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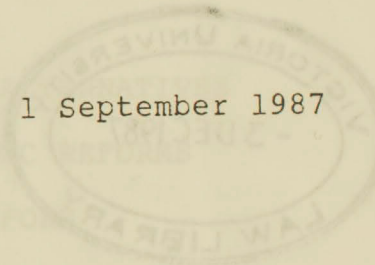
CHENEY, B. M.

Prostitution.

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Submitted for the LL.B (Honours) Degree at the
 Victoria University of Wellington

1 September 1987

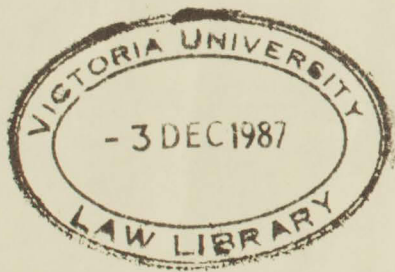
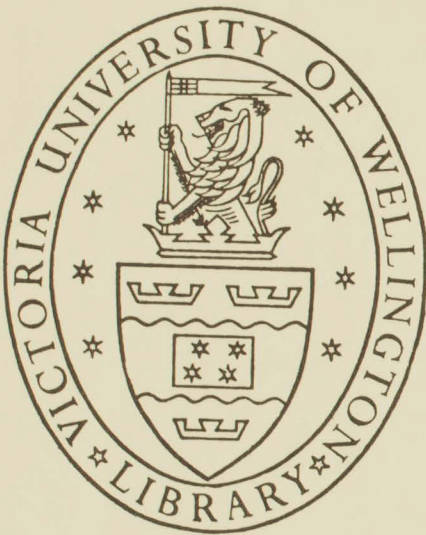


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ERIC CHENEY, B.M. Postgraduate



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INTRODUCTION - FIRST GLANCE

Prostitution is not openly discussed in our society yet few New Zealanders could pretend it does not exist. We see obvious - "red light" - signs of prostitution after dark on Vivian Street in Wellington and Karangahape Road in Auckland. We are implicitly aware that "massage and sauna parlours" offer more than steam baths and spas. A glance at the Wellington yellow pages reveals(1)

the parlour that offers plush, tasteful surroundings, a wonderful intimate atmosphere and friendly, really pretty ladies giving massages you'll just love; our promise you'll leave happy. The girls are also happy to visit you in your hotel or motel room.

Temptations abound. New Zealand caters for the range. Men in every socio-economic stratum will find "company" if visiting or residing in New Zealand. In Wellington, ship girls can be seen on wharves when vessels arrive in our port. Street walkers can be found in the known "sex" streets. Massage parlours proliferate and of a number in Wellington, only one does not appear to offer sexual services. Escort agency advertisements can be found in magazines, visitors' guide books and in some telephone directories. Prostitutes can be found in upmarket hotel cocktail bars if the management will tolerate them.

Exclusive clubs can be attended by invitation only where "hostesses" cater to every whim of patrons.(2)

Yes gentlemen, we cater for your every need... and due to the law and social stigma attached to prostitution, discretion is assured. To a very large extent the clients are male. There is little, if any, evidence of women in New Zealand seeking the services of prostitutes.

There are however some male prostitutes - some of whom are transvestite, others of whom service homosexual men. However, the vast majority of prostitutes are women and the clients are male. Prostitutes, like their clients, came from all walks of life. There is a wide range of ages, family backgrounds and educational qualifications.(3) Clients, while having similarly diverse backgrounds tend to be married men between the ages of 30-55 years.(4) They come to prostitutes because their marital sexual relations are unsatisfactory, because their wives will not do as they wish, because they want sex without commitment. Whatever one's personal stance on this issue of prostitution its continued existence and relatively static demand and supply over centuries must tell us something about our society and about the relations between men and women in society.

Different groups of people have different views on what prostitution tells us and what should be done about it. In this paper, I propose to explain why women enter prostitution, describe what this tells us about society from a feminist perspective, then tackle the question of the

law. Conservatives and liberals see the role of the law in the area of prostitution differently from each other and from feminists too. I have attempted to explain their views before specifically describing the law and why it is unsatisfactory to all concerned. At this stage, the situation looks depressing but hope, in the form of legislative and social reform programmes, is at hand. These look even more positive when placed in a feminist context that sees in the future an answer to many of the problems confronting us today.

WHY WOMEN BECOME PROSTITUTES - THE FACTS OF STREET LIFE

Not long ago it was thought that women who became prostitutes did so because they were mentally deficient nymphomaniacs who were not mature enough to face the life society expected of them - as wives and mothers. Many a psychoanalytical theory was developed to explain why women would sell their bodies for money rather than give them for love. (5) Firstly, the women had to be mentally abnormal and have lost all sense of identity. Secondly they were likely to fear sexual intimacy with men in any "normal" sense. But, best of all, in good Freudian terms, the women had never progressed beyond the childhood stage of sexually loving their fathers to the adult stage of non-erotic love.

The client, the 'strange man' who pays for her favours is the deteriorated image of her father; at the same time, (she) registers her

violently jealous disapproval of her mother's marriage by, as it were, debasing her own feminine currency.(6)

Economic and other practical possibilities that might explain why women became prostitutes were either ignored or explicitly rejected. The 1957 Wolfenden Report on Homosexual Offences and Prostitution states:

... we believe that whatever may have been the case in the past, in these days, in this country at any rate, economic factors cannot account for it to any large or decisive extent.

