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WOMEN AS PERPETRATORS: DOES MOTHERHOOD HAVE A REFORMATIVE EFFECT ON PROSTITUTION?

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Lynne Marie Kohm

Abstract

This article explores whether motherhood may have any restorative effect on prostitution. Section I provides an overview of the crime of prostitution. It analyzes the underlying themes of autonomy, power, authority, and control, and considers whether prostitution is an example of the ultimate loss of these qualities, or an exercise of complete freedom and liberty in autonomy. Section II discusses how motherhood affects the life of a prostitute. It analyzes current social science research and studies and explores maternal responsibilities in terms of potential work interruption, new personal roles, and anxieties associated with the work/family/crime triad. It also considers the moral concerns of prostitutes who become mothers. Section II analyzes whether motherhood is indeed a reformer of the criminal lifestyle of prostitution. Prostitute mothers share many of the anxieties of any working mother, with some dramatic departures due to the criminal nature of prostitution. Taking this into account, the article's conclusion offers some remedies which may help reform women who are trapped in prostitution.

KEYWORDS: prostitution, prostitutes, women, motherhood, mothers, reformer, childcare, children, adoption

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*John Brown McCarty Professor of Family Law, Regent University. This article was written upon request of the Fordham Urban Law Journal for its special issue on women as perpetrators of crime. Many thanks are afforded to George Brooks, Terry Kim, and the board and staff of the journal for the invitation to participate in this symposium. Sincere gratitude and acknowledgement is also extended to William Catoe, Ginger Wills, and Eric Welch in their excellent research for this article, and their analytical assistance in thinking through this difficult area of law. May they be blessed for their service and thoughtful analysis. This article is dedicated to women who are trapped in prostitution and ought to be encouraged and empowered with another choice Though the specter that drives prostitution is not uncommon, it is neither satisfying nor sustaining. "A spirit of prostitution is in their heart; they do not acknowledge the Lord...Let us acknowledge the Lord, let us press on to acknowledge him. As surely as the sun rises, he will appear..." Hosea 5:4, 6:3 (New International Version). May this article somehow offer a glimmer of hope.

WOMEN AS PERPETRATORS: DOES MOTHERHOOD HAVE A REFORMATIVE EFFECT ON PROSTITUTION?

By Lynne Marie Kohm[*]

An incarcerated prostitute, who had just given birth to a baby girl, awaited the hearing on her decision to give up her child for adoption.[1] As her gaze drifted toward the counselors and social workers who had assisted her in the adoptive placement process, she could not help but wonder if they were the only friends that she had in the world.[2] As part of the adoption process, a termination of parental rights hearing followed, where the judge read her entire criminal history into the record.[3] With a public

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1. The particular proceeding was the result of an Order of Publication, Virginia Beach Juvenile and Domestic Relations District Court, published in INSIDE BUS. (Norfolk, Va.), on May 23, May 30, June 6, and June 13, 2005. For another perspective of a mother prostitute and how her decisions had major effects and ramifications on others in her family, her extended family, her community, and on society in general, see Alan S. Kamin, *To Tell a Different Story*, ARIZ. ATT'Y, May 2002, at 32.

2. These counselors were employees of a Christian social service agency called Bethany Christian Services, which specializes in pregnancy counseling and adoption. *See* INSIDE BUS., *supra* note 1.

3. The judge in this particular case was a woman. *Id.* It could be argued that this practice of reading criminal charges of a birth mother into the record of a termination of parental rights hearing (which was initiated because of the knowing and voluntary consent and signed entrustment agreement of the birth mother) may be an abuse of judicial authority. Or, perhaps it was merely indicative of the judgmental attitudes that permeate society as a whole. It does seem that the only evidence that should have been included in the record was whether the birth mother had the mental capacity to knowingly and

litany of numerous convictions for drug possession and prostitution, the judge painted a picture of a criminal who was now doubly villainous for choosing adoption for her child.[4] Would not even the prospect of motherhood prove to be redemptive in her life?[5]

In 2004, there were 90,231 arrests for prostitution in the United States.[6] One in three women in jail today were arrested for prostitution.[7] Among women in jail for felonies, the rate is even higher—seventy percent of these inmates were initially arrested for prostitution.[8] For women, prostitution is

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voluntarily consent to the adoption and whether she, in fact, consented to the adoption without coercion or threat of coercion. A judge who presides over an adoption should know that there is a strong possibility that the putative adoptee will one day see the adoption records. Her inclusion of the birth mother's criminal history was not necessarily in the best interests of either the adoptee or the adoption process as a whole. In fact, such judicial attitudes might serve to discourage women such as this from choosing to do what is arguably the right thing in the best interests of the child.

