (1982) [hereinafter Silbert & Pines, *Victimization*] ("70% by clients an average of 31.3 times.").

³² The vast majority of prostituted people report being physically assaulted in prostitution, most often by johns. See PARRIOTT, *supra* note 31, at 18 (50% by john, 90% by someone other than john, over half beaten once per month or more); VANWESENBECK, *supra* note 31, at 91 (60%); Farley et al., *Vancouver, Nine Countries*, *supra* note 3, at 34, 43, 44 (71%); Farley et al., *Vancouver* *supra* note 18, at 242, 252, 255 (90%); Hunter, *supra* note 3, at 93 (84% an average of 103 times per year by pimps and johns); Miller, *supra* note 31, at 449 n.5 ("Two report having been choked, three suffered serious injuries such as broken bones, one had her head rammed through a glass door, and one was tortured with electric shock."); Silbert & Pines, *Victimization*, *supra* note 31, at 127 (65% by johns, 66% by pimps); Robert Sarti, *Prostitutes Face Province's Most Dangerous Profession*, *VANCOUVER SUN*, May 17, 1995, at B2 (99%; noting "[t]he women are injured far more often than workers in occupations considered the province's most dangerous, like mining, forestry and firefighting"). Some studies show

in at all times of the day or night and do whatever they want to do. Far from having police protection, in India, as in most other places, the police sweep in on raids periodically to arrest *the women* for whatever excuses or reasons are invented at the time for treating them like criminals because they are being victimized:³³ guilty of the crime of being forced. Even prostituted children are typically regarded as criminals rather than victims.³⁴ Prostitutes of color in racist cultures may be disproportionately likely to be arrested.³⁵ At the same time, police are routinely paid off in many places to protect business; I saw this happening on a street in Kolkata at dusk. Consider how many women pay for the money used in this corruption. Then when the women being prostituted are arrested, they typically fall even further into debt to the pimp who bails them out or pays their fine.³⁶ This official contribution to her bondage makes it even harder to leave, as now she has a criminal record.³⁷

Proponents of sex work often insist that indoor prostitution gives the prostitute more control, even as they sometimes also contend, without factual support, that criminalizing buyers makes prostitution more dangerous

johns perpetrate high levels of physical violence. See, e.g., 2 BADGLEY REPORT, *supra* note 21, at 1026 (showing prostituted Canadian girls most often assaulted by tricks, followed by pimps, police, and other prostitutes, with prostituted boys most often assaulted by tricks, followed by police, other prostitutes, drug dealers, and pimps); 2 FRASER REPORT, *supra* note 14, at 388 (drawing on data from the National Population Study to conclude that “[c]ustomers are the primary source of sexual violence against prostitutes”).

³³ For an exemplary South African case exposing excessive force by police raiding an adult entertainment establishment, see *Palmer v. Minister of Safety & Security* 2002 (1) SA 110 (S. Afr.); see also Anonymous, *Bad Luck at Lucky's Or Caught Between the Rapists and Police*, 1 GAUNTLET 111, 112 (1994) (“It’s hard to protect yourself from the rapists while you’re busy protecting yourself from the police.”); Jeremy Hay, *You’re Under Arrest, Spread Your Legs: A Report on the Police Abuse of Prostitutes in San Francisco*, 1 GAUNTLET 20 (1994).

³⁴ See Kimberly J. Mitchell et al., *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18 (2010).

³⁵ Not surprisingly, arrests of women of color in prostitution in the United States are significantly skewed compared with their proportion of the total population. The most recent Federal Bureau of Investigation (“FBI”) statistics show that prostituted African Americans constituted 40.9% ($n = 23,987$) of those arrested in 2008; 55.7% ($n = 32,682$) were white. See FBI, UNIFORM CRIME STATISTICS, tbl.43 (2008), http://www2.fbi.gov/ucr/cius2008/data/table_43.html; Marilyn G. Haft, *Hustling for Rights*, in THE FEMALE OFFENDER 207, 212 (Laura Crites ed., 1976) (citing government statistics that African American women in early 1970s were seven times more likely to be arrested for prostitution than members of other racial and ethnic groups); Leidholdt, *supra* note 15, at 135 (drawing on extensive experience as criminal defense attorney, observing those arraigned for prostitution in New York City are “largely African-American and Latin”); Leigh, *supra* note 17, at 113 (maintaining African Americans are “the vast majority of those sentenced to jail time”).

³⁶ Studies of prostitution in the U.S. have long identified posting bail as among the pimp’s traditional functions. See, e.g., BEN L. REITMAN, THE SECOND OLDEST PROFESSION: A STUDY OF THE PROSTITUTE’S ‘BUSINESS MANAGER’ 15 (1931); CHARLES WINICK & PAUL M. KINSIE, THE LIVELY COMMERCE: PROSTITUTION IN THE UNITED STATES 109 (1971).

³⁷ According to an authoritative Canadian study, “[m]ost prostitutes have a criminal record.” 2 FRASER REPORT, *supra* note 14, at 374.

because it drives it indoors.³⁸ Any protection or power of being indoors is illusory, even reversed, the research shows.³⁹ Street women, everyone who prostitutes on the street, are definitely at the bottom of the sex industry's transnational hierarchy that has at its top call girl and escort services and courtesans for men who want that and can pay more for the upscale houses. In South Africa, there is dockside and seamen's and tourist club prostitution in the lower middle;⁴⁰ many places in the United States are documented to have truck stop prostitution with conditions that can be particularly brutal.⁴¹

This class structure of prostitution is real,⁴² but the distinction between indoor and outdoor prostitution is an inapt proxy for it. Women who find johns on the street usually consummate the sex other than in an alley, making the distinction partially incoherent.⁴³ Crucially, although street women do not have a lot of choice over johns, women in brothels may have no

³⁸ See, e.g., WORKING GROUP, PURCHASING SEXUAL SERVICES, *supra* note 4, at 13 (asserting that Swedish anti-prostitution law has increased the risk of violence "for those who no longer work on the streets").

³⁹ See Melissa Farley, 'Bad for the Body, Bad for the Heart': Prostitution Harms Women Even If Legalized or Decriminalized, 10 VIOLENCE AGAINST WOMEN 1087, 1099–1101 (2004) [hereinafter Farley, 'Bad for the Body'] (discussing findings of violence against women engaged in street as compared to indoor prostitution); Melissa Farley, *Prostitution Harms Women Even If Indoors*, 11 VIOLENCE AGAINST WOMEN 950, 955–62 (2005) (reviewing data showing relative safety of indoor prostitution vastly overstated); Jody Raphael & Deborah L. Shapiro, *Violence in Indoor and Outdoor Prostitution Venues*, 10 VIOLENCE AGAINST WOMEN 126, 133 (2004) (presenting data from 222 women presently or recently in prostitution in metropolitan Chicago showing "violence was prevalent across both outdoor and indoor prostitution venues"). As reported by a woman prostituted in Nevada, "[o]nce you were alone in your room with a customer you had no protection from him. There were many different occasions when a woman was brutally beaten or raped by a john, but as long as he paid the house, it was kept quiet." Jayme Ryan, *Legalized Prostitution: For Whose Benefit?* SOJOURNER, July 1989, at 22; see also Anastasia Volkonsky, *Legalizing the 'Profession' Would Sanction the Abuse*, INSIGHT ON THE NEWS, Feb. 27, 1995, at 22 ("[C]ontrary to the common claim that the brothel will protect women from the dangerous, crazy clients on the streets, rapes and assaults by customers are covered up by management.").

⁴⁰ See, e.g., CHANDRÉ GOULD & NICOLÉ FICK, *SELLING SEX IN CAPE TOWN: SEX WORK AND HUMAN TRAFFICKING IN A SOUTH AFRICAN CITY* (2008) [hereinafter GOULD & FICK, *SELLING SEX*]; TED LEGGETT, *A STUDY ON THE RELATIONSHIP BETWEEN DRUG USE AND HIV IN SOUTH AFRICA* (2000); DORI POSEL, *THE SEX MARKET IN THE INNER CITY OF DURBAN* (1993); HENRY TROTTER, *SUGAR GIRLS AND SEAMEN: A JOURNEY INTO THE WORLD OF DOCKSIDE PROSTITUTION IN SOUTH AFRICA* (2007); Henry Trotter, *Soliciting Sailors: The Temporal Dynamics of Dockside Prostitution in Durban and Cape Town*, 35 J. S. AFR. STUD. 699 (2009).

⁴¹ See Quarraisha Abdool Karim et al., *Reducing the Risk of HIV Infection Among South African Sex Workers: Socioeconomic and Gender Barriers*, 85 AM. J. PUB. HEALTH 1521, 1523 (1995) (reporting frequent physical and sexual violence against prostitutes at South African truck stops); Dorothy Cox, *Authorities, Others Agree: Truck Stop Prostitution Far from Victimless Crime*, THE TRUCKER.COM, Dec. 8, 2008, <http://www.thetrucker.com/News/Stories/2008/12/5/Authoritiesothersagreetruckstopprostitutionfarfromvictimlesscrime.aspx>.

⁴² Prostitution has long been organized into distinct hierarchical classes. See, e.g., VERN BULLOUGH & BONNIE BULLOUGH, *WOMEN AND PROSTITUTION: A SOCIAL HISTORY* 35–40 (1987) (Greece); *id.* at 86–93 (India); *id.* at 102–03; *id.* at 105–08 (China); THOMAS A.J. MCGINN, *PROSTITUTION, SEXUALITY, AND THE LAW IN ANCIENT ROME* (1998); WILLIAM W. SANGER, *THE HISTORY OF PROSTITUTION: ITS EXTENT, CAUSES AND EFFECTS THROUGHOUT THE WORLD* 46 (1858) (Greece).

⁴³ See, e.g., 2 BADGLEY REPORT, *supra* note 21, at 1013–14 (documenting commercial sex typically performed indoors even if solicited outdoors).

choice at all; lined up for selection, the men pick them. The video surveillance in well-appointed brothels (pimps do watch this live pornography) and the panic buttons (three is *de rigueur*) often fail to get her help soon enough.⁴⁴ Indoor prostitution often means more pimp control and even less accountability. The main difference between indoor and outdoor prostitution seems to be whether the public that does not use the women is aware, or faces the fact, that they are there. The indoor/outdoor distinction basically functions ideologically to feed the illusion, beloved by moralists of most all politics, that the women in prostitution who appear classy really have upper class options: that they are exercising free choice (perhaps even a bad one), being well paid, enjoying themselves, could leave anytime they want, are relatively safe if they are careful, and are not being compelled or hurt, at least not very much. Apart from reading the empirical studies,⁴⁵ the moralists should try it sometime.

Not long ago, proponents of the sex work model denied there was any harm in prostitution at all.⁴⁶ Overwhelmed by the reality prostituted women have revealed, which shows them subject to more violence than any other group of women in the world, these days a modicum of harm is at times recognized, usually attributed to its illegal status, producing the so-called “harm reduction” or “harm minimization” approach central to the justification for legalization in New Zealand, for instance.⁴⁷ To reduce and minimize

⁴⁴ See MARY LUCILLE SULLIVAN, MAKING SEX WORK: A FAILED EXPERIMENT WITH LEGALISED PROSTITUTION 315 (2007) [hereinafter SULLIVAN, MAKING SEX WORK]. For more on the placement of panic buttons in the rooms of many legal brothels, see FARLEY, NEVADA, *supra* note 3, at 18, 21; Barbara G. Brents & Kathryn Hausbeck, *Violence and Legalized Brothel Prostitution in Nevada: Examining Safety, Risk, and Prostitution Policy*, 20 J. INTERPERSONAL VIOLENCE 270, 280–81 (2005).

⁴⁵ See *supra* notes above. As additional evidence, Farley et al. found no difference in the incidence of PTSD between street and brothel prostitution, although they, with Plumridge and Abel, examining conditions in New Zealand, found higher rates of physical violence in street than brothel prostitution. See Farley et al., *Five Countries*, *supra* note 3, at 419; Plumridge & Abel, *supra* note 18, at 82–83.

⁴⁶ A researcher not unfriendly to the sex work perspective observed its adherents see prostitution “by definition as a human right instead of as a violation of human rights” and are inclined to “consider sex-work liberating, a manifestation of crossing the borders of strictly circumscribed femininity, and a possibility for women to use the (sexual) power that has been denied them by patriarchal traditions.” VANWESENBECK, *supra* note 31, at 7–8. So “[t]hey would rather not talk about sexual victimization at all.” *Id.* at 7. Representatives of this camp consign prostitution’s harms to the realm of phantasmagorical “moral panic.” See, e.g., Rubin, *supra* note 2, at 267, 297 (arguing that panic-driven anti-prostitution reforms seeking to ban such “innocuous behavior[]” aim at “chimeras and signifiers” so are destined to fail); Jo Doezema, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, 18 GENDER ISSUES 23 (2000). Also common is attributing *sub rosa* racism to opponents of commercial sexual exploitation. See, e.g., Jo Doezema, *Ouch! Western Feminists’ ‘Wounded Attachment’ to the ‘Third World Prostitute’*, 16 FEMINIST REV. 16, 17 (2001) (rendering in de-realizing scare quotes the “injury,” *id.* at *passim*, and “suffering,” *id.* at 16, 18, 22, 25, 31, 32, of third world trafficking victims).