... Our impression is that the great majority of prostitutes are women whose psychological make-up is such that they choose this life because they find in it a style of living which is to them easier, freer and more profitable than would be provided by any other occupation.(7)

This reasoning is defective. The Committee decides that women, due to the economic prosperity of Britain in the 1950s could not have an economic need driving them to prostitution. Rather, there is a psychological need attributable to the abnormal and deviant make-up of prostitutes which differentiates them from their good and pure sisters. But the reasoning that a psychological need rather than an economic need leads prostitutes to a more

profitable life is wrong, as are a number of the Committee's assumptions. It assumes that prostitutes must be deranged to seek an easy, free and profitable life when the doors are open to a harder, controlled and profitless life as a factory worker, shop assistant or wife and mother. Women who labour "decently" or for love, who have sex to please their husbands and children to populate England are rewarded by the applause of society. They are awarded a "normal" badge. Prostitutes who seek material rewards for their work are condemned by society. They are given an "abnormal" badge.

More recent explanations of prostitution have been more pragmatic. The Canadian and New South Wales Committees which investigated and reported on prostitution, both cite economic factors as the overwhelming motivating force for women entering prostitution.(8) The New South Wales Report cites an investigation conducted by Roberta Perkins into the reasons for women entering prostitution.(9) An overwhelming majority of the women (97%) stated that their reasons for entering prostitution were purely economic. The majority claimed that their decision to enter prostitution had, at the time, been a matter of sheer survival. 44% of the women surveyed had children living with them and appeared to be solely responsible for them. Perkins concluded that the presence of dependent children was an important reason for the women remaining in prostitution.

It has been proved that women suffer far more severe economic hardship than men upon the dissolution of marriages and de facto relationships. While male ex-spouses' standard of living has been found to increase 43%, female ex-spouses' standard of living falls 73%.⁽¹⁰⁾ Usually, the women are left with the children and must cope in the face of severe economic disadvantages. Property division upon dissolution of established relationship shows the courts' willingness to enforce the ideal of equality between the sexes but the judges do not take into consideration the services of the non-earner spouse (usually the woman) performed after dissolution.⁽¹¹⁾ It is ironic that the cause of these unfortunate statistics is the courts' preparedness to implement equality in this one area. It is not surprising then that one sociologist has concluded,⁽¹²⁾

While poverty now wears a younger face, it continues to wear a female face. Income units headed by women comprise one quarter of all income units in poverty. One half of women-headed single parent families and one quarter of single women are living in poverty.

The economic plight experienced by women overseas appears to be shared by New Zealand women.⁽¹³⁾

Implicit in any discussion of women's relative economic plight is the fact that women workers are concentrated in relatively low-paid sales, services and clerical positions

many of which are part-time. The March 1987 Labour and Employment Gazette Figures reveal that the average weekly wage of women working in paid employment is \$337.52 while for men it is \$465.94. More telling still is the fact that women are seldom in the upper income brackets. In 1985, 3,927 men and 210 women civil servants received an annual salary of \$30,000 or more.(14) However, many women are not in paid employment at all. A recent New Zealand Woman's Weekly article (15) stated that 90% of married women not in paid employment never had any say in family finances or saw the money, - bar a housekeeping allowance. They had to ask their husbands for money if they wanted to purchase anything.

Prostitution, in most countries, is the only occupation in which women can earn, on average, more than men. Few occupations offer, particularly to women, a net income of \$50,000 or more. Prostitution also offers relative job autonomy. The women work for themselves and take most, if not all, of the money for themselves and they do not pay taxes. Unlike their overseas counterparts, New Zealand prostitutes do not appear to have pimps and if they work in massage parlours all money for "extras" is their own. This economic autonomy is more questionable in an escort agency situation but still the women are paid for the services they perform and the agency takes an "introduction" fee. It is estimated that most street and massage parlour workers earn in excess of \$1,000 per week although this will be reduced

during the Christmas vacation period when clients are holidaying with their families.(16)

Prostitution also offers a flexibility in respect of working hours which other jobs do not. When there are so few good child care options available to New Zealand women working in paid employment, this flexibility of working hours is an attraction for women with dependent children.

Another very important cause of women choosing to become prostitutes is the socialization of women who are brought up to believe that their bodies are their only valued asset. There is an alarming correlation between incest and assault of young girls and women and their later involvement in prostitution. Although there are no official New Zealand figures on this the Canadian and American statistics show that around 75% of prostitutes have been the victims of sexual abuse.(17) These figures are borne out by New Zealand research although not officially documented.(18) As Jan Robinson, a Wellington researcher states, (19)

Sexual abuse by a family member is a very direct powerful way of teaching a young girl that her only value resides in her body.

Unfortunately, many women, not only prostitutes, see their only value as residing in their bodies. While some women deal with this by trading their bodies for the security that a marriage contract offers, others trade their bodies

for money to live on. Society teaches women this self image, reinforcing it daily through the media and social institutions, yet society recoils from the undesirable results. As Elizabeth Fry says, (20)

A society that continues to define women as sexual objects and allows men to act as if women are fit to be the recipients of male aggression cannot be surprised when women accept that definition of themselves and market themselves as a commodity when their own limited resources fail.

No woman is proud to think consciously of herself as a marketable commodity yet subconsciously she has been taught that that is what she is.

Prostitutes are as aware of these facts as other women. Few prostitutes enjoy their "job" and most know that their occupation is derogatory to them as the following comment by a prostitute shows, (21)

The worst part about prostitution is that you're obliged not to sell sex only, but your humanity. That's the worst part of it: that what you're selling is your human dignity. Not really so much in bed, but in accepting the agreement to become a bought person.

This woman is very aware that she is exploited but she does not suggest by whom she is exploited.