4. *Cf.* Lisa C. Ikemoto, *The Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, The Practice of Defaulting to Science, and the Interventionist Mindset of Law*, 53 OHIO ST. L.J. 1205, 1261 (1992). Although she is discussing motherhood in the context of poor prenatal care, Ikemoto's analysis is worth repeating in the context of this prostitute who chose to provide for the best interests of her child through adoption and was nonetheless somewhat demonized.

> There is little precedent for restricting women by imposing penalties at law on choices that fail to promote fetal interests. But, the indirect regulations do continue the cultural practice of requiring self-sacrifice by punishing "unnatural" maternal selfishness as defined by the ideology of motherhood. The parallel stories continue. As the fetus gains recognition as a person, the construct of conflict expands. This story is accompanied by the old one, the subordination of women. In the indirect portion of the regulatory scheme, this story is told primarily in terms of tort liability, criminal prosecution, and findings of child neglect based on conduct during pregnancy.
>
> More particular to the indirect regulatory scheme is that it highlights the aspect of the motherhood ideology raised by the criminalization of prostitution and by sterilization abuse. That is, women are not only responsible for maintaining and perpetuating social order, they are also to blame when disorder prevails. Society expresses its fear of disorder by regulating women as bad mothers.

Id.

5. A distinction must be made here regarding the difference between the choice for birth and the choice for motherhood. Although it can be logically argued that motherhood begins at conception, choosing to parent a child is a major decision that endures for one's lifetime. Choosing birth endures for a difficult, but relatively brief, nine to ten months, and has different long term effects on the life of the woman who made the choice for birth than it does for the woman who made the choice for motherhood or abortion.

6. FED. BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 2004: UNIFORM CRIME REPORTS 280 (2004), *available at* http://www.fbi.gov/ucr/cius_04/documents/CIUS2004.pdf.

7. Destiny's End, Prostitution Statistics, http://www.wmich.edu/destinys-end/statistics.htm (last visited Jan. 2, 2006).

8. *Id.*

often a gateway crime leading to drug possession and use,[9] or a derivative crime that is committed to sustain a drug habit.[10] For the prostitute who had given up her child for adoption, did her drug dependencies perpetuate a cycle of crime that even motherhood could not break? Or was she a sacrificial heroine for placing her child's best interests above her own selfish desires to keep the child?[11] Could her decision for adoption have been based on the realization that the harmful and illegal circumstances in her life were not likely to change?[12] Is change even possible for a woman who has funded her survival and drug dependency with the sale of her body?

This article explores whether motherhood may have any restorative effect on prostitution.[13] Minimal research has been done in this area, but this article will seek to analyze the available data about prostitutes who are mothers, review the literature on this subject to date, and discern whether

9. *Id.*

10. Destiny's End, Risks to Women in Prostitution, *at* http://www.wmich.edu/destinys-end/risks.htm (last visited Jan. 2, 2006) (noting that drug use could be a way of coping with being a prostitute, or that prostitution could be a way to support a preexisting drug habit).

11. Placing the tag of "heroine" on this birth mother may be melodramatic. She did not necessarily choose to be a mother. She chose to give birth. If she did, however, desire to be a mother but realized that this was impossible due to her circumstances, her decision may have been on the basis of self-sacrifice and the desire to see her child have a chance at a better life. It is reasonably suspected that there is high degree of pressure placed on a pregnant woman who is incarcerated to give her child up for adoption. This would seem to be especially true if her incarceration is to continue for any significant time, and/or if the mother has no family support.

12. It is questionable whether this mother had any other alternative. Abortion is not generally available in prison, although a Missouri inmate recently appealed all the way to the Supreme Court of the United States to exercise her constitutional right to an abortion. *See* Associated Press, ***Inmate Gets Abortion After Going to Court, Missouri Woman's Request for Prison Transportation Went to Supreme Court,*** Oct. 21, 2005 (reporting that the abortion was performed after the state Corrections Department was forced to provide her with transportation to the clinic at taxpayer expense, though the inmate, who was four months pregnant and in prison for violating probation on a methamphetamine-possession charge, paid for the abortion itself). Therefore, the only other choices available to her, in essence, were to self-abort or to end her own life. The preferred perspective is to say that she chose life for both herself and her child, but it cannot be assumed that the child was a consideration in her decision. Indeed, this mother, as might be the case with any other prostitute, may have seen the child as a problem and adoption as the most viable solution. In any event, it can be said unequivocally that she chose life—at least for herself. The baby and the prospective adoptive parents may have simply been third party beneficiaries of her decision.

13. This article does not deal with or compare the intersection of prostitution and surrogacy arrangements. For a comprehensive review of this area of law, about which there is a litany of law journal literature, see April L. Cherry, *Nurturing in the Service of White Culture: Racial Subordination, Gestational Surrogacy, and the Ideology of Motherhood*, 10 TEX. J. WOMEN & L. 83 (2001).

there is indeed any reformative or restorative effect on the criminal disposition of a prostitute who becomes a mother.