⁴⁷ See JAN JORDAN, THE SEX INDUSTRY IN NEW ZEALAND: A LITERATURE REVIEW (2005) (“A harm minimisation approach was favoured by many, and the resultant legal changes sought to reflect such sentiments.”), available at <http://www.justice.govt.nz/publications/global-publications/t/the-sex-industry-in-new-zealand-a-literature-review>; Maria Pérez-y-Pé-

concedes some harm will remain. The imperative is to fix the harms so prostitution can stay. Groups dedicated to this notion suck up vast international funds devoted to addressing HIV/AIDS.⁴⁸ When prostitution is understood as commercial sexual exploitation, resulting cases of HIV/AIDS are a symptom, the cause of which is prostitution itself: sex with thousands of men a year under conditions you cannot realistically control. The sex work perspective would protect the buyers from the women so they can keep using them without getting sick, rather than protecting the women from the buyers who are making them lethally ill. Everyone supports less harm to the women. But harm *elimination* is not part of the sex work agenda because it is inconsistent with sex for sale.

Street or house, and however they get into the sex trade, prostituted women's measured level of post-traumatic stress ("PTSD") is equivalent to that of combat veterans or victims of torture or raped women.⁴⁹ PTSD results from going through atrocities you cannot mentally sustain. It often

rez, *The Struggle to Minimise Risk and Harm for Sex Workers in New Zealand: The Prostitution Reform Act 2003*, TE AWATEA REV. (Te Awatea Violence Research Centre, University of Canterbury, Christchurch, N.Z.), Aug. 2007, at 10, 10 ("Harm and risk minimisation became prioritized to promote the human rights, welfare, and occupational health and safety of sex workers.").

⁴⁸ For a dialogue, see Melinda Gates from 2004 speaking of "sex workers" in India using condoms as "empowerment," Melinda French Gates, *AIDS and India*, Op-Ed., SEATTLE TIMES, Apr. 11, 2004, available at <http://community.seattletimes.nwsourc.com/archive/?date=20040411&slug=gates11>, and a response by Ambassador John R. Miller, then director of the Office to Monitor and Combat Trafficking in Persons, U.S. State Department, criticizing the same, when not accompanied by resistance to prostitution itself, as support for slavery. John R. Miller, *Fight AIDS, of course, but also fight prostitution*, Op-Ed., SEATTLE TIMES, May 20, 2004, available at <http://community.seattletimes.nwsourc.com/archive/?date=20040520&slug=johnmiller20>. See also Farley, 'Bad for the Body', *supra* note 39, at 1112-15; Edward C. Green et al., Book Review, 301 JAMA 2502 (2009) (reviewing ELIZABETH PISANI, THE WISDOM OF WHORES: BUREAUCRACIES, BROTHELS, AND THE BUSINESS OF AIDS (2009)). I am told that the Bill and Melinda Gates Foundation currently funds organizations like DMSC for this purpose indirectly through a web of subsidiaries rather than directly, as previously.

⁴⁹ See Farley et al., *Nine Countries*, *supra* note 3, at 36, 37, 56, 57 (comparing 68% prevalence rate of PTSD among women in prostitution in nine countries to that in combat veterans, torture victims, and rape survivors); Farley et al., *Five Countries*, *supra* note 3, at 415 (finding prostituted women across five countries evidenced PTSD rates slightly above treatment-seeking Vietnam veterans in U.S.); Melissa Farley & Sungjean Seo, *Prostitution and Trafficking in Asia*, 8 HARV. ASIA PAC. REV. 9, 10 (1996) (citing separate studies in which 78% and 80% of prostituted women in Korea were diagnosed with PTSD). Evidence collected by Farley and her colleagues revealed no difference in incidence of PTSD in denizens of street and brothel prostitution, despite more physical violence in the former, supporting the conclusion that "psychological trauma is intrinsic to the act of prostitution." Farley et al., *Five Countries*, *supra* note 3, at 419. Emergent research suggests that commercial sexual exploitation significantly heightens participants' susceptibility not only to PTSD but also to a range of mental health problems, notably depression, anxiety, and mood disorders. See Wulf Rössler et al., *The Mental Health of Female Sex Workers*, 122 ACTA PSYCHIATRICA SCANDINAVICA 143, 143 (2010) (finding elevated rates of various mental illness in 193 Zurich women attributed principally to violence in prostitution). One study of 46 women in Korea formerly prostituted indoors found that PTSD and DESNOS symptoms remained significantly higher over a long time, even controlling for childhood abuse. Hyunjung Choi et al., *Posttraumatic Stress Disorder (PTSD) and Disorders of Extreme Stress (DESNOS) Symptoms Following Prostitution and Childhood Abuse*, 15 VIOLENCE AGAINST WOMEN 933, 935-36, 942, 945 (2009).

accompanies dissociation: you put the violation away, leave mentally, repress or deny it or act like it is not there inside you, disappear the self who knows it happened to get through the day.⁵⁰ Often women in prostitution are addicted to drugs; many use substantial amounts of alcohol, too, as a result of what they are going through.⁵¹ Sometimes the drugs are pushed on them by pimps to addict them.⁵² The substances partially numb the pain of the constantly re-inflicted trauma, distancing the body and psyche somewhat from what is being done, as well as make her dependent on the pimp for the next fix.

⁵⁰ For major contributions to the psychology of dissociation, see generally DISSOCIATION: CLINICAL AND THEORETICAL PERSPECTIVES (Steven J. Lynn & Judith W. Rhue eds., 1994); FRANK W. PUTNAM, DISSOCIATION IN CHILDREN AND ADOLESCENTS: A DEVELOPMENTAL APPROACH (1997); COLIN A. ROSS, DISSOCIATIVE IDENTITY DISORDER: DIAGNOSIS, CLINICAL FEATURES, AND TREATMENT OF MULTIPLE PERSONALITY (1997); HARVEY L. SCHWARTZ, DIALOGUES WITH FORGOTTEN VOICES: RELATIONAL PERSPECTIVES ON CHILD ABUSE TRAUMA AND TREATMENT OF SEVERE DISSOCIATIVE DISORDERS (2000); and ONNO VAN DER HART ET AL., THE HAUNTED SELF: STRUCTURAL DISSOCIATION AND THE TREATMENT OF CHRONIC TRAUMATIZATION (2006). For current research in the field, see DISSOCIATION AND THE DISSOCIATIVE DISORDERS: DSM-V AND BEYOND (Paul F. Dell & John A. O'Neil eds., 2009); TRAUMA, DISSOCIATION AND HEALTH: CAUSAL MECHANISMS AND MULTIDIMENSIONAL PATHWAYS (Kathleen Kendall-Tackett & Bridget Klest eds., 2009). For a brief introduction to the extensive literature documenting the relationship between child sexual abuse and dissociation, see JUDITH LEWIS HERMAN, TRAUMA AND RECOVERY 99–103, 110, 111 (1992). The relationship between prostitution and dissociation is addressed *infra* note 53.

⁵¹ No doubt addiction can make one vulnerable to entry into prostitution. Some earlier studies suggested that some women were addicts prior to entering prostitution, but more recent larger samples find more start using as a result of it. See, e.g., JANICE G. RAYMOND ET AL., A COMPARATIVE STUDY OF WOMEN TRAFFICKED IN THE MIGRATION PROCESS: PATTERNS, PROFILES AND HEALTH CONSEQUENCES OF SEXUAL EXPLOITATION IN FIVE COUNTRIES (INDONESIA, THE PHILIPPINES, THAILAND, VENEZUELA AND THE UNITED STATES) 64, 171–72 (2002) [hereinafter RAYMOND ET AL., COMPARATIVE STUDY] (finding 60% of Venezuelan respondents who admitted taking drugs and alcohol to escape the reality of the sex industry abused those substances only after they had been prostituted); W. Robert Lange et al., *The Lexington Addicts, 1971–1972: Demographic Characteristics, Drug Use Patterns, and Selected Infectious Disease Experience*, 24 INT'L J. ADDICTIONS 609, 612 (1989) (comparing data from female subjects in treatment for addiction, of whom 8% began abusing drugs prior to entering prostitution while 39% developed addictions afterwards); Mimi H. Silbert et al., *Substance Abuse and Prostitution*, 14 J. OF PSYCHOACTIVE DRUGS 193, 196–97 (1982) (reporting 41% of respondents “claimed that drugs *increased* their tolerance of [prostituted] sex: ‘Takes your mind off what you’re doing’ or ‘makes it bearable’ or ‘otherwise I’d kill myself’ or ‘calms me so I can get through it’ or ‘makes me feel less miserable.’”).

⁵² See RAYMOND ET AL., COMPARATIVE STUDY, *supra* note 51, at 61–62 (concluding drugs and alcohol used to control nearly 70% of trafficked women in five countries); CATHY ZIMMERMAN, THE HEALTH RISKS AND CONSEQUENCES OF TRAFFICKING IN WOMEN AND ADOLESCENTS: FINDINGS FROM A EUROPEAN STUDY 23, 25 (2003) (using “[f]orced and coerced use of drugs and alcohol” as technique for compliance of trafficked women). According to a government-sponsored study of pimps in Britain:

The biggest change to the organisation of sex work over the last twenty-five years is probably the growth of dependent drug use. American studies suggest that the fortunes of the ‘dealer/pimp’ have waxed as those of the traditional coercive pimp waned. In a sense drug dependence has tended to replace physical coercion as the process by which people are locked into sex work.

TIGGEY MAY ET AL., FOR LOVE OR MONEY: PIMPS AND THE MANAGEMENT OF SEX WORK 8 (2000).

The abuse that is constant in prostitution, indeed endemic to it, requires dissociation from yourself and the world to survive.⁵³ You may create another self, give her another name; she is the one who goes out and does this “work” and may defend doing it. If you cannot live inside your own head and be who you are and do this—is that what freedom looks like? Being subjected to constant rape, beaten to stay, prevented from looking into other options, sustaining the trauma of a war zone or a torture chamber, needing drugs to keep doing it—is this what you mean by employment? When you think, “I am going to go get myself a job,” is this what you have in mind?

Sex work proponents often insist that prostitute unions or collectives give the women the control and protection they need.⁵⁴ Given the conditions and preconditions of entry, the nature of treatment in the industry, and the place of sexuality in the status of women, what would a union change?⁵⁵ Suppose how much and what kind of sex was bargained over and put in a labor contract. Could it be enforced? Suppose the person collecting the money a prostituted woman makes is a former prostitute now called union organizer. Does that make her not a pimp? Suppose organized crime still

⁵³ Melissa Farley has aptly observed, “dissociation is a job requirement for surviving prostitution.” Farley, *Bad for the Body*, *supra* note 39, at 1106; *see also id.* at 1107–09 (quoting illustrative reflections from multiple studies). “Dee,” a woman involved in the sex trade in the U.K., offers: “If anything a prostitute treats herself like a chair for someone to sit on. Her mind goes blank. She just lies there. You become just an object.” EILEEN MCLEOD, *WOMEN WORKING: PROSTITUTION NOW* 39 (1982). A small but compelling body of research addresses the use of dissociation as a survival strategy by prostituted women. *See* VANWESENBEECK, *supra* note 31, at 78–79, 89, 208; Barry S. Cooper et al., *Dissociation and Sexual Trauma in Prostitutes: Variability of Responses*, 2 J. TRAUMA & DISSOCIATION 27, 29 (2001); Melissa Farley, *Prostitution and the Invisibility of Harm*, 26 WOMEN & THERAPY 247, 263–67 (2003); Colin A. Ross et al., *Dissociation Among Women in Prostitution*, 2 J. TRAUMA PRAC. 199 (2003); Colin A. Ross et al., *Dissociation and Abuse Among Multiple Personality Patients, Prostitutes, and Exotic Dancers*, 41 HOSPITAL & COMMUNITY PSYCHIATRY 328–30 (1990).

⁵⁴ *See, e.g.*, GREGOR GALL, *SEX WORKER UNION ORGANIZING: AN INTERNATIONAL STUDY* (2006); Jo BINDMAN, *REDEFINING PROSTITUTION AS SEX WORK ON THE INTERNATIONAL AGENDA* (1997), available at <http://www.walnet.org/csis/papers/redefining.html>; Jenn Clamen & Ana Lopes, *Labour Organizing in the Sex Industry: The Way Forward? The IUSW Experience*, 6 RES. SEX WORK 29 (2003); Gregor Gall, *Sex Worker Unionisation: An Exploratory Study of Emerging Collective Organisation*, 38 INDUS. REL. J. 70 (2007); Ana Lopes, *Sex Workers of the World Unite!*, 67 FEMINIST REV. 151 (2001); Jackie West, *Prostitution: Collectives and the Politics of Regulation*, 7 GENDER, WORK & ORG. 106 (2000). *But see* Stephanie A. Limoncelli, *The Trouble with Trafficking: Conceptualizing Women’s Sexual Labor and Economic Human Rights*, 32 WOMEN’S STUD. INT’L F. 261, 265 (2009) (acknowledging that “a labor rights approach can divert attention from social, political, and economic relations of power and lead to a focus on only consequences rather than causes of exploitation” within an analysis that is generally receptive to the unionist position); *cf.* SHEILA JEFFREYS, *THE IDEA OF PROSTITUTION* 191–93, 265 (1997) (underscoring the paradox of proponents’ demand for recognition of prostitution as employment for the domain of workplace sexual harassment more broadly); Melissa Farley, *Theory Versus Reality: Commentary on Four Articles About Trafficking*, 32 WOMEN’S STUD. INT’L F. 311, 312–13 (2009) [hereinafter Farley, *Theory Versus Reality*] (rebutting unfounded claims for the actual and potential efficacy of unionization in improving conditions for prostituted women).