THE "EXPLOITED" HOOKER'S POINT OF VIEW - A Feminist Approach

Arguably few women have escaped prostituting themselves for a dinner, a present, for love or for security. The prostitute is really at the extreme end of a continuum few of us ever escape. We have all grown up in a male dominated society in which men define women's assets as residing in their sexuality to a greater or lesser extent. But the prostitute suffers for this differently. I submit that prostitutes are exploited by a society that treats women as second class citizens fit to be recipients of men's domination and exploitation. Prostitutes are prosecuted for soliciting in a way "respectable women" who flirt are not. They are prosecuted for running a brothel if they take money for sex in a way "respectable women" who have sex in their homes are not. Their mistake, their punishable mistake, is that they get paid for work women are supposed to do as part of their "duty". Women are supposed to have sex for love, not money. (22)

The problem though is not accepting money for sex exactly. The problem lies in the unequal sexual construction which operates in society. Society says it is wrong to take money for sex yet offers many women no viable alternative bar marriage - which radical feminists identify as a variation on the same theme. Our society is built around a sexual

class system which frustrates the legitimate aspirations of half the population for economic, social and sexual freedom. It creates a demand for prostitution then punishes the suppliers.

But prostitution must be seen in its broadest context. If we accept that the prostitute is exploited and there needs to be an end to this exploitation, the prostitute's exploitation must be seen in the context of the exploitation experienced by all women. The status of women in society, politically, economically and socially, is far from satisfactory and much needs to be done to erode the innate sexism that pervades all spheres of our lives. Male dominance in the social hierarchy depends on the continued definition of women as sexually valuable exchange commodities who are not yet accorded a more equitable status.(23) Unfortunately, the law seems instrumental in the oppression of women as it identifies itself with maleness and masculine values and is intolerant of the abilities and values of women.(24)

For centuries,(25) perhaps since the time of Plato,(26) people have structured their thinking around a complex series of dualisms. Frances Olsen examines a number of these dualisms or opposing pairs: rational/irrational; active/passive; thought/feeling; reason/emotion; culture/nature; power/sensitivity; objective/subjective; abstract/contextualized; principled/personalized.(27) These dualistic pairs divide things into contrasting spheres or

polar opposites. Frances Olsen identifies three characteristics inherent in the dualisms. First, they are sexualized in that one half of each dualism is considered or identified as masculine, while the other half is feminine. Thus men are seen as rational, active, reasoning, powerful, objective etc while women are seen as irrational, passive, emotional, sensitive, subjective etc. Secondly, the terms of the dualisms are not equal, but are thought to constitute a hierarchy. The male side of the dualisms is identified as superior, the female inferior. Thirdly, law is identified with the "male" side of the dualisms. Law, like men, is supposed to be rational, objective, abstract and principled.

Yet the hierarchization of the dualisms may be obscured in relation to women. Men have oppressed and exploited women on the basis of their inferiority in the real, public world yet placed them on a pedestal and treasured those "inferior" qualities in a fantasy or domestic world. Men simultaneously exalt and degrade women and the concepts which represent the "feminine" side of the dualisms. Law, identified with maleness and traditionally controlled by men, reflects this contradictory attitude. The law may simultaneously condemn and protect women. Women's reproductive and child-bearing and nurturing capacity is a prime example of a feminine trait used to condemn (or discriminate against) women and to protect them in a paternalistic sense at the same time. Women's ability to become pregnant has been seen as a reason for keeping them out of the workforce or for restricting their hours in paid

employment "for their own good". The following quote illustrates the way judges have used pregnancy to justify unequal treatment of men and women.(28)

The paramount destiny and mission of women are to fulfil the noble and benign offices of wife and mother. This is the law of the creator. And the rules of civil society must be adapted to the general constitution of things.

More recent examples of this are Geduldig v. Aiello(29) and Gilbert v. General Electric(30) of which Christine Littleton says,(31)

The Supreme Court announced, apparently with a straight face, that singling out pregnancy, and only pregnancy, for disadvantageous treatment was not discrimination on the basis of sex.

Yet prostitution holds a unique position in a feminist analysis of the law because prostitutes, by virtue of their work, challenge many of the basic assumptions inherent in the dualisms identified by Olsen. If "normal" women are seen by men and the law as irrational, passive, feeling, emotional, sensitive and personalized both in their domestic and working lives it is hard to explain prostitutes' lives in terms of the feminine dualisms. Prostitutes have the same basic resources as other women by virtue of their "womanhood". But prostitutes, rather than hiring out their

sexuality and caring selves long-term as wives and mothers or as secretaries, nurses, or in other gender stereotyped employment, hire themselves out short term in a rational, active, unemotional and seemingly insensitive way. Prostitutes use for profit what other women use for love and applause. A prostitute is simultaneously condemned for using her essential womanliness and for using it in a male way. She plays the same game "normal" women play but by different rules - which very unfairly invokes the wrath of good citizens and the law. As one woman says, (32)

The smug stupidity with which people are accustomed to discuss [prostitution] is fairly outrageous: the victim, the prostitute, rather than the institution that victimizes her, is condemned... As the causes of female prostitution lie in the economic position of women, together with the psychological damage inflicted upon them through the system of sex-role conditioning in patriarchal society, this conventional satisfaction with the prostitutes' fate is not only unjust, but simplistic.

Too often people are willing to condemn without asking why the problem is there. In this case, prostitution is but one manifestation of women's unequal and therefore disadvantaged position.

Feminists do not have an easy solution. The majority of feminists have not written anything about prostitution. They have been too busy focusing on problems in the daily life of "normal" women such as economic disadvantages in employment, rape and abortion. The feminists who have addressed the issue of prostitution have been divided. Some believe, like conservatives, that the laws ought to be tightened which feminists hope would end the exploitation of women. Other feminists, adopting liberal ideas, believe adult women should be free to choose what they do.