Section I provides an overview of the crime of prostitution. It analyzes the underlying themes of autonomy, power, authority, and control, and considers whether prostitution is an example of the ultimate loss of those qualities, or an exercise of complete freedom and liberty in autonomy. Section II discusses how motherhood affects the life of a prostitute. It analyzes current social science research and studies and explores maternal responsibilities in terms of potential work interruption, new personal roles, and anxieties associated with the work/family/crime triad. It also considers the moral concerns of prostitutes who become mothers. Section III analyzes whether motherhood is indeed a reformer of the criminal lifestyle of prostitution. Prostitute mothers share many of the anxieties of any working mother, with some dramatic departures due to the criminal nature of prostitution. Taking this into account, the article's conclusion offers some remedies which may help reform women who are trapped in prostitution.

Prostitution is referred to as one of the oldest professions in the world.[14] It is criminally prosecuted in the majority of jurisdictions in the United States, and is illegal in all states but Nevada.[15] Prostitution also has close links with drug use and organized crime.[16] Though criminal activity may arise out of economic necessity, events such as family concerns, health matters, or social issues can trigger the reform of a person's criminal tendencies.[17] This article explores the impact of such trigger events on

14. *See, e.g.*, Mark Liberator, Legalizing Prostitution: Regulating the Oldest Profession (2004), http://www.liberator.net/articles/prostitution.html. For a thorough discussion of the historical perspective on prostitution, see Timothy J. Gilfoyle, *Prostitutes in History: From Parables of Pornography to Metaphors of Modernity*, 104 AM. HIST. REV. 117, 119 (1999) (noting the cliché that "prostitution is the world's oldest profession").

15. U.K. HOME OFFICE, PAYING THE PRICE: A CONSULTATION PAPER ON PROSTITUTION 102 (2004), *available at* http://news.bbc.co.uk/nol/shared/bsp/hi/pdfs/16_07_04_paying.pdf ("In Nevada prostitution is restricted to certain counties. It is forbidden in counties with high populations [e.g.,] Las Vegas, Reno and Lake Tahoe . . . Nevada state law only allows prostitution in brothels which are registered with the police . . . Prostitutes are required to provide fingerprints and to undergo regular health checks."); *see also* LIBERATOR, *supra* note 14, at 2 (noting that prostitution is illegal in the United States, except in certain counties in Nevada); *infra* notes 22-27.

16. *See* U.K. HOME OFFICE, *supra* note 15, at 5.

17. In his book THE LIMITS OF LAW ENFORCEMENT, Professor Hans Zeisel suggests that events such as gaining an education or obtaining gainful employment may help bring an end to criminal conduct. *See* Hans Zeisel, THE LIMITS OF LAW ENFORCEMENT 68-88 (1982).

> Those causes [of street crime] are no mystery to us. It is not news that almost all perpetrators of street crime come from the bottom of the socioeconomic ladder—from among the ignorant, the ill-educated, the unemployed and unemployable. The crime that gives us nightmares is a human problem indisputably connected

prostitutes.[18] Specifically, it considers what happens when the women who perpetrate this crime[19] become mothers. What effect does motherhood have on the criminal disposition toward prostitution? Could the responsibility and privilege of motherhood possibly bring reform to that criminal disposition?

Whether or not motherhood has a restorative or reformative effect on prostitution is worth examining. Because of the inherently transcendent and wondrous nature of motherhood, there exists the hope that motherhood may in some way reform criminal behavior, particularly in a crime involving one's sexual disposition. As this article concludes, however, such hope us not realized in the research that has been done on this topic to date.

I. LEGAL RATIONALES FOR PROSTITUTION

Legislation concerning prostitution varies globally.[20] Of the varied western[21] methods of responding to prostitution and the exploitation of

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with savage social and economic deprivation.

Id. at 70-71 (alteration in original) (quoting Judge David L. Bazelon, Letter to the Editor, *Our Wrong Answer to Street Crime*, N.Y. TIMES, Oct. 19, 1980, § 4, at 20).

18. Prostitution is generally defined as "the exchange of sexual services for some form of payment—usually money or drugs." U.K. HOME OFFICE, *supra* note 15, at 14. It covers any type of sex-for-payment arrangements. Karen Peterson-Iyer, *Prostitution: A Feminist Ethical Analysis*, J. FEMINIST STUD. RELIGION, Fall 1998, at 19, 20-21 ("'Prostitutes' range from the stereotypical street prostitute, with or without a pimp, to the upscale 'call girl' who operates out of her home or through an escort service. Many 'massage parlors,' operating under legal auspices, also regularly include sex-for-pay services."). For the purposes of this article, all of these definitions meet what is referred to herein as prostitution.