⁵⁵ For analysis consistent with these queries, *see* JEFFREYS, *supra* note 54, at 265, and Farley, *Theory Versus Reality*, *supra* note 54, at 312–13. *See also* Limoncelli, *supra* note 54, at 265.

controls. Does being in a unionized brothel eliminate your PTSD? Make it easier to leave? If people with the fewest choices are still railroaded into the industry and kept there, and control of the relations and conditions is not possible as a practical matter while still providing what prostituted people are there for, nothing is changed. The issue here is not only, as a principled and practical matter, whether organizing prostitution transforms the unequal relations it institutionalizes, but whether not being in prostitution is thereby strengthened into a human right.

Recently when Ruchira Gupta, recognizable as the founder of Apne Aap, an organization that works to free trafficked women and abolish prostitution through organizing,⁵⁶ and I were walking through Sonagachi, a red light area in Kolkata, some of the women who lined the street reached out their hands to us, calling “we need to talk to you.” As we approached, two older, larger women from the prostitutes’ union DMSC,⁵⁷ which originally began with the goal of empowering women in prostitution,⁵⁸ angrily interposed themselves between us, demanding of me loudly, “Are you married? Do you have children? You should get married!” The moment these women appeared, the two who had tried to make contact with us shut their faces, eyes guttered out. As we walked away, a phalanx of male pimps emerged to follow close behind us so that every woman along that street who saw us saw these men at the same time. The women turned away, hands shaking. Whatever they had intended to say, they had no choice even about talking with us. The impression left was that the choices the union gives them are ones that keep them in prostitution—their vaunted organized independence, in the words of Simone de Beauvoir, “the deceptive obverse of a thousand dependencies.”⁵⁹

Across cultures, at all levels of economic development, whether street or house, when asked, “What do you need?”, the answer of 89% of people in prostitution is to “[I]eave prostitution.”⁶⁰ It is the most frequently men-

⁵⁶ See Apne Aap, Profile of Ruchira Gupta, <http://www.apneap.org/founder/founder-profile/profile-ruchira-gupta> (last visited Feb. 6, 2011).

⁵⁷ See DURBAR MAHILA SAMANWAYA COMM., <http://www.durbar.org/> (last visited Feb. 6, 2011).

⁵⁸ For a brief history of the organization, see <http://www.durbar.org/html/history.asp>. See also NAG, *supra* note 19, at 86–100; Kotiswaran, *supra* note 2, at 609.

⁵⁹ SIMONE DE BEAUVOIR, *THE SECOND SEX* 572 (H.M. Parshley trans., 1989) (1949).

⁶⁰ See Farley et al., *Nine Countries*, *supra* note 3, at 48, 51; see also JAMES, *supra* note 17, at 69 (noting fatalism of prostituted girls in Seattle where near impossibility of exit was widely accepted); SAPHIRA & HERBERT, *supra* note 18, at 7–8 (interviewing 47 prostituted New Zealanders of whom 80% had attempted to leave the sex trade, most failing, most citing economic necessity); Gavin W. Jones et al., *Prostitution in Indonesia: Historical and Social Factors Behind the Development of the Sex Sector*, in *THE SEX SECTOR: THE ECONOMIC AND SOCIAL BASES OF PROSTITUTION IN SOUTHEAST ASIA* 29, 43 (Lin Lean Lim ed., 1998) (reporting “most” prostituted Indonesian women surveyed “not comfortable with their work” and 96% had plans to leave); Claudia Hammond, *I’m Just Here for Survival*, *GUARDIAN* (U.K.), Jan. 9, 2008, at 18 (reporting from interviews with numerous prostituted women in brothel town of Daulatdia, Bangladesh, that no one “intends to spend their whole life here. Each has a plan to leave, just not quite yet.”).

tioned reply. They want to leave but feel they cannot or do not know how.⁶¹ Whether you are in your own country or another, however you entered the sex industry, being in a situation of prostitution that you cannot get out of has been aptly defined by Kathleen Barry as sexual slavery.⁶² Many women in prostitution in India who are not of a prostitute caste are often from Nepal or Bangladesh. The ones I spoke with were destitute from poverty-stricken families. Someone said they could get them a good job in India and they woke up locked in a brothel. Someone sold them to someone who bought them.⁶³ They were owned. The buyer rented them out to others who used them sexually. These events and dynamics are paralleled and reproduced within the United States and elsewhere.⁶⁴

⁶¹ See Lynda M. Baker et al., *Exiting Prostitution: An Integrated Model*, 16 VIOLENCE AGAINST WOMEN 579, 588–90 (2010) (summarizing studies of barriers). An American physician writing nearly a century ago observed nearly universally, “[w]hen once engaged in prostitution, it is difficult for the woman to escape from it unless powerful social forces are brought to bear.” James P. Warbasse, *The Causes of Prostitution*, TWENTIETH CENTURY MAG., July 1912, at 219.

⁶² KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 39–40 (1984). See also U.N. ESCOR, Comm’n on Human Rights, *Activities for the Advancement of Women: Equality, Development and Peace, Report of the Special Rapporteur Jean Fernand-Laurent*, 1st Sess., Agenda Item 12, at 7, U.N. Doc. E/1983/7 (1983) (likening prostitution to slavery).

⁶³ Accounts of treachery and deceit abound. See *Three Held for Selling a Schoolgirl to a Brothel*, UNITED NEWS OF BANGLADESH, Dec. 10, 2007; Victor Malarek, *Meet the Traffickers*, NEW INTERNATIONALIST, Sept. 2007, at 10. Innumerable such cases underlie international reports. See U.N. Econ. & Soc. Council (“ECOSOC”), Comm’n on Human Rights (“CHR”), *Preliminary Report Submitted by the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, 50th Sess., Agenda Item 11(a), ¶ 211, U.N. Doc. E/CN.4/1995/42 (Nov. 22, 1994) (by Radhika Coomaraswamy) [hereinafter *Coomaraswamy Report 1994*] (“Women who are trafficked are by and large not aware of what awaits them; some women contact pimps or managers directly, but the larger percentage of trafficked women are sold into bondage by their parents, husbands, boyfriends, or they are deceived or coerced, sometimes by friends or elders in the village.”); ECOSOC, CHR, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, 52nd Sess., Agenda Item 9(a), ¶ 73, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996) (by Radhika Coomaraswamy) (“[M]any young indigenous women from rural villages in Nepal are sold or tricked by their husbands or relatives into being trafficked to India for prostitution. Prostituted women are then detained, often for a period of seven years, as sexual slaves, systematically raped and repeatedly subjected to other forms of sexual torture.”) (citation omitted); ECOSOC, Comm’n on Human Rights, *Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences*, 53rd Sess., Agenda Item 9(a), ¶ 83, U.N. Doc. E/CN.4/1997/47 (Feb. 12, 1997) (by Radhika Coomaraswamy). See generally *Rantsev v. Cyprus & Russia*, App. No. 25965/04, Eur. Ct. H.R. (Jan. 10, 2010) (ruling human rights violated of father of young Russian woman lured into cabaret in Cyprus, prostituted, found dead apparently trying to escape).

⁶⁴ See, e.g., FARLEY, NEVADA, *supra* note 3, at 93 (describing exemplary cases of women unwittingly sold into prostitution). One anonymous white U.S.-born prostituted woman described this reality to Michele Clark, Protection Project, Johns Hopkins University, this way: “I wanted to talk to you, to impress upon you that there are a lot of American women who are also in the same predicament as women who are trafficked from overseas. I tell you these things from my own experience. I was bought and sold between men in the U.S.” Letter from Anonymous to Michele Clark, Protection Project, Johns Hopkins University (n.d.), *quoted in* Robert Brannon, *Does Consensual Prostitution Exist? 2*, available at <http://www.nomas.org/node/179> (last visited May 22, 2010).

Slavery is internationally defined as the exercise of powers of ownership over a person.⁶⁵ When pimps sell you for sex to johns who buy you, and you want to leave but cannot, you are a sex slave by international legal definition whether you have ever been beaten or crossed a border. That women who are pimped are exercising “agency” as independent entrepreneurs is a fantasy of privilege. Unless there is something biologically appropriate or existentially predestined about a life of sexual use by others for the benefit of third parties, these women—most of the industry⁶⁶—make the phrase “adult sex work that involves no victimization”⁶⁷ largely a contradiction in terms. They are not being employed under some other name. They are being sexually exploited. To expand the language of two judges on the Constitutional Court of South Africa, arguing in dissent that criminalizing prostituted people and not buyers is sex discrimination,⁶⁸ the differences between prostituted people and those who buy and sell them are that one is served, the other serves; one is bought, the other buys and sells them; one is stigmatized, the other retains respectability; one is a criminal, the others either are not, or the law against them is virtually never enforced. And the one is mostly women, the others overwhelmingly men.⁶⁹

So far, prostitution has been analyzed here as an institution of caste and race and class and age inequality. But men are poor and young too and are members of disadvantaged classes and racial groups and scheduled castes. Yet men are not found selling sex in anything like the numbers women are. So: why are the prostituted so often women?⁷⁰ The answer—also one producing little disagreement in an otherwise contentious debate—is sex inequality. Some women rank higher within the female sex caste⁷¹ than others on the basis of race, ethnicity, religion, and/or class, as well as in the terms

⁶⁵ Slavery Convention art. 1(1), Sept. 25, 1926, 46 Stat. 2183, 2191, 60 L.N.T.S. 253, 263 (“Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”).

⁶⁶ A claim to the contrary in South Africa relies on an unrealistic definition of “pimp.” See GOULD & FICK, *SELLING SEX*, *supra* note 40, at 5 (“We use the term pimp to describe a person who directly benefits from an outdoor sex worker’s income and is in some way present while the sex worker is on the street.”).

⁶⁷ SALRC, *SEXUAL OFFENSES*, *supra* note 4, at 84.

⁶⁸ *State v. Jordan* 2002 (6) SA 642 (CC) at para. 71 (S. Afr.) (O’Regan & Sachs, JJ., dissenting).

⁶⁹ *Id.* at ¶¶ 59–60, 64–70.

⁷⁰ See, e.g., 2 FRASER REPORT, *supra* note 14, at 371 (observing “the ratio of female to male prostitutes is estimated to be at least four to one,” with some variation among cities); Kristiina Kangaspunta, *Mapping the Inhuman Trade: Preliminary Findings of the Database on Trafficking in Human Beings*, 3 F. CRIME & SOC. 81, 95–97 (2003) (utilizing open source case information in UNODC trafficking database to show the vast majority of those trafficked for sex are women and children); John Lowman, *Canada*, in PROSTITUTION: AN INTERNATIONAL HANDBOOK ON TRENDS, PROBLEMS, AND POLICIES 56, 69–70 (Nanette J. Davis ed., 1993) (describing prostitution as “a predominantly female occupation” in which “female street prostitutes outnumber males (including transvestites and transsexuals) by at least 3 or 4 to one”).

⁷¹ Shulamith Firestone called sex “the oldest, most rigid class/caste system in existence.” SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* 15 (2003).

of their sexual use. Women try to work their way up in this caste, avoid it, and deny its existence. Those who fall to its floor are in prostitution, where those who are defined as purely for sex reside. If prostitution were a choice, one would think more men would be found exercising it.⁷² But as girls become women, among whom the prostituted are assigned the lowest definition, boys, even sexually abused or prostituted boys, grow into men with the options of men, which are better than most women's even if they are not always good. Nobody chooses the single attribute most prostituted people share, the single most powerful determinant of being sold for sex: the sex they are born with. No one fights to become a prostitute against all the odds. She is prostituted when the odds beat her.⁷³

Boys and men are trafficked,⁷⁴ many of whom are prostituting as women,⁷⁵ some as transgendered⁷⁶ who for that reason are also discriminated

⁷² As expressed by Ekberg, "What they mean, but do not say, is that prostitution is an acceptable solution for women living in poverty. Seldom do we see proposals that poor men should make their way out of poverty by welcoming the insertion of penises and other objects into them on a regular basis . . ." Gunilla S. Ekberg, *The International Debate About Prostitution and Trafficking in Women: Refuting the Arguments* (2002) (unpublished paper presented at the Seminar on the Effects of Legalisation of Prostitution Activities, Stockholm, Sweden), available at <http://www.childtrafficking.com/Content/Library/?pg=1&CID=1ff1de774005f8da13f42943881c655f|515c>.

⁷³ As a retired madam reflected decades ago on a situation that has not changed, "No girl, as a social worker once said, sets out to be a prostitute . . . Who wants to be a pariah, a social outcast—treated with contempt, jailed, beaten, robbed and finally kicked into the gutter when she is no longer salable?" POLLY ADLER, *A HOUSE IS NOT A HOME* 127–28 (1953).