ON THE STREET/IN THE BEDROOM - A Public/Private Spheres Analysis

The public/private dualism has provided a fertile source of debate for feminists, conservatives and liberals. The public sphere is usually associated with the communal world of work and politics; the private sphere encompasses the personal or domestic worlds of individuals and their families. The debate focuses on the appropriateness of the law interfering in these areas, particularly the private. Invariably the public/private spheres argument involves a public/private morality discussion as well. Public morality may be seen as either the popular morality of the masses or critical morality - which is an objective standard to be applied to everyone by those who know best. The law usually involves elements of both popular and critical morality as is evident in the hypocritical prostitution related laws discussed in depth later in this article. Private morality

then is the morality of individuals within their own homes or, specifically, bedrooms. The law has traditionally been opposed to interfering in the private sphere as can be seen by the establishment's resistance to becoming involved in domestic violence.

BONDAGE IN THE BEDROOM - A Feminist Analysis

Feminists see the public/private dichotomy as a further sexualized, hierarchized and legally entrenched dualism. In analysing this public/private dichotomy feminists (33) have associated public with the masculine side of the dualisms. The public sphere then is the male sphere, more important than the private "domestic" sphere of women. The law will not interfere in the private sphere whereas the public realm is believed to be a proper arena for legal or social regulation. Feminists see the legal system has functioned to legitimate a public/private distinction by assessing it as a natural, rather than socially imposed, ground for different treatment. By withdrawing from regulation of the private sphere it is easy to see that the legal system has actually lent its support to men's exploitation of women. By largely ignoring the area, the law has permitted men to dominate and control women in their imposed private role. Feminists then, like conservatives, would hope for legal regulation of the private sphere but for different reasons. If one accepts the feminist analysis of the public/private spheres argument both the conservative's reasons for legal

intervention in public and private spheres and the liberal's reasons for public only intervention are defective.

ONLY STRAIGHT SEX IN THE BEDROOM - A Conservative Analysis

The conservatives believe that the law must embody and enforce traditional moral values or society will lose its "moral cement" and gradually disintegrate. A conservative approach allows for significant intervention by law to proscribe immoral conduct even when it is fully chosen by the individual or individuals concerned, conducted in private and of no harm to anyone else. Conservatives, like Lord Devlin, (34) see society as being quite right in prescribing minimum moral standards of conduct of "which the reasonable man approves". He sees law as instrumental in upholding the morality of society. To a conservative mind prostitution damages the moral welfare of society. It corrodes the Christian notion of monogamous marriage by providing temptation to wicked men. It poses a threat to the health of society through the spread of sexually transmitted diseases. It opens the door to emotionally uncommitted sex. Conservatives also justify the intervention of the law beyond the private sphere on the basis that prostitution is a public eyesore, and is linked to other criminal offences. Yet, many of these assertions are untrue therefore it is questionable whether the law may be involved in an essentially private sphere. (35) The conservative arguments against prostitution reflect a Victorian attitude to sex and sexuality. Their underlying

fundamental assumption is that the ideal society is one in which women have subordinate and submissive roles and in which sexual expression of all but the most orthodox type is to be stamped out.

ANY HARMLESS SEX IN THE BEDROOM OR THE STREET - The Liberal View

The liberals' view, stemming from the philosophy of John Stuart Mill, is that the law has no legitimate function in prohibiting anyone from choosing or practising the lifestyle of prostitution, or in penalizing adults who, by consent, engage in sexual activity for money as long as no physical harm is caused or threatened to either participant and neither physical nor mental harm is done to others. Liberals take the view that prostitution is here and will be for some time. They believe the law may only legitimately interfere with those who forcibly coerce others to become prostitutes and who exploit them against their wishes. It may also be involved to control the nuisance caused to others by prostitution.

But one has to beware of a harm analysis for similar reasons as one has to beware of conservatives' reasons for condemning prostitution. (36) The harms most often alleged to be caused by prostitution and thereby used to justify its prohibition are that:

1. Prostitution provides an opportunity for the commission of crimes which may be ancillary to prostitution.
2. It provides a breeding ground for the activities of organised crime.
3. It is a significant factor in the spread of Sexually Transmitted Diseases (STDs).
4. It results in the subjection of citizens to offensive public solicitation.
5. Prostitution contributes to the destruction of public morals.

Yet, there is nothing about an act of intercourse for hire which, in itself, makes the commission of other crimes likely. There is no evidence that prostitution is responsible for the encouragement of organized crime. Recent studies show that prostitutes are not a major cause of the spread of STDs. They are more likely than any other people to insist on the use of condoms and to be regularly (weekly) checked at VD clinics. In New Zealand it is unlikely that prostitution will be seriously offensive to citizens unless they plan a family picnic after dark in Vivian Street. Whether or not prostitution destroys the morals of society and whether it is the law's function to uphold public morals is a continuing debate between conservatives and liberals. (37)

Whether the law should or should not involve itself with morals is immaterial for the purposes of this discussion. The law does, in the area of prostitution, concern itself with morals - public and private-in a most unsatisfactory way. While the law may appear to strike a balance between conservative and liberal values it is essentially conservative and it is oblivious to any feminist perspective.

THE BODY OF THE LAW

New Zealand in common with Britain, Canada and Australia does not make prostitution itself a criminal offence. Rather, a range of offences exist which may be committed in association with acts of prostitution.

Section 26 of the Summary Offences Act 1981 makes soliciting - offering one's body for the purpose of prostitution - an offence punishable by a maximum fine of \$200.