19. A second consenting participant is required to perpetrate the crime of prostitution. Generally the prostitute's services are hired by that participating individual, who brings the crime to fruition. That individual is often the forgotten participant in the crime of prostitution. This enigma is an extremely interesting one, but beyond the scope of this paper. For information on that aspect of prostitution prosecution, and about methods used to prosecute exploiters and promoters of prostitution, see U.K. HOME OFFICE, *supra* note 15, at 12, 99-102; *see also* Peterson-Iyer, *supra* note 18, at 22 ("[C]ustomers of prostitutes ('johns') are rarely even picked up by the police, let alone arrested or punished.").

20. *See* U.K. HOME OFFICE, *supra* note 15, at 99-102 (describing prostitution legislation in Europe, Australia, New Zealand, and the United States). Some argue that cultural differences play a major role in the legalization or criminalization of prostitution. *See, e.g.*, LIBERATOR, *supra* note 14, at 1 ("When we examine sex as a trade, the combination of philosophy, cultural precedence, religious influence and politics [make] each country select how to handle it in its own way.").

21. There is very little literature on non-Western prostitution and its settings. *See* Lillian S. Robinson, *Touring Thailand's Sex Industry*, 257 NATION 492, 492-97 (1993) (providing mainly anecdotes and estimates, but few statistics about the sex industry in Thailand); *see also* Peterson-Iyer, *supra* note 18, at 22-23 ("In the international arena, prostitution is particularly exploitive in poor and non-Western settings. According to one study, for

persons in the global sex industry, countries criminalize, legalize, decriminalize or require registration or licensing in the sex trade.

Prostitution is legal in Denmark, Germany, Greece, the Netherlands, and Switzerland, and in all but one state in Austria.[22] It is legal in Finland, France, Italy, Portugal, Spain, and Canada.[23] Similarly, it is illegal everywhere but Nevada in the United States,[24] and some form of registration, licensing, or health checks is required in Austria, Belgium, Greece, Netherlands, Switzerland, Turkey, and parts of Australia.[25] It is decriminalized in Sweden, New Zealand, and parts of Australia.[26] Many of these arrangements also include some form of criminal offence for exploiting, trafficking, promoting, or encouraging prostitution, or benefiting from the prostitution of another.[27]

There is generally growing level of tolerance for prostitution and the sale of sexual services.[28] Much of this tolerance is based on the legal rationale that a person has a liberty interest in his or her own sexuality.

A. Liberty

Liberty is the area of freedom that includes privacy, autonomy, and a right to pursue one's own form of happiness. Liberty interests have been protected by the Supreme Court of the United States in the area of sexuality in numerous cases involving procreation,[29] marital privacy relating to contraceptive use,[30] sexual privacy in contraceptive use for non-married

example, seventy to eighty percent of all prostitutes in India have been forced into the life by trickery and violence."); LIBERATOR, *supra* note 14, at 1 (claiming anecdotally that in Singapore, "sex for money is open and commonplace"). Liberator also attempts to include Iran, Israel, Greece, Saudi Arabia, and Singapore in his research on crime, healthcare, and social conditions as they relate to the legalization of prostitution, but most categories for these Middle-Eastern and Eastern nations do not keep such statistics, making them unavailable to prove the truth of the matter stated. *Id.* at 14-18.

22. *See* U.K. HOME OFFICE, *supra* note 15, at 99-101.

23. *See id*. at 99-102.

24. *See id*. at 101-02; *see also* LIBERATOR, *supra* note 14, at 2 (stating that prostitution is illegal in the United States, with the exception of Nevada).

25. *See* U.K. HOME OFFICE, *supra* note 15, at 99-102.

26. *Id*. at 101-02. Some regimes make prostitution illegal, but have nonetheless decriminalized it. *Id*.

27. *Id*.

28. To some extent this trend is based on the legal rationales that follow, while also flowing largely from the arguments against prohibition. *See* LIBERATOR, *supra* note 14, at 3-8 (discussing rationales against prohibition and applying them to prostitution).

29. Skinner v. Oklahoma, 316 U.S. 535, 543 (1942) (holding that the right to procreate is fundamentally protected by the United States Constitution).

30. Griswold v. Connecticut, 381 U.S. 479, 486 (1965) (holding that the Constitution protects a marital right of privacy to use contraception).

people,[31] autonomy in abortion choices,[32] and sodomy.[33] Prostitution has not been defended as a liberty interest at the federal level, but has been argued by legal academics to be a liberty interest based on the autonomy, privacy, and equality interests that render it better served by regulation.[34]

Autonomy over one's body, particularly in regard to sexuality, is a prime focus of many legal academics and some feminists. Prostitution is viewed as a matter of free choice.[35] The prostitute is often portrayed as being strong, independent and autonomous, and as having pride in her work.[36]

Prostitutes are viewed, from a free trade perspective, as sex workers in a legitimate area of commerce.[37] The work is seen as a voluntary contract,

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31. Eisenstadt v. Baird, 405 U.S. 438, 455 (1972) (holding that the Constitution protects an individual right of privacy to use contraception).