⁷⁴ For analysis of the sex trade in men and boys, see MICHEL DORAIS, *RENT BOYS: THE WORLD OF MALE SEX TRADE WORKERS* (2005); BRUCE FISHER, *REPORT ON ADOLESCENT MALE PROSTITUTION* (1982); R. BARRI FLOWERS, *RUNAWAY KIDS AND TEENAGE PROSTITUTION: AMERICA'S LOST, ABANDONED, AND SEXUALLY EXPLOITED CHILDREN* (2001); MACK FRIEDMAN, *STRAPPED FOR CASH: A HISTORY OF AMERICAN HUSTLER CULTURE* (2003); ROBERT P. McNAMARA, *THE TIMES SQUARE HUSTLER: MALE PROSTITUTION IN NEW YORK CITY* (1994); MEN WHO SELL SEX: INTERNATIONAL PERSPECTIVES ON MALE PROSTITUTION AND HIV/AIDS (Peter Aggleton ed., 1999); JACOBO SCHIFTER, *LILA'S HOUSE: MALE PROSTITUTION IN LATIN AMERICA* (1998); SAM STEWARD, *UNDERSTANDING THE MALE HUSTLER* (1991); DONALD J. WEST, *MALE PROSTITUTION* (1993); Donald M. Allen, *Young Male Prostitutes: A Psychosocial Study*, 9 ARCHIVES SEX. BEHAV. 399 (1980); David S. Bimbi, *Male Prostitution: Pathology, Paradigms and Progress in Research*, 53 J. HOMOSEXUALITY 7 (2007); Debra Boyer, *Male Prostitution and Homosexual Identity*, 17 J. HOMOSEXUALITY 151 (1989); Eli Coleman, *The Development of Male Prostitution Activity Among Gay and Bisexual Adolescents*, 17 J. HOMOSEXUALITY 131 (1989); Christopher M. Earls & Hel  n   David, *A Psychosocial Study of Male Prostitution*, 18 ARCHIVES SEX. BEHAV. 401 (1989); Kerwin Kaye, *Male Prostitution in the Twentieth Century: Pseudohomosexuals, Hoodlum Homosexuals, and Exploited Teens*, 46 J. HOMOSEXUALITY 1 (2003); Christopher N. Kendall & Rus Ervin Funk, *Gay Male Pornography's 'Actors': When 'Fantasy' Isn't*, 2 J. TRAUMA PRAC. 93 (2003); John Scott et al., *Understanding the New Context of the Male Sex Work Industry*, 20 J. INTERPERSONAL VIOLENCE 320 (2005); Sari van der Poel, *Professional Male Prostitution: A Neglected Phenomenon*, 18 CRIME L. & SOC. CHANGE 259 (1992); and J. Davis Mannino, *The Relationship of Child Abuse and Other Characteristics Among Young Adult Male Prostitutes* (1989) (unpublished Ed.D. dissertation, University of San Francisco) (on file with Gleeson Library, University of San Francisco).

⁷⁵ See, e.g., Bindumadhav V. Khire, *Male Sex Work (MSW), in PROSTITUTION AND BEYOND: AN ANALYSIS OF SEX WORK IN INDIA*, *supra* note 19, at 126, 135 (Rohini Sahni et al. eds., 2008) (discussing men having sex as women with clients).

against in real employment. So far as is known, their johns remain almost exclusively men. That their violation is gendered is further supported by the fact that prostituted women and the transgendered are more likely to be physically or sexually assaulted than are men prostituting as men.⁷⁷ World-wide sex inequality gives most members of the male sex caste the privilege not to have being bought and sold for sex defined as your destiny; to have it recognized that something went wrong for you, rather than saying something about you that defines your character and worth. Men also have the privilege of choosing to sell and buy women, and men and children of both sexes, for sexual use. *This* choice is real. The sex industry exists because millions of men whom no one is forcing exercise it, men who will still be above the grass tomorrow if they do not do this today. Their free (if conditioned) choice to buy women to use sexually produces immense profit for the traffickers and pimps who provide the supply.⁷⁸ It is this that makes coltish

⁷⁶ One look at twentieth-century sexological writing found numerous commentators who “noted that even brothels proffering mostly women featured an occasional man in women’s clothing, just in case a client might prefer him to a female.” Kaye, *supra* note 74, at 7. That said, there is comparatively little research on the prostitution of transgendered people. Exemplary works include DON KULICK, *TRAVESTI: SEX, GENDER AND CULTURE AMONG BRAZILIAN TRANSGENDERED PROSTITUTES* (1998); Jacqueline Boles & Kirk W. Elifson, *The Social Organization of Transvestite Prostitution and AIDS*, 39 *SOC. SCI. & MED.* 85 (1994); Dwight Dixon & Joan K. Dixon, *She-Male Prostitutes: Who Are They, What Do They Do, and Why Do They Do It?*, in *PROSTITUTION: ON WHORES, HUSTLERS, AND JOHNS* 260 (James E. Elias et al. eds., 1998); Ronit D. Leichtenritt & Bilha Davidson Arad, *Adolescent and Young Adult Male-to-Female Transsexuals: Pathways to Prostitution*, 34 *BRIT. J. SOC. WORK* 349 (2004); D.F. MacFarlane, *Transsexual Prostitution in New Zealand: Predominance of Persons of Maori Extraction*, 13 *ARCHIVES SEX. BEHAV.* 301 (1984); Serena Nanda, *The Hijiras of India: Cultural and Individual Dimensions of an Institutionalized Gender Role*, 11 *J. HOMOSEXUALITY* 35 (1986); Garrett Prestage, *Male and Transsexual Prostitution*, in *SEX WORK AND SEX WORKERS IN AUSTRALIA* 174 (Roberta Perkins et al. eds., 1994); Tim Rhodes et al., *Police Violence and Sexual Risk Among Female and Transvestite Sex Workers in Serbia: Qualitative Study*, 337 *BRIT. MED. J.* 811 (2008); Lydia A. Sausa et al., *Perceived Risks and Benefits of Sex Work Among Transgender Women of Color in San Francisco*, 36 *ARCHIVES SEX. BEHAV.* 768 (2007); and Martin S. Weinberg et al., *Gendered Sex Work in the San Francisco Tenderloin*, 28 *ARCHIVES SEX. BEHAV.* 503 (1999).

⁷⁷ Farley and Barkan find that among people in prostitution, “women and transgendered prostitutes were more likely than men prostitutes to experience physical assaults in prostitution (chi square = 8.96, df = 2, p = .01). Women and transgendered prostitutes were more likely than men prostitutes to be raped in prostitution (chi square = 9.68, df = 2, p = .01).” Melissa Farley & Howard Barkan, *Prostitution, Violence, and Posttraumatic Stress Disorder*, 27 *WOMEN & HEALTH* 37, 41 (1998).

⁷⁸ Nothing in this analysis turns on absolute or relative numbers, across or within borders, but gaining even a general sense of magnitudes proves complex. No transnational data on the global magnitude of prostitution or domestic trafficking exists. As to the much smaller numbers of internationally trafficked people, UNESCO finds between 500,000 and 4 million victims cross borders annually. UNITED NATIONS EDUC., SCIENTIFIC, & CULTURAL ORG. (“UNESCO”), *TRAFFICKING PROJECT* [hereinafter UNESCO Trafficking Project], *FACTSHEET #1: WORLDWIDE TRAFFICKING ESTIMATES BY ORGANIZATIONS* (June 2004). Notwithstanding the inevitable undercounting of a clandestine industry, since many countries are source, transit, and destination locations, the incidence of trafficking—each act of which is a crime and a human rights violation—can be up to three times the prevalence of trafficked people. For a methodological critique of factors contributing to data variance on sex trafficking only, see Thomas Steinfatt, *Methodological Issues in Trafficking Research* (2005), <http://www.un>

thirteen-year-old girls into sole meal tickets for families of five.⁷⁹

What exactly is bought and sold in prostitution? Some men sell women to other men for intimate access to and power over them: for “you do what I say” sex.⁸⁰ They are buying the sex of no back talk, of not relating to her as a person, of being served and serviced, of being in the privacy of anonymity with a switched-off dissociated person who is not there, counting the cracks in the ceiling while watching the clock and thinking of England,⁸¹ of not having to do anything real for her sexually while kidding yourself that all she wants is to be there doing exactly this for big sexy irresistible you.⁸² To be fair, most johns know the women don’t enjoy it and are there out of

escobkk.org/fileadmin/user_upload/hiv_aids/Documents/Workshop_doc/Seminar_promoting/Methodological_Issues_in_Trafficking_Research_-_Thomas_Steinfatt.pdf (unpublished paper presented at the Seminar on Promoting Standards for Socio-Cultural Research on the Issues of HIV/AIDS and Trafficking, Bangkok, Thailand). Among the growing number of related studies, see especially Andrea Di Nicola & Andrea Cauduro, *Review of Official Statistics on Trafficking in Human Beings for Sexual Exploitation and Their Validity in the 25 EU Member States from Official Statistics to Estimates of the Phenomenon*, in MEASURING HUMAN TRAFFICKING: COMPLEXITIES AND PITFALLS 73 (Ernesto U. Savona & Sonia Stefanizzi eds., 2007). The International Labour Organization (“ILO”), which limits its definition of trafficking to transborder movement, compiled the first global minimum estimate of forced labor worldwide, categorized by region and type of exploitation, in 2005. See ILO, REPORT OF THE DIRECTOR-GENERAL: A GLOBAL ALLIANCE AGAINST FORCED LABOUR 2 (2005) [hereinafter ILO Report]. Its Special Action Programme to Combat Forced Labour concluded that, conservatively speaking, approximately 1.39 million victims of commercial sexual exploitation exist worldwide at any given time, 1.05 million of whom were trafficked. *Id.* at 13, 14. Kristiina Kangaspunta, *supra* note 70, at 95, provides a good compilation of data combined with a lucid critique of collection methods, analyzing 3671 trafficking cases, 80% of the victims of which were for sexual exploitation. An International Organization for Migration (“IOM”) representative (writing under his own name) recently concluded that “superior data will only emerge when the gravity of trafficking is fully recognized and acknowledged by all authorities concerned. Unless governments and law enforcement agencies are prepared to combat trafficking more vigorously and, at the same time, to provide adequate protection to the victims of trafficking, the majority of trafficking cases will continue to go uncounted, the victims uncared for, and the traffickers unpunished.” Frank Laczko, *Human Trafficking: The Need for Better Data*, MIGRATION INFORMATION SOURCE, Nov. 1, 2002, <http://www.migrationinformation.org/feature/display.cfm?ID=66>.

⁷⁹ This example drawn from a direct experience is far from unique. See Sue Ryan, *For Sale: 13-Year-Old Virgin*, SUNDAY TELEGRAPH (London), Apr. 13, 2008, at 30 (describing four sisters in Rajasthan, India, whose prostitution supports 50 family members).

⁸⁰ A prostituted Vancouver woman put it this way: “Men who go to prostitutes go to prostitutes (and I’ve been hooking for 19 years) because it’s a power trip. They pay the money, they get to call the shots. They own you for that 1/2 hour or that 20 minutes or that hour. They are buying you. They have no attachments, you’re not a person, you’re a thing to be used.” 2 FRASER REPORT, *supra* note 14, at 387.

⁸¹ See, e.g., 2 BADGLEY REPORT, *supra* note 21, at 1016–17, 1034–35 (documenting prostituted youth who definitively indicate they neither enjoy prostitution nor recommend it as a life choice); ADLER, *supra* note 73, at 127 (observing, based on years of experience as New York madam, “despite all the feigned transports of ecstasy . . . to ninety-nine out of a hundred girls, going to bed with a customer is a joyless, even distasteful, experience.”).

⁸² A recent study in London attests to johns’ attitudes in this regard. “Most interviewees said they assumed that to a greater or lesser extent, women in prostitution are sexually satisfied by the sex acts purchased by buyers,” believing in particular that they “were satisfied by the sex of prostitution 46% of the time.” MELISSA FARLEY ET AL., MEN WHO BUY SEX: WHO THEY BUY AND WHAT THEY KNOW 19 (2009) [hereinafter FARLEY ET AL., MEN WHO BUY SEX].

economic necessity.⁸³ Like Shakespeare's Romeo, they know they are buying her poverty, not her will.⁸⁴ But—understand this—they consider this “consent.”⁸⁵ When she is found doing the one thing left after 99% of her options are precluded, when she is so desperate she is out of any other possibility, consenting is what she is doing. *This* is an ideological position. From his end, it makes him feel better using her, making it good for business. From her end, she is having the sex of the sexually abused child: sex you would never have except that he has more power than you do. This is not just like every other job. Setting limits on the intimacy and intrusiveness of the demands that can be made on a person without recourse is one of the purposes of human rights and labor law. With all respect to academic colleagues who contend that prostituting is not that different from thinking and writing,⁸⁶ prostitution in the real world is not an abstraction or a metaphor.

⁸³ See MACLEOD ET AL., CHALLENGING, *supra* note 29, at 20–21 (reporting that 73% of johns interviewed said that women engaged in prostitution strictly out of economic necessity and 85% said that prostituted sex was not pleasurable to those sold). Any tension with the finding in note 82 above is explained by the important finding that men who buy sex simultaneously hold many diametrically opposed attitudes about prostitution, including on their own roles and women's roles in it. See Melissa Farley et al., *Attitudes and Social Characteristics of Men Who Buy Sex in Scotland*, in PSYCHOL. TRAUMA (forthcoming 2011) [hereinafter Farley et al., *Men Who Buy Sex in Scotland*]. Some men who buy sex express awareness that coercion and force are integral to prostitution and trafficking. See, e.g., BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN? A MULTI-COUNTRY PILOT STUDY 23 (2003) (concluding that between 77% (Japan) and 100% (Sweden) of johns surveyed in five countries were aware of women being trafficked into prostitution); Andrea Di Nicola & Paolo Ruspini, *Learning From Clients*, in PROSTITUTION AND HUMAN TRAFFICKING: FOCUS ON CLIENTS 227, 232 (Andrea Di Nicola et al. eds., 2009) (quoting a “Dutch client” who admitted that foreknowledge that woman available for purchase had been forcibly prostituted “would probably not influence my choice[,]” adding “[i]t is totally wrong of course.”); Farley, ‘Renting an Organ,’ *supra* note 29, at 150–52. As a London buyer perceptively acknowledged, “[t]he girls in Soho could just as easily have been reading a book . . . [those who] are very good at their job will kid you into feeling the connection's really happening.” FARLEY ET AL., MEN WHO BUY SEX, *supra* note 82, at 24.