Section 147 of the Crimes Act 1961 prohibits brothel keeping, which involves the managing of rooms or any kind of place for the purposes of prostitution, whether by one woman or more than one.

Section 148(a) makes it illegal for anyone to live wholly or in part on the earnings of the prostitution of another person and by s.148(b) it is an offence to solicit or receive payment for any prostitute.

Section 149 makes it an offence for anyone to engage for reward in the procuring of any woman or girl to have sex with a man who is not her husband.

All these offences specified in the Crimes Act carry the same maximum penalty of imprisonment for up to five years.

The provisions are similar to prostitution related provisions in other countries. One legislative feature peculiar to New Zealand, however, is the Massage Parlours Act 1978. This Act provides for the licensing (s.5) and regular investigation (s.35) of massage parlours. To be eligible for a licence (s.8) one must be over 18 years, have no criminal or drug convictions in the past 10 years, and have had no previous licence cancelled within five years. Employees must also be 18 years and over and be free from drug and criminal convictions as above. A licence will be terminated if any employee is convicted of any offence involving an act of prostitution or if they perform an act of prostitution and the performance of that act was facilitated by the failure of the licensee to effectively supervise the conduct of the business (s.30 (1)(e)). An act of prostitution (s.2(2)) means the offering by a man or woman of his or her body for purposes amounting to common lewdness for payment. Under s.35 the Police are given the power to enter and inspect the premises and licence at any time.

THE OBJECTIVE -Trick or Treat

What the law seeks to achieve is difficult to ascertain. Prostitution itself is not an offence yet it is an offence to offer one's body for the purposes of prostitution. If the law is primarily directed at the public nuisance aspect of prostitution, why is it illegal for one woman alone "to keep a brothel"? The Wolfenden Committee Report gives us some guidance. (38)

We clearly recognize that the laws of any society must be acceptable to the general moral sense of the community if they are to be respected and enforced. But we are not charged to enter into matters of private moral conduct except in so far as they directly affect the public good. (The State's) function ... is to preserve public order and decency, to protect the citizen from what is offensive or injurious, and to provide sufficient safeguards against the exploitation and corruption of others, particularly those who are specially vulnerable because they are young, weak in body or mind, inexperienced, or in a state of special physical, official or economic dependence.

This quote raises a number of issues. First, it is not the business of the state to interfere in the "private" spheres of people's lives. Presumably, following a liberal analysis, this is particularly true of the sexual private

sphere. Yet, if this is true, why the need to legislate against massage parlours and brothels? The offence of soliciting(39) specifically requires a public place and yet New Zealand courts have held a massage parlour to which customers were admitted entry having rung a buzzer and been scrutinized by those inside, to be a public place(40). Similarly, a locked massage room in which an undercover police officer was invited to be masturbated for an extra fee was deemed a public place and the woman was charged under s26 of the Summary Offences Act 1981.(41) This is a clear extension of the public place requirement beyond the public nuisance sphere. Apparently the New Zealand legislation attempts to cover both the private morals and public nuisance aspect of the argument.

New Zealand is quite singular in its intrusion into the private morals area. Here, unlike England, the description of a brothel includes a place in which one woman operates alone.(42) It has been argued overseas that if one or two women were permitted to operate on their own premises they would be free from the exploitation of brothel owners or madams who might take up to 50% of the profits.(43) The women could run their businesses as they choose, determine who they service, and, consequently be better protected against violence and exploitation.

Another feature of the New Zealand law is that customers are not prosecuted for soliciting, only the prostitutes. In effect, if a prostitute suggests sex for a price to a

customer she is liable whereas a customer who suggests sex for a price to the prostitute is not liable. This is a completely discriminatory treatment of women by the law. Not to criminalize the soliciting customer seems to violate the fundamental principle of equality and perpetuate double standards in sexual commerce. In Canada the offence of soliciting was extended in 1972 to cover every person soliciting any person for the purpose of prostitution. New South Wales has provisions allowing for the prosecution of clients too. The main reason stated for change was the increasing opposition to the maintenance of an offence which discriminated against women. There is no justification for making only the prostitute liable for soliciting.

As the Fraser Report states, (44)

As in other areas of the law, the relatively powerless are controlled, accused and convicted and the relatively powerful are ignored, excused and acquitted.

The legislation concerning soliciting, the keeping of a brothel, or the using of a massage parlour for the purposes of prostitution clearly is not concerned solely with public nuisance. It attempts to control private morality in the sense of an individual's moral welfare too. But the official attitude to prostitution has tended to blame the women who supply the service rather than the men who create the demand. Prostitutes are seen as a menace to society, to

marriage, and to public health. Their clients, on the other hand are seen as normal men with a healthy sex drive. The Fraser Report expands on this(45)

The philosophy seems to have been that the male population was entitled, without sanction, to seek the services of prostitutes, but in so far as the morality or health of the community might be compromised by such activity, the target of the law was properly the purveyors and not the customers of the business.

Another contradiction arises in that prostitutes were traditionally seen as legal and moral outcasts but also weak women in need of protection from wicked men who sought to exploit them. This paternalistic concern continues to be reflected in the offences of procuring and living off the avails of prostitution.(46) While such a paternalistic concern shows a degree of care it is less appropriate today for the law to interfere in this area. What any woman does with her earnings is entirely her affair and a prostitute who chooses to share her earnings with a partner, or her family, should be free to do so. In New Zealand where there is so little evidence of pimping those who "live off the avails" tend to do so for legitimate reasons.