32. Roe v. Wade, 410 U.S. 113, 167 (1973) (holding that the Constitution protects a fundamental right to abortion); Planned Parenthood v. Casey, 505 U.S. 833, 901 (1992) (holding that the fundamental right to abortion may be regulated if that regulation does not create an undue burden on the mother).

33. Lawrence v. Texas, 539 U.S. 558, 579 (2003) (holding that the Constitution recognizes a right to privacy protecting consenting adults who engage in acts of sodomy).

34. *See, e.g.*, Peterson-Iyer, *supra* note 18, at 27.

> An emphasis on the prostitute as an autonomous agent, one who knows her own best interests and enters into a free contract, draws implicitly on a conception of the individual as primary. In this view, each individual is uniquely equipped to determine her or his own best "good"; privately chosen goods supplant any overarching sexual values. It is therefore wrong to use the public arena to impose particular sexual agendas. Of course, such an approach dovetails well with a civil libertarian emphasis on the right of the individual to control her or his own body without unreasonable interference from the state. What we are left with is a relatively thin theory of sexual good, indeed of *any* bodily good; instead, determination of good is left up to the individual.
>
> Related to the stress on individual agency and privacy is a liberal emphasis on equality. Equality arguments further challenge the current legal treatment of prostitution, particularly the unequal treatment of men and women involved in the trade. For instance, the American Civil Liberties Union objects that the failure to punish male customers of female prostitutes denies women equal protection under the law. Such a view makes the case for more evenhanded treatment of prostitutes and their customers; however, it does not by itself settle the question of the moral status of prostitution.

Id. An assertion could be made that privacy rights founded in the line of cases outlined in this text could be applied to prostitution. *See, e.g.*, M. D. Harmon, Editorial, *The Abortion Issue Was Supposed to Stay Buried, But It Hasn't; Thirty-Two Years After Roe v. Wade, Supreme Court Appointments Still Engulfed in It. Why?* PORTLAND PRESS HERALD, Oct. 21, 2005, at A9 (noting arguments that abortion should be merely regulated, as a privacy right, as should prostitution).

35. *See, e.g.*, Peterson-Iyer, *supra* note 18, at 23-24 (noting that this view of free choice is the most common among prostitutes' organizations).

36. *See, e.g.*, Teresa J. Hornsby, '*Israel Has Become a Worthless Thing': Re-Reading Gomer in Hosea 1-3*, 82 J. STUDY OLD TESTAMENT 115, 116, 124 (1999).

37. Peterson-Iyer, *supra* note 18, at 24-26.

and assumes a mutually beneficial relationship between the parties to the contract.[38] "According to this view, prostitution is no less legitimate than any other contractual business arrangement; while the state may have an interest in taxing and/or regulating it, [it] has no business in banning it."[39]

These concepts of autonomy and contract, however, are more idealistic than realistic. As eroticism moves from bargained-for intimacy to forced or manipulated sexual services, prostitution can become enmeshed in a conflation of violence.[40] The prostitute's autonomy is then corrupted by the power exerted by another over her body.[41] This twists the concept of autonomy.[42] Research on prostitution that focuses on sex work as a

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38. *Id*. at 25-26.

39. *Id*. at 26.

40. *See* U.K. HOME OFFICE, *supra* note 15, at 17 ("Prostitution makes victims of many of those involved in it, and of those communities in which it takes place. Key concerns include: . . . links with criminality . . . [and] related violence, including serious assaults against those involved in prostitution . . . ."); *see also* Hornsby, *supra* note 36, at 115, 125 (analyzing *Hosea* 1-3 and the "conflation of violence and eroticism" surrounding Gomer, who is "described with prostitute imagery"); Judith Mirkinson, Red Light, Green Light: The Global Trafficking of Women (1994), *available at* http://feminism.eserver.org/gender/sex-work/trafficking-of-women.txt/document_view (discussing the brutalization of child prostitutes).

41. Mirkinson, *supra* note 40 ("Although there is much debate within the feminist movement around the question of prostitution[,] one thing should be perfectly clear. Prostitutes are not criminals and they should not be penalized and jailed. Given the nature of trafficking, one cannot look at these jobs as ones of free choice."); *see also* U.K. HOME OFFICE, *supra* note 15, at 39 ("Some men and women involved in prostitution argue vociferously that it is their occupation of choice. However, this does not detract from the task of supporting and protecting those . . . for whom prostitution undoubtedly involves exploitation."); John Lawrence Hill, *Law and the Concept of the Core Self: Toward a Reconciliation of Naturalism and Humanism*, 80 MARQ. L. REV. 289, 385 (1997).