⁸⁴ See WILLIAM SHAKESPEARE, ROMEO & JULIET act 5, sc. 1.

⁸⁵ For whatever reason, johns consider the transaction consensual despite their knowledge of her actual conditions. See, e.g., MACLEOD ET AL., CHALLENGING, *supra* note 29, at 20 (“Almost all (96%) of the punters interviewed in this research stated that to a significant extent (50% or more of the time) prostitution was a consenting act between two adults.”); VICTOR MALAREK, THE JOHNS: SEX FOR SALE AND THE MEN WHO BUY IT 103 (2009) (quoting a john, “Ninety-nine per cent of mongers purchase as a willing buyer a service from a consensual adult willing seller . . .”). Among johns surveyed in Chicago, a solid majority of buyers of both indoor (55%) and outdoor sex (69%) completely agreed with the statement, “Prostitution is a sex act between consenting adults.” Carrie George, Deconstructing the Demand for Prostitution: Preliminary Insights from Interviews with Chicago Men Who Purchase Sex—Further Insights: A Comparison of Men Who Purchase Sex Indoors Versus Outdoors 6 (2010) (unpublished paper) (on file with author), available at <http://www.caase.org/resources.aspx>. Forty-three percent of respondents in another study contended that their payment bought them their choice of sexual services delivered without dissent. See RACHEL DURCHSLAG & SAMIR GOSWAMI, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 18 (2008) (“[S]he gave up her rights when she accepted my money.”).

⁸⁶ For instance, Martha Nussbaum asserts, “All of us . . . take money for the use of our body. Professors, factory workers, lawyers, opera singers, prostitutes, doctors, legislators—we all do things with parts of our bodies for which we receive a wage in return.” Martha C.

And apart from the differing assault and mortality rates, and the differing roles of explicit sexuality in the activity, some of us are not doing “you do what I say” scholarship.

Proponents of the sex work model sometimes suggest that anyone who is against prostitution is against sex.⁸⁷ The sex they are talking about is the reality I have been describing. It is like (indeed, it *is*) saying that being against rape is being against sex. The same group sometimes insists that all the abuse, rape, and beatings are invented or exaggerated by us ideologically motivated, repressed puritan sex-panicked whiners who just don’t have what it takes to make it as whores.⁸⁸ The pimps are invented too. These women are independent entrepreneurs—well, maybe some have managers.⁸⁹ Then along came HIV/AIDS and even this crowd discovered a harm, along with a lucrative profit center in purporting to address it.⁹⁰ Handy, this disease that harms the men who wipe themselves off on the women as well as the wo-

Nussbaum, ‘*Whether from Reason or Prejudice*’: *Taking Money for Bodily Services*, 27 J. LEGAL STUD. 693, 693–94 (1998). Similarly a john found it convenient to claim, “It’s a service they provide—for example a joiner can use his hands to produce something with wood, that’s a service. If a woman can use part of her body, that’s a service, too.” MACLEOD ET AL., CHALLENGING, *supra* note 29, at 21. The abusive and discriminatory conditions and preconditions of prostitution are covered up here, even as the specific substantive role of a denigrated sexuality in the second-class status of women, by which prostituted women are victimized in pure form, is lost in abstraction. One formerly prostituted woman cuts through one aspect of the nonsense: “[w]orking in the sex industry just isn’t the same as playing in it. The former is about pleasing others while the latter is about having it your way.” Veronica Monét, *No Girls Allowed at the Mustang Ranch*, in WHORES AND OTHER FEMINISTS, 167, 167 (Jill Nagel ed., 1997) (describing her visit to a legal brothel in Nevada for sex).

⁸⁷ WENDY CHAPKIS, LIVE SEX ACTS: WOMEN PERFORMING EROTIC LABOR 17–20 (1997) (categorizing exponents of the sexual exploitation approach as “anti-sex” feminists); Carol Queen, *Sex Radical Politics, Sex-Positive Feminist Thought, and Whore Stigma*, in WHORES AND OTHER FEMINISTS, *supra* note 86, at 125, 129 (disparaging ideological opponents as “anti-sex-work demagogues”); Rubin, *supra* note 2, at 301 (situating anti-pornography feminists within the tradition of “conservative anti-sexual discourse”).

⁸⁸ This is a compressed reconstruction of 27 years of experience debating these issues, the atmosphere of which is evoked by literature such as PAT CALIFIA, PUBLIC SEX: THE CULTURE OF RADICAL SEX (1994); CAMILLE PAGLIA, SEXUAL PERSONAE: ART AND DECADENCE FROM NEFERITTI TO EMILY DICKINSON (1990); and KATIE ROIPHE, THE MORNING AFTER: SEX, FEAR, AND FEMINISM (1993).

⁸⁹ See, e.g., MAY ET AL., *supra* note 52, at 3 (distinguishing “pimps from the—largely female—managers of sex work in saunas and massage parlors” whose “relationship with their workers” tends to be “contractual rather than coercive”); Ronald Weitzer, *Prostitution as a Form of Work*, 1 SOCIOLOGY COMPASS 143, 143 (2007) (referring to pimps and johns respectively as “male managers and customers”); see also O’CONNELL DAVIDSON, *supra* note 29, at 54 (defining “entrepreneurial” pimps to encompass those who “act as ‘agents’ for prostitutes, providing various services”). The organization Women Hurt in Systems of Prostitution Engaged in Revolt (“WHISPER”), having observed the same tendency in their interactions with the sex work crowd, responded with a pungent leaflet asking, “do you want this job?” They present a mock contract stating prostitution’s actual conditions, including “[c]orporate management fees range from 40-60% of wages” while “private manager reserves the right to impound all monies earned,” concluding with “[s]ignature of manager on behalf of applicant.” See WHISPER, “Do YOU want this job?” (n.d.), in CATHARINE A. MACKINNON, SEX EQUALITY 1274–75 (2d ed. 2007), available at <http://www.prostitutionresearch.com/faq/000009.html>.

⁹⁰ See Farley, ‘*Bad for the Body*’, *supra* note 39, at 1112–15.

men whose faces they explode all over—how refreshingly gender neutral and symmetrical. So now the pernicious brothel system in India must stay in place, or where would we distribute the condoms? Who keeps track of whether the women can actually use them, or the skyrocketing prices for women who have no choice but not to?⁹¹

These condoms are emblematic of the prophylactic sex work idea that proposes to make the world safe for prostitution by containing its harms one at a time. Nothing is fundamentally problematic about prostitution itself. Indeed, something about it is important to preserve. The first fault line in this denial of intrinsic harm appears when it is conceded that children should not be prostituted.⁹² I cannot imagine why not. If there is nothing wrong with prostitution, if this is freedom and equality and liberation, if it really can make a woman's life more autonomous and independent, if its harms are negligible or occasional, what on earth is wrong with children doing it or seeing it being done? And if something is problematic here, how does it change suddenly when she reaches seventeen years and three hundred sixty-six days old? If no one could enter commercial sex as a child, if the abuse of all those who did was retroactively redressed,⁹³ the sex industry would be depopulated overnight.

⁹¹ Other people do. Compare Vijayendra Rao et al., *Sex Workers and the Cost of Safe Sex: The Compensating Differential for Condom Use Among Calcutta Prostitutes*, 71 J. DEV. ECON. 585, 588 (2003), with data from a random sample of prostituted people in Sonagachi, Kolkata, India, calculating that “sex workers face between a 66% and a 79% loss in the average prices they charge by using condoms.” In a study of women trafficked in the U.S., 47% of respondents said they were often confronted with the demand for condom-free sex, 73% confirming that men offered to pay more for going “bare back.” RAYMOND & HUGHES, *supra* note 30, at 11; Rochelle L. Dalla, *Exposing the ‘Pretty Woman’ Myth: A Qualitative Examination of the Lives of Female Streetwalking Prostitutes*, 37 J. SEX RES. 344, 350 (2000) (presenting interviews with 43 street-prostituted women in a midsized city in the U.S. Midwest with several indicating that “clients would pay extra in order to have unprotected sex”); see also Catherine Campbell et al., *Gender as an Obstacle to Condom Use: HIV Prevention Amongst Commercial Sex Workers in a Mining Community*, 39 AGENDA 50, 53 (1998) (“In their difficult and hand-to-mouth existence, poverty prevented them from turning away clients who refused to use condoms.”). As one buyer put it, “The girls never refuse sex acts. The best sex is without a condom—condoms kill sexual pleasure by 30%.” FARLEY ET AL., *MEN WHO BUY SEX*, *supra* note 82, at 17. In a final turn of the screw:

During the course of research on Indian men who buy sex conducted collaboratively by Prostitution Research & Education (San Francisco) and Sanjog (Kolkata), Melissa Farley, Ph.D. also spoke with women in Kolkata prostitution who told her that pimps sold them condoms that they'd received at no cost from US condom distributors (such as Family Health International, specifically mentioned). The pimps charged .5 rupee for several condoms. Other women that Farley spoke to independently confirmed this in 2006. Many of the pimps were women.

Email from Melissa Farley, the leading researcher some of whose work is cited in notes 3, 11, 29, 39, 49, 53, 77, 82, 83, and 91 and 126 of this Article, to Catharine A. MacKinnon (Dec. 19, 2010) (on file with author).

⁹² An especially thorough criminalization of child prostitution is contained in recent laws of South Africa. See Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 §§ 17–22.

⁹³ The “look back” idea would allow legal pursuit of anyone who used a person in prostitution who was a child, whatever her age today.

Although no one can deny that most women enter the sex industry with previously violated childhoods, what is denied is that defending prostitution supports their continuous violation on the rationale that they are no longer little girls. What those seem to miss who care only about prostituted children (if they care about anything in this picture⁹⁴) is that in the sex trade, adults and children are not two separate groups of people. They are the same group of people at two points in time. Too, this is why nothing effective can be done for one without doing it for both. Those children for whom nothing was done who managed not to die yet are most of today's prostituted women. One consequence of childhood sexual abuse can be to feel valued and approved when being sexually violated in a context of feeling fundamentally worthless.⁹⁵ Meantime law, policy, and popular culture just wait

⁹⁴ Indicative is Priscilla Alexander's observation that "[a]dult prostitutes are concerned about adolescents and children turning to sex work to survive or being pressured to do so by parents and brokers." Alexander, *Feminism, Sex Workers and Human Rights*, *supra* note 2 at 93, and Mina Seshu's statement for Sangram, a "sex workers collective" based in Sangli, India, that "we are against . . . bringing minors into sex work . . ." *NGOs Rally for Safety of Woman Sex Workers*, *TIMES OF INDIA*, April 11, 2011, http://articles.timesofindia.indiatimes.com/2011-04-11/pune/29405738_1_police-raids-human-rights-rights-organisations. The tendency to prioritize children has also been observed in the work of governmental and non-governmental organizations. See, e.g., David E. Guinn, *Defining the Problem of Trafficking: The Interplay of US Law, Donor, and NGO Engagement and the Local Context in Latin America*, 30 *HUM. RTS. Q.* 119, 124 (2008) ("Out of all forms of trafficking, child trafficking receives the greatest attention and condemnation. Countries that provide practically no programs to combat the trafficking of women or trafficking for labor exploitation nonetheless make some effort to prevent child trafficking, especially trafficking for purposes of sexual exploitation as reported in the US Trafficking in Persons (TIP) Report."). This observation is supported by the most recent pronouncement of the Council of Europe. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting its Victims, and Replacing Council Framework Decision 2002/629/JHA, 2011 O.J. (L 101) 1. For critique of the distinction in this context, see Sheila Jeffreys, *Challenging the Adult/Child Distinction in Theory and Practice on Prostitution*, 2 *INT'L FEMINIST J. POL.* 359 (2000). Although, like many entities, the U.S. Department of Justice gives an overall impression of special solicitude toward child victims, see generally TRACEY KYCKELHAHN, ET AL., OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T JUSTICE, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT: CHARACTERISTICS OF SUSPENDED HUMAN TRAFFICKING INCIDENTS, 2007–08 (2009), its documented practice in the same years shows precious few trafficking cases of any kind, a disproportionate number concerning labor trafficking, fewest concerning sex trafficking of adults or children. *Id.* at 4.