LEGAL REFORM ALTERNATIVES

The law relating to prostitution is in need of reform. It is out of date in that it reflects a Victorian attitude to sex, it is sexually discriminatory and misguidedly paternalistic. However, there are a number of possible ways that the law could be reformed. The four options considered by Canada and New South Wales were:

1. Suppression - legal suppression.
2. Legalisation - legal recognition with full Government controls.
3. Decriminalisation - removal of all prostitution specific laws and no Government regulation of the trade.
4. Decriminalisation with controls - legal recognition with Government regulation of some aspects of prostitution.(47)

Suppression is favoured by those who believe prostitution is wrong by its very nature and so should be stamped out. This approach has not received much support because it is against the principles of a free and democratic society and it would be unlikely to achieve the desired effect of ridding society of prostitution. It would not stem the demand for prostitutes' services and would effectively drive prostitution further underground where crime and STDs would become a real problem. Suppression could not eliminate prostitution any more than prohibition could eliminate the consumption of alcohol. While the demand is there,

suppliers will find a means of satisfying that demand. On a more practical level, there would be major difficulties with enforcement. Presently, the Wellington Vice Squad numbers only three. Those three police officers are responsible for coping with prostitution, bookmaking and indecent publications. It would be a very expensive and time consuming exercise to eliminate prostitution and, realistically, it could not be done by suppression. The world's oldest profession has withstood such attacks before and has always reemerged albeit in altered form.

Decriminalisation with controls appears to be the most favoured
Legalisation, in the alternative, would involve formal recognition and therefore state sanctioning of the trade. Prostitutes might be registered and subject to regular health checks. Red-light districts might be established while prohibition was maintained elsewhere. Brothel premises and management might also be registered. This appears at first glance to be quite feasible but there have been a number of objections to legalisation and regulation of prostitution. Firstly, legalisation implies the official recognition and acceptance of prostitution as a legitimate occupation and that is undesirable. The objection stems from the moral issue discussed earlier of whether society should see prostitution as a regular - even desirable - business like any other, or a social aberration which should, through legal and social policies, be abolished. A further objection is that the state, in effect, becomes the pimp and benefits, through taxes, from an activity which is exploitative of women. The state should attempt to

alleviate the need for women to enter prostitution rather than enjoy "living off the avails" of prostitution.

Decriminalisation does not provide a complete answer either for it leaves open to abuse some of the worst aspects of prostitution. The police must have the power to prevent any crime or drug offences related to prostitution and to protect very young women or women being forced into prostitution.(48)

Decriminalisation with controls then, is the most favoured option. Prostitution related activities such as soliciting would be removed from the control of the criminal law unless other forms of criminal conduct are involved. This option involves recognition of prostitutes being essentially victims of a sexist society who should not be treated as criminals. The state would not condone prostitution but would recognize that it can only be eliminated through long term social and economic measures, not through legal restraints. Decriminalisation with controls provides a sensible first step in providing an answer to the problem of prostitution. It is a reasonable, workable compromise between prostitutes, clients and the community. A prostitute would be free from police control yet provisions against the exploitation of minors, regulations to protect public amenities and to control the noise and nuisance aspects of the trade would be retained.

SOCIAL/ECONOMIC REFORMS

A sensible second step would be found in the social and economic spheres. Generally, prostitutes do not enjoy the work they do. Prostitution is not a glamour world nor a paradise for deranged nymphomaniacs. Prostitutes, in common with many women, would welcome a better option but for most of them the stereotyped, low paid jobs offering to "normal" women do not provide such an option. Decriminalisation of prostitution would alleviate some of the surface problems faced by prostitutes but the problem goes deeper than that. Women's groups who made submissions to the Canadian Committee suggested encouraging Governments to introduce a range of programmes to alleviate the causes of women turning to prostitution. These included:

1. Legislative affirmative action programmes.
2. Better enforcement of employment standards legislation.
3. Improved child care facilities.
4. Retraining programmes for women to assist them to enter the higher paying non-traditional jobs.
5. Extension of benefits to part-time workers on a pro-rata basis with full-time workers.
6. Changes to social benefits legislation in order to allow women to adequately support their families.

All of these recommendations make good sense. On a practical level such reforms would encourage women to try

other things and they would alleviate the pressing economic hardship some women face.

In Sweden a programme of decriminalisation with controls was instituted at the same time as a social and economic reform programme.(49) The results were very positive. Although Sweden has a very liberal attitude to sex it tightened its laws relating to sexual behaviour largely as a result of pressure by the women's movement. Sweden hit at activities generally associated with prostitution - such as procuring - to discourage landlords, pimps and others who, for personal gain, encourage or exploit another person's "immoral code" of life. They also retained penalties for procuring women under 20 years.

In the second half of the 1970s a system of outreach programmes was established to deal specifically with the problem of trying to reduce the incidence of prostitution by social rather than legal means. The Government provided prostitutes with sufficient economic and social security for them to leave the trade. In 1977 in Malmo there were 240 prostitutes and in 1980 this number was reduced to 60 following the programme. Massage parlours and sex clubs were completely eliminated from the city. The women were provided with accommodation, money, emotional support and alternative employment. At the same time, the Government instituted education programmes on sexual matters. The results speak for themselves.

The outstanding and distinguishing feature of the Swedish approach to dealing with the problems of prostitution lies in the difference of emphasis that governments, organisations and the population generally appear to place on the need for education and intervention at the social, rather than merely legal level ... the regulatory process is seen as complementary to measures intended to change attitudes and modes of life. (50)

If in New Zealand we wish to effectively tackle the problem of prostitution and provide better alternatives for women becoming, already working as, or likely to become, prostitutes a programme of decriminalisation with controls with an affirmative social and economic back-up system should be adopted. Decriminalising prostitution would avoid the worst exploitation and abuse of prostitutes. The law would then afford them protection rather than harassment. Their prices then would be likely to rise as would the conditions of work. An affirmative social programme including economic, emotional and vocational support to prostitutes would encourage prostitutes to find an alternative. The Swedish idea of generally educating the community about sexual matters would help, in New Zealand, to open our eyes in an honest way to sex and sexuality and the associated problems.