> Some feminists have maintained that women who are raised in a male-dominated society are unfree because they have internalized patriarchal values. This argument has been made, among other places, in the debate over whether women who become prostitutes or surrogate mothers are truly free with respect to their choice of profession. In one sense, of course, any social system that limits the opportunities available to a particular class of persons renders them unfree in an external way—in the sense that they are not able to achieve a desired goal. The woman who wishes to become an executive but is forced by virtue of unjust social and political forces to choose between motherhood and prostitution is obviously unfree in this external, political sense. This is not, however, the extent of the feminist claim. Instead, the feminist seeks to demonstrate that the prostitute or the surrogate mother is not free in the sense which this section has discussed—in the internal sense, in the sense that she is not personally free.

Id.

42. *See generally* Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137, 170-73 (2004) ("At first glance, privileging choice and autonomy may appear to benefit all people. However, inequality is revealed in the answers to the following questions: Who gains by characterizing prostitution as choice? . . . Who is advantaged by a distinction between

bargained-for contract often does not see the manipulative and possibly extortionist nature of sex work.[43] Some feminists see prostitution as "another example of the oppression of women."[44] More importantly, legalization of prostitution based on these rationales has possibly fanned into flame the burgeoning sex trafficking industry.[45]

Some legal regimes, nonetheless, are moving toward a trend of acknowledging the legitimacy of sex work to protect a liberty interest.

> [I]n recent years a number of countries have been reviewing their approach and, in some cases, have concluded that a greater acceptance of the existence of a sex trade is justified in order to minimise the stigmatization associated with prostitution and introduce greater controls over the health and safety of those involved in prostitution and of the

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'chosen' prostitution as a private exercise of autonomy and 'forced' prostitution as an action to be condemned? Those in a position to exercise power and those who have more to protect are the beneficiaries of a model of privacy and nonintervention."). Contrarily, for arguments from prostitutes' rights groups that view prostitutes as autonomous in their choice of work, such as Cast Off Your Old Tired Ethics (COYOTE), see *Coyote/National Task Force on Prostitution*, *in* SEX WORK 290, 290-95 (Fredérique Delacoste & Priscilla Alexander eds., 1988); Frances M. Shaver, *The Regulation of Prostitution: Avoiding the Morality Traps*, 9 CANADIAN J.L. & SOC. 123, 144 (1994).

43. Fair discussion of both sides of the autonomy/oppression discussion are comprehensively set forth in Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J.L. & FEMINISM 47, 93-101 (1992); Elizabeth Bernstein, *What's Wrong with Prostitution? What's Right with Sex Work? Comparing Markets in Female Sexual Labor*, 10 HASTINGS WOMEN'S L.J. 91, 95-101 (1999); Jody Freeman, *The Feminist Debate Over Prostitution Reform: Prostitutes' Rights Groups, Radical Feminists, and the (Im)possibility of Consent*, 5 BERKELEY WOMEN'S L.J. 75, 86-109 (1989).

44. Judith Hahn, *Loving a Prostitute*, 106 CHRISTIAN CENTURY 415, 416 (1989); *see also* Tsubasa Wakabuyashi, *Enjokosai in Japan: Rethinking the Dual Image of Prostitutes in Japanese and American Law*, 13 UCLA WOMEN'S L.J. 143, 171-72 (2003) (arguing that Japanese laws are improperly based upon fixed notions of sex, paternalism, and gender-prejudice, which result in an improper analysis of prostitution as a form of exploitation rather than a chosen occupation.). For arguments from feminists who see prostitutes as victims, see generally KATHLEEN BARRY, FEMALE SEXUAL SLAVERY (1979); CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989); CAROLE PATEMAN, THE SEXUAL CONTRACT (1988).

45. *See, e.g.*, Mirkinson, *supra* note 40 (noting that sex trafficking clearly defeats an individual's free choice, even if prostitution is a regulated industry). Some who argue in favor of legalization, however, use the opposite argument. *See, e.g.*, LIBERATOR, *supra* note 14, at 6 ("It is estimated that 100,000 to 3 million teens are nearly invisibly prostituted per year in the United States. If we allow prostitution to remain hidden from view and basically invisible to the law as it is today, we allow a number of teens to be swept up into prostitution every year. When adult women decide to exchange money for sex, it is a personal choice open to them under the philosophy of a free, democratic society. When troubled minors who do not yet have the social survival skills decide to prostitute, they are often manipulated by opportunists who exploit these teens, typically leading to horrific ends. Legalizing prostitution will help prevent these instances through regulation.").

wider public.[46]

It is clear that many of the laws relating to prostitution are "outdated, confusing, and ineffective,"[47] and some nations are relying on legislative means to introduce new offenses and tougher penalties for persons who exploit others for the purposes of prostitution.[48] The act of prostitution, nonetheless, remains one that is widely dealt with on a criminal level, rather than a rehabilitative or social basis, and even less frequently as a protected liberty interest.