⁹⁵ Derek Jehu, Marjorie Gazon & Carole Klassen, *Common Therapeutic Targets Among Women Who Were Sexually Abused in Childhood*, 3 *J. SOC. WORK & HUM. SEXUALITY* 25, 29, 30 (1985) (presenting results from structured interviews showing that more than three-quarters of treatment seeking adult female subjects who had been sexually abused in childhood ($n = 22$) experienced low self-esteem, with 16 of 21 agreeing with the statement "I am worthless and bad"). A number of prominent theorists and clinicians, beginning with David Finkelhor and Angela Browne, have connected the devastation to the child's emergent sense of self caused by sexual violation in childhood with heightened vulnerability to sexual trauma across the life course. See, e.g., David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 *AM. J. ORTHOPSYCHIATRY* 530 (1985) (identifying "traumatic sexualization" as a long-term effect of child sexual abuse); see also DIANA E.H. RUSSELL, *THE SECRET TRAUMA: INCEST IN THE LIVES OF GIRLS AND WOMEN* 167–70 (rev. ed. 1999) (elaborating Finkelhor and Browne's analysis regarding links between child sexual abuse, particularly incest, and later sexual victimization, including prostitution). For broader discussion of the lasting harms of sexual abuse in childhood, see CALVIN A. COLARUSSO, *THE*

for them to live long enough to be written off as consenting adults. Understood as a practice of sexual exploitation, prostitution cannot be made safe. Those in it cannot realistically be protected. Once you face this, recognizing its harms selectively is unmasked as a strategic retreat that allows its intrinsic harms to continue, lifting the sex industry's ever-sagging public face as ever more violated women flee and find their voices.

The second strategic concession of the sex work approach has been to criticize trafficking while defending prostitution. But what is trafficking? The Palermo Protocol definition,⁹⁶ which is sweeping the world, includes being sexually exploited through force, fraud, or coercion for commercial sex, all of which indeed occurs in the sex industry. But that definition, and the industry's reality, also includes sexual exploitation through "abuse of power or a condition of vulnerability," elements often elided in this discussion.⁹⁷ Caste, race, or age can be conditions of vulnerability, as is extreme poverty.⁹⁸ So also, in reality, are sex and gender. Trafficking is transportation, transfer, harboring, or receipt of a human being for purposes of sexual exploitation: it is straight-up pimping. Movement across jurisdictional lines is not, and has not been, an element of the international definition of trafficking since at least 1949.⁹⁹ The sine qua non of trafficking is thus neither

LONG SHADOW OF SEXUAL ABUSE: DEVELOPMENTAL EFFECTS ACROSS THE LIFE CYCLE (2010); CHRISTINE A. COURTOIS, HEALING THE INCEST WOUND: ADULT SURVIVORS IN THERAPY 171–232 (2d ed. 2010); DAVID FINKELHOR, CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH (1984); and LASTING EFFECTS OF CHILD SEXUAL ABUSE (Gail Elizabeth Wyatt & Gloria Johnson Powell eds., 1988).

⁹⁶ See Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3(a) Nov. 2, 2000, G.A. Res. 25 (II), at 54, U.N. Doc. A/55/383 [hereinafter Palermo Protocol]:

Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

⁹⁷ For one use of the Palermo definition that elides these elements, see ECOSOC, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, U.N. Doc. E/2002/68/Add. 1, at 7 n.6 (May 20, 2002).

⁹⁸ South Africa's proposed trafficking law defines "abuse of vulnerability," as "any physical or psychological abuse that leads a person to believe that he or she has no reasonable alternative but to submit to exploitation, and includes, but is not limited to, taking advantage of the vulnerabilities of that person resulting from— (a) the person having entered or remained in the Republic illegally or without proper documentation; (b) pregnancy; (c) any disability of the person; (d) addiction to the use of any dependence-producing substance; (e) being a child; and (f) socio-economic circumstances[.]" unless context indicates otherwise. Prevention and Combating of Trafficking in Persons Bill, 2010, Bill 7-2010 (NA) (S. Afr.).

⁹⁹ Asserting in the Preamble that "prostitution and the accompanying evil of the traffic in persons for the purpose of prostitution are incompatible with the dignity and worth of the human person and endanger the welfare of the individual, the family and the community," adherents to the 1949 Trafficking Convention "agree to punish any person who, to gratify the passions of another: (1) Procures, entices or leads away, for purposes of prostitution, another

border crossing nor severe violence. It is third-party involvement. This is why Sigma Huda, Special Rapporteur on Trafficking from 2004 to 2008 observed that, “prostitution as actually practised in the world usually does satisfy the elements of trafficking.”¹⁰⁰ You cannot traffic yourself, which separates it from prostitution. Sexual exploitation can also be slavery.¹⁰¹ Right there, in the international definition, is what is sometimes criticized as a “conflation” of slavery with trafficking.¹⁰² You cannot enslave yourself either.

For her prostitution to be exploited, she has to be sold *to* someone. She has to be bought. This person, the buyer, is almost never prosecuted. While most places legally make prostitutes criminals for being victimized, those who victimize them are typically let off the hook either in law or fact. The pimp and the landlord are often not prosecuted; the john is either not a criminal at all or if he is, he is virtually never pursued, certainly not as often as the women are. South Africa is not atypical in having reportedly arrested 3,385 prostituted people and only 10 johns in the two years since criminalizing the

person, even with the consent of that person; (2) Exploits the prostitution of another person, even with the consent of that person.” Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others art. 1, Dec. 2, 1949, G.A. Res. 317 (IV), U.N. Doc. A/1251, at 33. Of course the scope of application of an international convention will often require international activity, but this is not the same as the definition of the crime.

¹⁰⁰ ECOSOC, CHR, *Integration of the Human Rights of Women and a Gender Perspective, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, E/CN.4/2006/62, ¶ 42 (Feb. 20, 2006) (by Sigma Huda) [hereinafter Huda Report]. She continues, “It is rare that one finds a case in which the path to prostitution and/or a person’s experiences within prostitution do not involve, at the very least, an abuse of power and/or an abuse of vulnerability. Power and vulnerability in this context must be understood to include power disparities based on gender, race, ethnicity and poverty.” *Id.* For criticism from the sex work perspective, see, e.g., Ann D. Jordan, *Human Rights or Wrongs? The Struggle for a Rights-Based Response to Trafficking in Human Beings*, 10 GENDER & DEV. 28, 30–31 (2002) (lamenting criminalizing clients as result of conflating prostitution with trafficking); Weitzer, *supra* note 2, at 61, 70–72 (depicting opposition to prostitution as “moral crusade” conflating trafficking and prostitution to further its agenda); Ronald Weitzer, *The Social Construction of Sex Trafficking*, 35 POL. & SOC’Y 447, 455 (2007) (noting that conflation of trafficking and prostitution is motivated by goal of eliminating sex trade); Melissa Hope Ditmore, *Trafficking and Sex Work: A Problematic Conflation 2* (2002) (unpublished Ph.D. dissertation, City University of New York) (on file with City University of New York Graduate Center Library) (emphasizing “the ways in which a morality about prostitution is being transferred to legislation aimed at trafficking”).

¹⁰¹ See, e.g., Palermo Protocol, *supra* note 96, art. 3(a) (incorporating “slavery or practices similar to slavery” into its definition of trafficking).

¹⁰² See, e.g., Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Anti-Prostitution Reform and Its Influence on U.S. Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1709 (2010) (speaking of “the dangers of conflating trafficking with slavery”); Janie Lynne Musto, *What’s In a Name? Conflations and Contradictions in Contemporary U.S. Discourses of Human Trafficking*, 32 WOMEN’S STUD. INT’L F. 281, 286 (2009) (“Terms like ‘trafficking,’ ‘smuggling,’ ‘modern day slavery,’ and ‘sexual slavery’ are polemical in nature and demonstrate the tenuousness of assigning meaning to forms of exploitation that appear to resemble but nevertheless remain distinct from one another.”); see also Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT’L L.J. 207, 212 (2007).

buyers.¹⁰³ This is official sex discrimination unrecognized as such.¹⁰⁴ What Sweden has done is to situate prostitution in the context of violence against women¹⁰⁵ and strongly criminalize the buyers accordingly, making purchasing sex a crime, and enforced it, together with extending some help (if not enough) to those who want to leave.¹⁰⁶ Against his demand to buy her for sex, this law says she is not for sale, or rent. Eliminating her criminality raises her status; criminalizing him lowers his privilege. This is a sex equality law in inspiration as well as effect.¹⁰⁷ It took training to show the police

¹⁰³ See Colleen Lowe Morna, *Sex Workers Are Being Arrested While Rapists Go Free*, SUNDAY INDEPENDENT (S. Afr.), Dec. 6, 2009, at 15.

¹⁰⁴ This is the conclusion of the cogent dissent in *State v. Jordan* 2002 (6) SA 642 (CC) at ¶ 67 (S. Afr.). See also Stu Woolman & Michael Bishop, *State as Pimp: Sexual Slavery in South Africa*, 23 DEV. S. AFR. 385, 388 (2006) (chiding the majority for ignoring “state complicity in a legal regime that condones institutionalised rape” and failing the victims of sex trafficking—“people who have little chance, and no choice, in life’s wheel of fortune”). For the same failure in the U.S., see, e.g., *People v. Superior Court (Hartway)*, 19 Cal. 3d 338 (1977); and *In re P.*, 400 N.Y.S.2d 455 (N.Y. Fam. Ct. 1977), *rev’d*, 418 N.Y.S.2d 597 (N.Y. App. Div. 1979).

¹⁰⁵ When the Swedish Parliament voted to criminalize purchase of sexual services in 1998, it described the connection between gender-based violence and prostitution as:

[I]ssues that in major parts pertain to relationships between men and women, relationships that have significance for sex equality, in the particular case as well as in the community at large. In this way the issues can be said to be related with each other. Men’s violence against women is not consonant with the aspirations toward a gender equal society, and has to be fought against with all means. In such a society it is also unworthy and unacceptable that men obtain casual sex with women against remuneration.

Proposition [Prop.] 1997/98:55 Kvinnofrid [approx: Women’s Sanctuary / Women’s Peace] [government bill], 22 (Swed.).

The law is now found in the Criminal Code. See *Brottsbalken [BrB] [Criminal Code] 6:11 (Swed.)* (“[a] person who, otherwise than as previously provided in this Chapter [on Sexual Crimes], obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most six months. [This law] also applies if the payment was promised or given by another person” (passed in 2005, amending *Lag om förbud mot köp av sexuella tjänster (Svensk författningssamling [SFS] 1998:408)*, which took effect January 1999)) (unofficial translations of penal code available at <http://www.sweden.gov.se/sb/d/3288/a/19568>). For legislative history before the 1998 government bill, see *Statens offentliga utredningar [SOU] 1995:15 Könshandeln: Betänkande av 1993 års Prostitutionsutredning [The Sex Trade: Final Report of the 1993 Prostitution Inquiry] [government report series] (Swed.)*; see also Max Waltman, *Prohibiting Purchase of Sex in Sweden: Impact, Obstacles, Potential, and Supporting Escape* (Dept. of Political Science, Stockholm University, Working Paper Series 2010:3), available at http://www.statsvet.su.se/English/Research/working_papers.htm (analyzing the law’s legislative history, rationale, impact, application, and potential); Marie De Santis, *Opposing Prostitution as a Form of Violence Against Women: The Swedish Model*, PEACEWORK, June–July 2005, at 16 (situating the 1999 statute in the context of its legislative history wherein concerns about violence against women were central).

¹⁰⁶ On July 10, 2008, the Swedish government adopted a five-prong “National Action Plan” to combat prostitution and sex trafficking by providing “greater protection and support for people at risk, more emphasis on preventive work, higher standards and greater efficiency in the justice system, increased national and international cooperation, and a higher level of knowledge and awareness.” MINISTRY OF INTEGRATION & GEND. EQUAL. (Swed.), INFORMATION SHEET: ACTION PLAN AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES (2008), available at <http://www.sweden.gov.se/sb/d/574/a/110629>.

¹⁰⁷ The Swedish government, in adopting its law, recognized, *inter alia*, that

that the buyers are exploiters; now they surveil and arrest them.¹⁰⁸ The result has been a halving of street prostitution and the lowest trafficking rate in Europe.¹⁰⁹ The stigma of prostitution may be shifting to the johns. Although

[I]t is not reasonable also to criminalize the one who, at least in most cases, is the weaker part whom is exploited by others who want to satisfy their own sexual drive. It is also important in order to encourage the prostituted persons to seek assistance to get away from prostitution, that they do not feel they risk any form of sanction because they have been active as prostituted persons.

Prop. 1997/98:55 Kvinnofrid, *supra* note 105, at 104. Cf. Betänkande [Bet.] 1997/98:JuU13 Kvinnofrid [Committee on Justice parliamentary report] (Swed.) (dismissing minority motions proposing criminalizing both parties), available at http://www.riksdagen.se/webbnav/index.aspx?nid=3322&dok_id=GL01JuU13.

¹⁰⁸ Arrest and conviction figures do not capture the numbers of buyers deterred as a result of the law. But the number of convictions under the Sex Purchase Act was 10 in 1999, 29 in 2000, 38 in 2001, 37 in 2002, 72 in 2003, 48 in 2004, 105 in 2005, 114 in 2006, 85 in 2007, 69 in 2008, and 107 in 2009. See National Criminal Statistics Database, Sweden, Swedish National Council for Crime Prevention statistics, <http://www.bra.se>. The number of reported crimes of sex purchase increased as well on an annual basis. See *id.* A recent dramatic increase in reported crimes took place in 2010 when as many as 1251 cases were reported, compared with the previously highest annual number reported in 2005 of 460. *Id.* There were also 231 reported purchases of a sexual act from a child (under age 18), where the penalty maximum is 2 years. See Brottsbalken [Br] [Criminal Code] 6:9 (Swed.). The reasons for this increase seem due to particular funds allotted by the government's action plan for prostitution and trafficking, and one large local case of organized pimping in Jämtland (northern Sweden). See *Anmälda sexköp har fördubblats* [Reported Sex Purchases Doubled], TIDNINGARNAS TELEGRAMBYRA (TT) [Newspapers' Telegram Agency], July 27, 2010; Anna Helmersson/TT, *Anmälda sexköp har fördubblats*, DAGENS NYHETER [Daily News], July 27, 2010, available at <http://www.dn.se/nyheter/sverige/annalda-sexkop-har-fordubblats>.