THE WIDEST REFORM

To achieve reforms that will eradicate the need for women to enter prostitution there will have to be an acknowledgement of society's and the customer's role in prostitution. Prostitution must be seen in its broadest context as only one manifestation of the disadvantaged position of women. The fact that many women's issues are now being openly discussed and that the discussion is being listened to is a positive step. But few feminists have gone further than making us aware of all the problems: there have been very few proposals for a pragmatic scheme for future endeavours in a feminist direction.

Christine Littleton's article "Reconstructing Sexual Equality" attempts, as its title suggests, to reconstruct the concept of equality so that, (51)

Difference between human beings whether perceived or real, and whether biologically or socially based, should not be permitted to make a difference in the lived-out equality of those persons.

She calls this view, "equality as acceptance".

The starting point is that sex is a biological and social construct which has resulted in men and women being treated as different. To date this difference has meant that people

who are biologically or socially female have been prejudiced. This group of prejudiced people includes women and men designated as socially women (that is, men who have "female" characteristics or who choose to enter traditionally "female" employment. Male nurses and homosexuals then are likely to be lumped with women.) Christine Littleton maintains that it is more "expensive" now to possess female characteristics in a difference relationship. She explains this, (52)

Taking parental leave shunts you off the partnership track; crying in a meeting shuts off the discussion; breastfeeding makes you unacceptable at the restaurant table.

The male power system, seen in the phallogentric concepts of society and its institutions, is constructed and perpetuated by men but it oppresses not merely biological women but also men who are classified as women due to their social situation.

Women, due to their sexuality and consequently their ability to be^{come} pregnant, are not recognised as socially male in the way that some men are identified as socially female. Even women privileged in racial and class terms are not seen as anything more than counterfeit men. We may be seen as "almost male" or "like a man" but due to our biological make-up we are always women. And women are deemed to be different - "we cannot perfectly conform".

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Use Christine Littleton's name (instead of "she") after now or these pp.

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The male power system, seen in the patriarchal concepts of society and its institutions, is constructed and perpetuated by men but it oppresses not merely biological women but also men who are classified as women due to their social situation.

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She believes we must look at men's and women's "real" differences - like pregnancy - but we must look further at other socially constructed differences too. Her ideal is to match the genderized complements of emotional, physical and employment traits and make the differences costless between the two parties. She proposes to equalize the differences by using the "currency" of money, status and access to decision-making. Although she acknowledges that these measures are phallogentric she believes we must start somewhere and that the most practical place to start is with "the currency of the day" - redistributing the things that a male-dominated society counts as valuable. The most important of these is access to decision-making which, if spread, would allow men and women to devise new measures of currency to assess the success or failure of changes that ^{propose} propose to advance the concept of equality as acceptance.

On the biological plane she envisages matching sperm loss with pregnancy so that the man and woman involved in the two sides of that difference relationship would be treated equally across that difference. In an area of biological and social differences such as athletics she argues that equality as acceptance would support arguments that equal resources be made available to male and female and genuinely co-ed sports at institutions, regardless of whether the sports are "similar". She advocates this because women have not participated as much as men and women's sports have been downgraded by the (male dominated) system. A glance at Sport On One will confirm this. In the socially constructed

difference area Christine Littleton gives the example of matching a soldier with a mother and rewarding their work equally in terms of money, status and access to decision making roles and positions.

While a soldier/mother example sounds foreign to us it must be remembered that in New Zealand we are familiar only with equal pay for the same work but not equal pay for different work. Canada, on the other hand, is in the process of revaluing people's work to find out what it would be worth if it was not genderized and if "female" work had not been devalued. For example, when men were secretaries in the nineteenth century it was a highly paid, prestigious job. Now that women are secretaries it is a poorly paid, low status occupation. The Canadians seek to rectify that sort of situation. They would weigh the job done by a secretary against a traditionally male occupation, perhaps that of a skilled tradesperson and level the incomes. This is an effective means of preventing "real" and cultural gender differences which make men and women unequal. Christine Littleton says, (53)

Equality as acceptance is not a model of superiority of socially female categories, nor even of the superiority of androgynous categories, but rather a model of the equal validity of men's and women's lives.

Equality as acceptance will admit women's voice to "the dialogue that constructs social meaning".(54) It would improve the lives of people designated as socially female. It would also improve the lives of men for they would be freed from the oppressive stereotyped image associated with the masculine side of the dualisms.

CONCLUSION

However, I should not like to see prostitution matched with a male equivalent long-term. Prostitution is degrading to women and exploitative of them. If Christine Littleton's approach was adopted I believe many women would find themselves economically better off and, in time, would not be crippled by a self-image based on their marketable sexuality. My view may be idealistic but the Swedish experience has given me hope. In the meantime, if prostitution were decriminalised prostitutes could be matched with self-employed business people, giving them more money, more status and more access to decision making. In time social reforms and a programme of the equality across difference type would remove the causes of prostitution.