B. Criminal nature of prostitution

Prostitution is by its very nature perilous,[49] and is prosecuted because it affects the wider community in numerous negative ways.[50] Furthermore, it often assumes the abuse or exploitation of one person by another, and "has close links with problematic drug use and, increasingly, with transnational and organised crime."[51] As a gateway crime, prostitution has grown tremendously in the under-eighteen age group; while charges for prostitution and commercialized vice decreased by 12.4 percent from 1995 to 2004, the same offense charged to individuals under eighteen years of age increased by 39.5 percent.[52] Moreover, the U.K. Home Office stated:

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46. U.K. HOME OFFICE, *supra* note 15, at 82. This article suggests, however, the possibility that the very acceptance of the existence of such a sex trade may be what is fostering an increasing abuse of those dragged into the industry of prostitution.

47. U.K. HOME OFFICE, *supra* note 15, at 5.

48. *Id*. at 5. For example, the United Kingdom passed the Sexual Offences Act 2003 which "began the process of reform by addressing concerns about the growing level of trafficking." *Id*. The U.K. government's consultation paper on prostitution from the Home Office clearly sets forth the "need to ensure . . . a coherent legal framework and effective tools to tackle abusers and exploiters." *Id*. The paper also asserts that there is a link between prostitution and pornography and the Sexual Offences Act 2003 regulates both. *Id*.

49. *See infra* notes 57-60 and accompanying text (detailing the fears for physical safety). The existence of a "sex trade" causes prostitution to make victims of many of those involved in it. Concerns include an "[i]ncreasing use of the internet as a grooming or advertising medium, links with drug abuse [and drug] markets, links with criminality, including robbery, related violence [and] serious assault against those involved in prostitution . . . [and] people trafficking for the purposes of commercial sexual exploitation . . . ." U.K. HOME OFFICE, *supra* note 15, at 17.

50. U.K. HOME OFFICE, *supra* note 15, at 74 ("Prostitution undermines public order and creates a climate in which more serious crime can flourish.").

51. *See supra* note 16 and accompanying text.

52. FED. BUREAU OF INVESTIGATION, *supra* note 6, at 284. Although charges for prostitution and commercialized vice decreased from 65,778 in 1995 to 57,618 in 2004, a decrease of 12.4 percent, the same offense charged to individuals under eighteen years of age increased from 874 in 1995 to 1,219 in 2004, an increase of 39.5 percent. The statistics for those over eighteen years of age, however, paralleled the overall statistics. *Id*.

> Research shows that as many as 70 per cent of those involved in prostitution started out as children or young teenagers. Their vulnerability and need for affection means they can be easy prey for those determined to exploit them. Often they become trapped in a web of fear and deceit in which drug addiction, prostitution and responding to the demands of pimps becomes a way of life.[53]

For those adults who are prosecuted, prostitution (street prostitution in particular) is often a crime of economic necessity.[54] This is indicated by the results of a recent study of women prostitutes in Toledo, which revealed that eighty-one percent of the study participants had not earned a high school diploma and had no other apparent or feasible means of income.[55]

> Forty-eight percent, nearly half the women interviewed, had no previous work history. All of the women were eligible for welfare benefits and all came from families where their parents lived in poverty or fluctuated from poverty to working class throughout their childhood. None of the women were currently married, nor did any of the women who were parents consistently collect child support for the children they were attempting to raise. Therefore, street prostitution is largely representative of the poor, single, and less educated. With very few skills, a limited education, and minimal, if any, work experience, these women saw prostitution as a way to succeed in otherwise blocked entrances to conventional opportunities.[56]

These women are not entering prostitution to exercise rights of autonomy, power, and control over their bodies and lives, but to attempt to overcome an upbringing of poverty and possibly abuse or lack of parental (particularly paternal) nurturing.[57] It is logical to assume that most prostitutes see their profession as a means of survival.

> While the existence of commercial sexual transactions is generally accepted and even tolerated in certain circumstances, the prostitute is a

53. U.K. HOME OFFICE, *supra* note 15, at 5.

54. *Id.* at 39 ("Debt and drug addiction play a major part in driving people into prostitution as a survival activity. They are also significant factors, along with the threat of violence from pimps/partners, in making it difficult to leave. Those involved in prostitution can be particularly difficult to reach, claiming that prostitution is their choice and that they don't want to leave—through a combination of fear, the process of normalisation or in an effort to maintain their dignity. While preventative work at an early age is important we must also work to address the safety of the thousands already trapped by debt and drug addiction.").