¹⁰⁹ Although the National Criminal Police did not, in this instance, include an estimate of the number of girls and women trafficked in Sweden, "[f]rom telephone interception it appears that the stream of sex buyers is not often as large as desired by the pimps. A probable explanation is that the law relating to purchase of sexual services works like a barrier to the establishment of trafficking in human beings in Sweden." SITUATION REPORT No. 8, *supra* note 18, at 19. This conclusion was strengthened subsequently: "It is clear that the prohibition against buying sexual services, known as the sex purchase law, is still functioning as a barrier that is preventing human traffickers and pimps from becoming established in Sweden." NAT'L CRIMINAL POLICE (Swed.), TRAFFICKING IN HUMAN BEINGS FOR SEXUAL PURPOSES: SITUATION REPORT No. 9, 1 JANUARY–31 DECEMBER 2005, at 9 (2007). Cf. Rikspolisstyrelsen [Nat'l Criminal Police], Lägesrapport 10: Människohandel för sexuella och andra ändamål 2007–2008 [Situation Report No. 10: Trafficking for Sexual and other Purposes 2007–2008] at 10 (2009) (citing wiretapping showing traffickers disappointed with low demand in Sweden and noting clandestine brothels are fairly small enterprises, police operations rarely finding more than 3–4 prostituted women at one time); NAT'L CRIMINAL POLICE (Swed.), TRAFFICKING IN WOMEN: SITUATION REPORT No. 5, at 34 (2003) (noting reduced demand after 1999). Outside in Europe, it is not uncommon to find operations including 20 to 60 prostituted persons in certain criminal activities. See Statens Offentliga Utredningar [SOU] 2010:49 Förbud mot köp av sexuell tjänst: En utvärdering 1999–2008 [Prohibition Against Purchase of Sexual Service: An Evaluation 1999–2008] [government report series] at 122 (Swed.). Based on extensive fieldwork, the Swedish National Board of Health and Welfare determined that "the number of clients has declined on the streets of the three major cities [Stockholm, Göteborg, and Malmö] since the new law went into effect. The amount of traffic is said to be less, and some informants believe that the transactions have become briefer." NAT'L BD. OF HEALTH & WELFARE, PROSTITUTION IN SWEDEN 2003: KNOWLEDGE, BELIEFS & ATTITUDES OF KEY INFORMANTS 26 (2003). Organized crime is known as an "opportunity seeking" enterprise, situating operations where demand is high and risk low. See BUDAPEST GRP., THE RELATIONSHIP BETWEEN ORGANIZED CRIME AND TRAFFICKING IN ALIENS 15 (1999). For pimps and traffickers, Sweden has become increasingly inhospitable, nudging them elsewhere. See BINDEL &

the drafting¹¹⁰ and implementation of the law could be improved, as could judicial recognition of its fundamental principle¹¹¹ and benefits for exit, this

KELLY, *supra* note 4, at 29; Gunilla Ekberg, *The Swedish Law That Prohibits the Purchase of Sexual Services: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 10 VIOLENCE AGAINST WOMEN 1187, 1200–01 (2004). Evidence currently available shows that the number of women in prostitution decreased from 2500–3000 in the early 1990s (650 of whom were on the streets) to approximately 300 women and 50 men advertising sex for sale on the Internet and another 300 women in street prostitution by 2005. See Statens Offentliga Utredningar [SOU] 1995:15 Könshandeln: Betänkande av 1993 års Prostitutionsutredning [The Sex Trade: Final Report of the 1993 Prostitution Commission] [government report series], at 10, 99 (Swed.); Charlotta Holmström, *Prostitution och människohandel för sexuella ändamål i Sverige: Omfattning, förekomst och kunskapsproduktion [Prostitution and Trafficking for Sexual Purposes in Sweden: Extent, Occurrence, and Research]*, in PROSTITUTION I NORDEN: FORSKNINGSRAPPORT [PROSTITUTION IN THE NORDIC COUNTRIES: CONFERENCE REPORT] 303, 314 (Charlotta Holmström & May-Len Skilbrei eds., 2008). In Denmark, by contrast, where sexual purchase is legal, using similar methods of approximation there were at least 5567 identifiably prostituted people, 1415 of whom were on the streets. Charlotta Holmström & May-Len Skilbrei, *Nordiska prostitutionsmarknader i förändring: En inledning [Nordic Markets for Prostitution in Change: An Introduction]*, in PROSTITUTION I NORDEN: FORSKNINGSRAPPORT, *id.* at 14. Following implementation of the Sex Purchase Act, Sweden's prostitution population is thus approximately one tenth of Denmark's, though Denmark's total population (5.6 million) is substantially smaller than Sweden's (9.4 million). See Statistics Sweden (SCB), Population Statistics, http://www.scb.se/Pages/Product_25799.aspx (last visited Feb. 16, 2011); Statistics Denmark, Quarterly Population (ultimo), http://www.dst.dk/HomeUK/Statistics/Key_indicators/Population/pop.aspx (last visited Feb. 16, 2011). For comparative analysis, see Prohibition on the Purchase of Sexual Services, *supra* note 107, at 145–48. Research using similar methods of approximation in Norway as of 2007, before its passage of the Swedish model law, with 4.9 million people, found an estimated 2,654 prostituted women (1,157 on the street), more than 4 times, or 8 times more per capita, than documented in Sweden. See Holmström & Skilbrei, *Nordiska prostitutionsmarknader*, *supra* note 109, at 13; Statistics Norway, Focus on Population, http://www.ssb.no/english/subjects/02/befolkning_en/ (last visited Feb. 16, 2011). The Swedish government's own 10-year report on the law by the Ministry of Justice finds *inter alia* that it is serving its intended purposes, that it is supported by a majority of the population, and that the purchased person can be regarded as the injured party in the transaction. See SOU 2010:49, Förbud mot köp, *id.* at 250 (stating that “anyone who has been exploited by someone who has purchased a sexual service occupies a special position compared with others who felt violated by the crime . . . [n]or is the offence of such misdemeanor character to support the conclusion that there is no injured party”).

¹¹⁰ The law might say, or be interpreted to say, that it is a crime to purchase a person for sex. This would make clear, among other things, that a person is harmed by being bought and sold, hence is entitled to compensation and reparation. The Ministry of Justice's 2010 Report concurs with the basic point that the person purchased may be regarded as injured although this is to be determined in each case. Prohibition on the Purchase of Sexual Services, *supra* note 107, at § 7.2.4.

¹¹¹ The Swedish Supreme Court in 2001 affirmed lower court decisions holding that purchase of a prostituted person with her so-called “consent” constitutes an offense primarily against the “public order,” and not primarily against her as a “person.” See Nytt Juridiskt Arkiv [NJA] [Supreme Court] 2001-07-09 p. 532 (Ct. App. Swed.), *aff'd id.* at 533 (S.C.). As a result, no right to civil damages was recognized and perpetrators may be assessed a reduced penalty. At the same time, in its analysis of “interventions against prostitution,” mainly through social work practices, the Swedish National Board of Health and Welfare suggests no systematic approach to relieving the ill effects of, or facilitating exit from, prostitution. See SOCIALSTYRELSEN (SOS), INTERVENTIONER MOT PROSTITUTION OCH MÄNNISKOHANDEL FÖR SEXUELLA ÄNDAMÅL: EN SYSTEMATISK KARTLÄGGNING MED KOMPLISTERANDE INTERVJUER AV SVENSKA INSATSER [INTERVENTIONS AGAINST PROSTITUTION AND HUMAN TRAFFICKING FOR SEXUAL PURPOSES: A SYSTEMATIC REVIEW WITH COMPLEMENTING INTERVIEWS OF SWEDISH EFFORTS] (2008), available at www.socialstyrelsen.se/publikationer2008/2008-112-4.

is the only legal approach to prostitution that has ever even partly worked in the history of the world.¹¹²

By contrast, although it may seem counterintuitive, experience shows that when prostitution is legalized, trafficking goes through the roof.¹¹³ This has been documented in the Netherlands, Germany, Victoria in Australia, and elsewhere.¹¹⁴ As a business decision, it makes sense to traffic women and children where business is legal because once you get them there, the risks to sellers are minimal even if trafficking is formally a crime, and the profits to be made from operating in the open are astronomical. Illegal prostitution more generally explodes under legalization.¹¹⁵ If authorities pursue harm reduction, legal brothels require condom and other restrictions; many johns (perhaps most, research is showing) do not want to use them,¹¹⁶ and they are there to do what they want. This raises the price on sex without

¹¹² The Swedish Ministry of Justice's 2010 Report concludes that the law against sexual purchase is largely working as intended. PROHIBITION ON THE PURCHASE OF SEXUAL SERVICES, *supra* note 107, at 120, 123, 128, 130. Sweden's achievement, if incomplete, is impressive given prostitution's notorious imperviousness to law. In the long history of failed efforts, Britain's Contagious Diseases Acts rank high. See PHILIPPA LEVINE, PROSTITUTION, RACE AND POLITICS: POLICING VENEREAL DISEASE IN THE BRITISH EMPIRE (2003); JUDITH R. WALKOWITZ, PROSTITUTION AND VICTORIAN SOCIETY: WOMEN, CLASS, AND THE STATE (1980); E.M. Sigsworth & T.J. Wyke, *A Study of Victorian Prostitution and Venereal Disease*, in SUFFER AND BE STILL: WOMEN IN THE VICTORIAN AGE 77 (Martha Vicinus ed., 1972); Judy Whitehead, *Bodies Clean and Unclean: Prostitution, Sanitary Legislation, and Respectable Femininity in Colonial North India*, 7 GENDER & HIST. 41 (1995). Such schemes were no more effective in the United States. See Anita Ashendel, 'Notorious Home of Harlotry': Regulating Prostitution in the Ohio Valley, 1850-1860, 3 OHIO VALLEY HIST. 17 (2003); John C. Burnham, *Medical Inspection of Prostitutes in the Nineteenth Century: The St. Louis Experiment and Its Sequel*, 45 BULL. HIST. MED. 464 (1971); John C. Burnham, *The Social Evil Ordinance—A Social Experiment in Nineteenth Century St. Louis*, 27 BULL. MO. HIST. SOC. 203 (1971).

¹¹³ Australia is a well-documented instance where legalization has been identified as a "pull factor" for traffickers. See BINDEL & KELLY, *supra* note 4, at 15. In fact, all facets of the commercial sex industry have exploded as a result of the reforms implemented in Victoria. See generally SULLIVAN, MAKING SEX WORK, *supra* note 44; Mary Lucille Sullivan & Sheila Jeffreys, *Legalization: The Australian Experience*, 8 VIOLENCE AGAINST WOMEN 1140 (2002); MARY SULLIVAN, WHAT HAPPENS WHEN PROSTITUTION BECOMES WORK: AN UPDATE ON LEGALISATION OF PROSTITUTION IN AUSTRALIA (2005), available at <http://action.web.ca/home/catw/readingroom.shtml?x=84641>. For documentation and analysis of the Netherlands' problem with "foreign workers," who form the majority of prostituted women there, see PROHIBITION ON THE PURCHASE OF SEXUAL SERVICES, *supra* note 107, at 162-63.

¹¹⁴ See, e.g., SULLIVAN, MAKING SEX WORK, *supra* note 44, at 206-11, 219-21; *Human Trafficking Climbs in Germany*, PRESS TV, May 24, 2010, <http://www.presstv.ir/detail.aspx?id=127565§ionid=351020604>.

¹¹⁵ See *supra* note 113.