FOOTNOTES

- (1) Wellington Yellow Pages Telephone Directory 1987, p.714.
- (2) This information is from Jan Robinson's research, Dominion Wellington, 21 July 1986. Also from my interview with Detective Sergeant Steve Waters, formerly of the Wellington Vice Squad and with Nina, a prostitute.
- (3) Lewis Diana, The Prostitute and Her Clients (U.S.A. 1985) p.43-77.
- (4) Supra n. 2 and Ibid, p.180-196 Below n. 8.
- (5) Edward Glover, The Psycho-Pathology of Prostitution, (London, 1945).
- (6) B.J. George, "Legal Medical and Psychiatric Considerations in the Control of Prostitution" (1962) 60 Mich L Rev :712, 750.
- (7) Great Britain Home Office and Scottish Home Department Committee on Homosexual Offences and Prostitution. Report London, 1957. Chairman: Sir John Wolfenden, 79. (Referred to as the Wolfenden Report).
- (8) Report of the Special Committee on Pornography and Prostitution, Canada 1983; (Referred to as the Fraser Report). Select Committee of the Legislative Assembly upon Prostitution, N.S.W. pp.130-136.
- (9) Roberta Perkins, Female Prostitution in Sydney I & II (Australia 1983), 25,27. Roberta Perkins was a founding member of the Australian Prostitutes' Collective who conducted surveys of Sydney

prostitutes. The preliminary findings of her surveys were made available to the Committee.

- (10) Weitzman, "The Economics of Divorce", (1980) 28 U.C.L.A.L. Rev (118).
- (11) Christine A Littleton, "Reconstructing Sexual Equality", unpublished article, U.L.C.A. School of Law, June 1986, 88-89.
- (12) B. Cass, "The Changing Face of Poverty in Australia: 1972-1982", paper delivered at Continuing Education Seminar in the Department of Social Work, University of Sydney 1984.
- (13) New Zealand Listener, Wellington, July 25 1987, 25.
- (14) Figures supplied by the Ministry of Women's Affairs.
- (15) New Zealand Woman's Weekly, Auckland, June 29 1987, 60.
- (16) Supra No. 2.
- (17) Jillian Riddington & Barb Findlay, "Prostitution: The Visible Bargain", Broadsheet, 20-24; Gail Sheehy, Hustling: Prostitution in our Wide Open Society (New York, 1971).
- (18) Supra No. 2.
- (19) Jan Robinson, Draft Chapter on Prostitution, for Public + Private World: Women in Contemporary New Zealand (ed S Cox + B James)
- (20) Fraser Report, Supra No. 8, 351.
- (21) Comment by a prostitute quoted by Kate Millett, The Prostitution Papers (U.S. 1976), 84.
- (22) Frances Olsen, "The Stigma of Money", unpublished article presented at the National Conference on Women and Law, Chicago, Illinois, March 22, 1986.
- (23) See Janet Rifkin, "Toward a Theory of Law and Patriarchy" 1980 Harvard Women's Law Journal; and Diane

- (23) Polan, "Toward a Theory of Law and Patriarchy" from The Politics of Law - A Progressive Critique ed. David Kairys (Pantheon, 1982).
- (24) See J.C. Smith, "The Sword and Shield of Perseus: Some Mythological Dimensions of the Law", (1983) 6 International Journal of Law and Psychiatry, 235-261 and Gods and Goddesses of the Quadrant: Some Further Thoughts on the Mythological Dimensions of the Law, (1984) 7 International Journal of Law and Psychiatry, 219-247 and Idem.
- (25) See T. Hobbes Leviathan (London, 1651); J. Locke, The Second Treatise of Government (T. Pearden ed. 1952); J.S. Mill, The Subjection of Women, in J.S. Mill and H.T. Mill, Essays on Sex Equality 125 (A. Ross, ed. 1970).
- (26) For a discussion of Plato's dualistic thought see J. Clegg, The Structure of Plato's Philosophy (1977), 18, 100-1, 188-91.
- (27) Frances Olsen, "Feminism and Critical Legal Theory: An American Perspective" (unpublished paper 1985).
- (28) Bradwell v. Illinois (1873) 83 U.S. (16 Wall.) 130, 141.
- (29) (1974) 417 U.S. 484
- (30) (1976) 429 U.S. 125.
- (31) Supra No. 11, 39.
- (32) Kate Millett, The Prostitution Papers (U.S. 1976) 84.
- (33) Supra No. 23.
- (34) See Patrick Devlin, The Enforcement of Morals (London, 1965).

- (35) See H.L.A. Hart, Law Liberty and Morality (London, 1962).
- (36) See Madeline S. Caughley "The Principle of Harm and Its Application to Laws Criminalizing Prostitution". (1974) 51 Denver L.J. 235.
- (37) See Devlin/Hart debate Supra No. 34 and No. 35.
- (38) Supra No. 7, 9-10.
- (39) Summary Offences Act, 1981.
- (40) Stephens v. Police [1985] N.Z.L.R. 732.
- (41) M. v. Police [1985] N.Z.L.R. 732.
- (42) Crimes Act, 1961 s.14. Also see R v. Barrie [1978] 2 N.Z.L.R. 78,81.
- (43) Fraser Report Supra No. 8 - Submissions were made by various women's groups to this effect.
- (44) *Ibid*, 390.
- (45) *Ibid*, 403.
- (46) Crimes Act, 1961 ss.148 and 149.
- (47) Supra No. 8 Fraser Report, 514-520; Select Committee N.S.W, 236-242.
- (48) During my interview with a former head of the Vice Squad, Detective Sergeant Steve Waters I learned that some crimes are detected while the police watch street prostitution and also that some women are forced into prostitution against their wills by male partners.
- (49) Fraser Report, Supra No. 9, 113-116.
- (50) *Ibid*, 115-116.
- (51) Supra, No. 11, 6.
- (52) *Ibid*, 94.
- (53) *Ibid*, 54.
- (54) *Ibid*, 72.

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