¹¹⁶ Johns express their aversion to condom use by insisting on sex without them. A recent book examining johns' attitudes and behavior stated categorically of condom usage that "[t]he pressure on women to go without is unrelenting." MALAREK, *supra* note 85, at 232; see also LEONARD CLER-CUNNINGHAM & CHRISTINE CHRISTENSEN, VIOLENCE AGAINST WOMEN IN VANCOUVER'S STREET LEVEL SEX TRADE AND THE POLICE RESPONSE IV, 26, 57 (2001) (finding 89% of those interviewed reported at least one john refused condom in the prior year), available at <http://www.pace-society.ca/>; Catherine Campbell, *Selling Sex in the Time of AIDS: The Psycho-social Context of Condom Use by Sex Workers on a Southern African Mine*, 50 SOC. SCI. & MED. 479, 487 (2000) (describing detailed life histories of 21 prostituted women near Johannesburg where customers "almost always" rebuffed requests to wear a condom and "would take [their] business elsewhere" if pressured).

condoms, a potentially lethal demand satisfied by the illegal industry, often populated largely by illegal immigrants, that springs up all around the legal ones.¹¹⁷ When men's belts and shoelaces and ties and cigarette lighters have to be confiscated at the door, when lamps and phones can't have cords, Johns who want to use those for sex—and they do—go elsewhere. The upshot is, far from making life safer, across-the-board decriminalization can make it even more dangerous, and certainly no less so, for those women who have the fewest options to begin with. The German government has concluded that legalizing the sex industry has failed to deliver any of the promised tangible benefits to prostituted people:

The Prostitution Act has . . . up until now . . . not been able to make actual, measurable improvements to prostitutes' social protection. As regards improving [their] working conditions, hardly any measurable, positive impact has been observed in practice The Prostitution Act has not recognisably improved the prostitutes' means for leaving prostitution. There are as yet no viable indications that [it] has reduced crime [or] contributed . . . transparency in the world of prostitution¹¹⁸

In other words, legalization is a failed experiment.¹¹⁹ What even pimps sometimes acknowledge about prostituted sex is exactly what is denied by those defenders of legalization who maintain that the harm of prostitution

¹¹⁷ In Victoria, Australia, for example, "illegal brothel prostitution, in particular, has burgeoned to meet buyers' demands for 'cheaper' or 'unrestricted' sexual services." SULLIVAN, MAKING SEX WORK, *supra* note 44, at 202. In response, licensed pimps in Melbourne have resorted to lobbying authorities to rein in the increased illegal sex trade that has resulted from legalization. See Padraic Murphy, *Licensed Brothels Call for Blitz on Illegal Sex Shops*, THE AGE (Melbourne, Austl.), June 3, 2002, at 3; see also DONNA M. HUGHES, THE DEMAND FOR VICTIMS OF SEX TRAFFICKING 58 (2005), available at www.uri.edu/artsci/wms/hughes/demand_for_victims.pdf (reporting that in Munich, Germany, where legalization has heightened competition among brothels, brothel owners are "forcing women to engage in riskier sex acts and sex without condoms in order to attract men. Code terms and euphemisms for sex without condoms appear in advertisements").

¹¹⁸ REPORT BY THE GERMAN FEDERAL GOVERNMENT ON THE IMPACT OF THE ACT REGULATING THE LEGAL SITUATION OF PROSTITUTES 79 (2007), available at [Publikationsverstand der Bundesregierung, www.bmfsfj.de](http://Publikationsverstand.der.Bundesregierung.www.bmfsfj.de).

¹¹⁹ Barbara Hobson found "some of the worst features of legalized prostitution in the Nevada system." BARBARA HOBSON, UNEASY VIRTUE: THE POLITICS OF PROSTITUTION AND THE AMERICAN REFORM TRADITION 227 (1990). Conditions documented there make clear that the interests of non-prostituted people, whether Johns, brothel owners, or community residents, are routinely privileged over those of the women being used in the commercial sex industry. See, e.g., FARLEY, NEVADA, *supra* note 3, at 9–10, 13, 16–20, 21, 23–24, 29–30, 31–32, 35–36, 40–41, 45, 46–47, 202; HOBSON, *supra*, at 227–28; Laura Anderson, *Working the Nevada Brothels*, I GAUNTLET 40 (1994) (rebutting claims that legalized prostitution in Nevada is advantageous to women involved based on five years' experience as "independent contractor" in four separate brothels); Bob Herbert, *Politics and Misogyny*, N.Y. TIMES, Jan. 15, 2008, at A21 (claiming treatment of prostitutes at legal brothel in Nevada is "[a] grotesque exercise in the dehumanization of women"); Ryan, *supra* note 39, at 22 (describing rule of legal brothel in Nevada, including being "on call 23 hours a day, seven days a week," and making no more than "one two-minute phone call per week").

can be eliminated bit by bit while the industry itself remains. One Dutch pimp at an indoor brothel complained about an ordinance that required brothels have pillows in the rooms: “It’s a murder weapon.”¹²⁰ So now, what about the sheets?

Most women in prostitution do not want to think that this is all their lives are ever going to be. To become legal requires disclosure of a real name, registration, going to a hospital to get cleaned up, which in turn relies on and creates records. This in turn means deciding that prostitution will be part of your official life story. Most prostituted women, even if they have to do this now, have dreams.¹²¹ So also for this reason they resort to the illegal prostitution that flourishes under legalized schemes, receiving few of its purported benefits. As the illegal market explodes, the governmental apparatus to address it erodes because the industry is decriminalized, no one sees any harm in it, and the illegal market intersects and overlaps the legal market. Only the stigma stays the same.¹²² Except for not being arrested—in general, a real improvement, although brief jail time can, some say, be a respite from the pimps and the street¹²³—the promised benefits of wholesale decriminalization do not come to pass.¹²⁴ And meantime the legal system tells society what the sexually abused child is told: for some women, there is nothing wrong with being treated this way. This is how the world, for you, is. To her, it says this is what you deserve. This is who you are. This, for you, is the best it is ever going to be.

In light of this investigation, the moral distinctions that organize the debate on prostitution, examined in light of reality, emerge as ideological, functioning to make more socially tolerable an industry of viciousness and naked exploitation. Most adult women in prostitution are first prostituted as girls and are just never able to escape. As they age out, they retain the adult vulnerabilities of class, sex, and often race. Traffickers are incentivized to grab girls when they are most desirable to the market; then, with each day

¹²⁰ See Suzanne Daley, *New Rights for Dutch Prostitutes, But No Gain*, N.Y. TIMES, Aug. 12, 2001, at 15.

¹²¹ The information on which this analysis is based comes from discussions with hundreds of prostituted women over four decades.

¹²² See *Coomaraswamy Report 1994*, *supra* note 63, at ¶ 207 (observing that the “highly stigmatized” social status of prostituted women is not measurably improved by legalization).

¹²³ See Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J.L. & FEMINISM 47, 79 n.108 (1992) (observing that “jail is the closest thing many women in prostitution have to a battered women’s shelter”); Ryan, *supra* note 39, at 23 (maintaining from personal experience that “prostitutes often view jail time as a respite from the abuse they are subjected to by both their pimps and their johns”); Volkonsky, *supra* note 39, at 22 (“Considering the absence of any other refuge or shelter, jail provides a temporary safe haven, at the very least providing a bunk, a square meal and a brief respite from johns, pimps and drugs.”).

¹²⁴ New Zealand’s own assessment underscores its failure to significantly improve the lives of prostituted people. See REPORT OF THE PROSTITUTION LAW REVIEW COMMITTEE ON THE OPERATION OF THE PROSTITUTION REFORM ACT 2003 (2008), available at <http://www.justice.govt.nz/policy-and-consultation/legislation/prostitution-law-review-committee/publications/plrc-report>; see also Farley, *Theory Versus Reality*, *supra* note 54.

that passes, their exploitation is more blamed on them. When prostituted women are used indoors, they are industrially accessible to pimps and johns and invisible to everyone else. Legal and illegal regimes inflict the same harms and pathologies on prostituted people, many of which get worse with across-the-board legality. The forms of force that impel entrance into the sex industry, that are endemically visited upon those used in it, and that operate to keep them captive produce a circumstance that, once revealed, it is difficult to believe a free person with real options would voluntarily elect. Perhaps the deepest injury of prostitution, with material basis in the converging inequalities of which its unequal concrete harms are irrefutable evidence, is that there is no dignity in it.¹²⁵ Attributing agency here as if it means freedom, ignoring the unequal and violent material conditions of the life, can be a desperate grab toward lost dignity, as well as a cooptation of the humanity that the exploited never lose.

Any adequate law or policy to promote the human rights of prostituted people has three parts: decriminalizing and supporting people in prostitution, criminalizing their buyers strongly,¹²⁶ and effectively criminalizing third-party profiteers. This is what it takes to unlock the interlocked, often intergenerational discrimination to which people in situations of prostitution are subjected. As one Indian woman in prostitution put it to me: “[W]e don’t understand why they say we are criminals but nobody does anything about the real criminals.” She meant the men who buy them, as well as the goons and gangs who enforce prostitution on them, including often their fathers, and the police who collaborate. India’s consideration of the Swedish model has resulted in proposed legislation to move toward equality by eliminating the criminal status of the prostituted and criminalizing the buyers who are the reason for their commercial sexual exploitation.¹²⁷ The point is to call the criminals by their real name and to help dismantle the motive force driving this industry.

To promote equality, the violators have to be closed down and the world has to be opened up to the violated. This is what they are asking for. They are under no illusion that prostitution is a job. If the lines between sex and labor can be indistinct, it is not because being sexually violated is work, but because a lot of forced labor also includes sexual exploitation, and many

¹²⁵ This is by no means to substitute dignity for equality, *see, e.g.*, *M. v. H.*, [1999] 2 S.C.R. 3 (Can.), *but compare* *R. v. Kapp*, [2008] 2 S.C.R. 483 (Can.), but to point to dignitary loss as one part of inequality, especially in the context of prostitution. Although in prostitution, the material loss is grittily concrete, its gendered dimensions visible, supporting relief for prostituted women, dignity’s avatars seldom see the dignitary loss in prostitution, or if they do, blame prostitutes. Thus Justices O’Regan and Sachs in *Jordan* say that women in prostitution choose their loss of dignity. *See State v. Jordan* 2002 (6) SA 642 (CC) at ¶ 74 (S. Afr.).

¹²⁶ Johns interviewed in Scotland said that what would most deter them from using a prostituted woman is, in order, being placed on a sex offender registry, having their patronage publicized, and serving jail time. MACLEOD ET AL., *CHALLENGING*, *supra* note 29 at 26–27; Melissa Farley et al., *Attitudes and Social Characteristics of Men Who Buy Sex in Scotland*, *PSYCHOL. TRAUMA* (forthcoming 2011).

¹²⁷ *See* Immoral Traffic (Prevention) Amendment (ITPA) Bill, § 5C (2006).

who are trafficked for labor end up in the sex industry.¹²⁸ Not one prostituted woman I have ever met wants her children to have that life. What does that say except that prostitution chose her?¹²⁹ What she wants, as several put it to me, is “away from this place,” and it is not migration she is imagining. Of labor trafficking, I have never heard anyone say that this, regrettably, is the best job these people are ever going to get, so leave them there.¹³⁰ Yet, a recent research report to the South African Law Reform Commission characterized prostitution as “a viable alternative for women coping with poverty, unemployment, failed marriages and family obligations, especially where social welfare programmes are limited.”¹³¹ The conditions mentioned, along with the nasty low-paid jobs in which women predominate, hardly justify the sex industry. They do show how women with no real options in a sex-discriminatory economic setting where they have no human rights are pushed into a shortened desperate life of sexual abuse—to the tune of resigned sighs by some who think and write for a living. Even if other

¹²⁸ On relative magnitudes of sex and labor trafficking, Kangaspunta finds 85% of women victims are trafficked for sexual purposes, 2% for forced labor, and 13% for a combination of both; 16% of victimized men are trafficked for sex, 24% for forced labor, and 60% for a combination of both; 70% of child victims are trafficked for sexual exploitation, 13% for forced labor, and 18% for both. Kangaspunta, *supra* note 70, at 95, 97. The dynamics mentioned in the text, observed by activists, leave some trace here.

¹²⁹ See, e.g., GOULD & FICK, REPORT, *supra* note 14, at 12 (“The sex workers were unanimous in the view that it is not a job that they like doing or would choose to do should their range of options have been wider.”); Giobbe, *supra* note 23, at 79–80 (quoting a prostituted woman, “I don’t think I came into this world with the desire to be a prostitute. I think that that was something that was put on me by the dynamics of society.”); Leidholdt, *supra* note 15, at 136 (“Women in prostitution, with few exceptions, are not people who debated between the advantages of going to law school or working at the X-tasy Massage Parlor.”); Nekome, *How Prostitution Chose Me*, TRAFFICK JAMMING (Feb. 2010), http://www.prostitutionresearch.com/blog/2010/02/un_commission_on_the_status_of.html (“They say prostitution is a choice? How did I choose prostitution? I didn’t choose prostitution, it chose me. Just as child sexual assault and neglect had chose me. I was not a willing participant, but lured into a life I saw as my only option.”).

¹³⁰ According to the U.S. Central Intelligence Agency (“CIA”), “approximately 800,000 people, mostly women and children, are trafficked annually across national borders, not including millions trafficked within their own countries; at least 80% of the victims are female and up to 50% are minors; 75% of all victims are trafficked into commercial sexual exploitation.” “Trafficking in Persons,” CIA, THE WORLD FACTBOOK 2009 (2009), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/xx.html>. Relatedly, at a briefing—“Global Trafficking in Women and Children: Assessing the Magnitude”—the CIA estimated that 45,000 to 50,000 women and children are trafficked to the U.S. annually. AMY O’NEIL RICHARD, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTINUING MANIFESTATION OF SLAVERY AND ORGANIZED CRIME iii, 1 (1999). In its most recent assessment, the United Nations Office on Drugs and Crime (“UNDOC”) concluded that “sexual exploitation is by far the most commonly identified form of human trafficking (79%)[,]” the victims of which are predominantly women and girls. UNDOC, UN Global Initiative to Fight Human Trafficking, *Global Report on Trafficking in Persons*, at 6 (Feb. 2009). Strikingly, “[o]f those who are subject to nonconsensual sexual exploitation, 98% are women.” Johannes Koettl, *Human Trafficking, Modern Day Slavery, and Economic Exploitation* 16, 21 (World Bank, Soc. Protection & Lab. Dep’t, SP Discussion Paper No. 0911) (May 2009).

¹³¹ SALRC, SEXUAL OFFENSES, *supra* note 4, at 31.

people cannot, prostituted women *can* imagine a world in which their options are not limited to domestic work versus lap dancing. Some who have the choices women in prostitution are denied cannot seem to envision prostituted women's lives outside prostitution. The women themselves have no such trouble. They see real work, real love, dignity, and hope.