55. Destiny's End, Prostitution Statistics, *supra* note 7.

56. *Id.*

57. *See* Hahn, *supra* note 44, at 415 ("Most enter prostitution between the ages of 14 and 16. Some 70 to 80 percent are incest victims and come from unstable families. They enter 'the life' with low self-esteem, little self confidence, no job skills and minimal education.").

> commonly pilloried figure. This is often based on a general assumption that those involved are in control of their situation. However, the evidence is clear that this can be far from true. High levels of childhood abuse, homelessness, problematic drug use and poverty experienced by those involved strongly suggest survival to be the overriding motivation.[58]

The brutal realities of the criminal nature of prostitution become apparent when studied.[59] Prostitution is an obvious source of danger for those involved, even when street work is shielded under the cover of a legitimate business.[60] For many prostitutes, drugs become more of a dependency as part of a solution to handling the violence, shame, and guilt inherent to the industry, and also as a coping mechanism to continue such work.[61] This vicious cycle of prostitution for drugs, under which more drugs are required to cope with the prostitution, and in turn more prostitution is required to afford drugs, drives the prostitute into deeper despair.

Rather than affording women ultimate control over their bodies, prostitution quickly results in the ultimate loss of autonomy, power, and control over not only one's body, but over one's life. In other words, "[t]he assertion that prostitution is no more than an example of a free contract between equal individuals in the market is another illustration of the presentation of submission as freedom."[62] Prostitution is largely an illegal profession rife with exploitation, violence, and harassment against the women who offer it as a service.[63]

> [P]rostitution is a complex, multifaceted social problem. . . . To analyse the issue of prostitution, we cannot just focus on sex as a personal moral issue; rather, we must examine the unequal power structures and social constructions of gender, sexuality, class and race that create systems that exploit the vulnerable, especially the poor, the young, people of colour,

58. U.K. HOME OFFICE, *supra* note 15, at 12.

59. Although a thorough treatment of all of the realities of the lives of prostitutes is beyond the scope of this paper, see generally *id.* (providing details of prostitutes' lives).

60. *Id.* at 6 ("While street prostitution is the most obvious cause of danger both to those involved and to the wider community, there is a growing trade in selling sexual services in premises licensed for other activity, including massage and also video and film. Prostitution must not be concealed behind the façade of legitimate business.").

61. *See* Hahn, *supra* note 44, at 415 ("Many become substance addicts and live in an abusive relationship with a pimp. The pimp is a prostitute's security: he will bail her out of jail . . . . A prostitute risks her life every time she gets into a car. . . . The need to support her drug habit keeps her on the streets. She ages quickly.").

62. Carole Pateman, *Defending Prostitution: Charges Against Ericsson*, 93 ETHICS 561, 564 (1983), *quoted in* Peterson-Iyer, *supra* note 18, at 19.

63. Peterson-Iyer, *supra* note 18, at 19.

and socially outcast women.[64]

Others argue that public opinion and political affairs are the only factors that keep prostitution from being legalized universally, even if the non-enforcement of prostitution laws is deliberate.[65] This allows prostitution to be protected by a thick veil of secrecy, even by political corruption for the commerce it brings to a municipality.[66] When a prostitute becomes a mother, however, a new host of issues are added to the complications brought on by the criminal nature of prostitution.

II. THE INTERRUPTION OF MOTHERHOOD IN PROSTITUTION

Despite the fact that most prostitutes become mothers at some point in their lives,[67] very few studies have focused on the intersection of motherhood with prostitution, and there are no studies that focus on motherhood as an avenue of prostitution reform.[68] Moreover, motherhood further complicates the criminal world of a prostitute, which makes examining the possibilities for reformation difficult. Might there, however, be some promise in a reformation or retreat from the lifestyle of prostitution when it is interrupted by motherhood?

Focusing on the nature of prostitution as it relates to motherhood reveals some harsh facts. Most prostitutes generally fear for their personal safety.[69] When these women become pregnant, they generally fear for the

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64. Rose Wu, *Women on the Boundary, Prostitution, Contemporary and in the Bible*, 28 FEMINIST THEOLOGY 69, 71 (2001).

65. *See* Jane Addams, *The Church and the Social Evil: Christian Responsibility for a Terrible Modern Scourge*, 61 METHODIST Q. REV. 665, 666-67 (1922) (arguing that prostitution is often the root of political corruption, which explains the resulting non-enforcement of laws against prostitution).

66. *Id*. at 667 ("The men who consider her a legitimate source of revenue, in a thousand ways fleece the decent taxpayers who refuse to acknowledge her existence, and she abides through one administration after another to the confusion and frustration of all movements for civic reform.").

67. Hahn, *supra* note 44, at 415 ("Most likely she will have children. She might know the father of her child, or the child might be a 'trick' baby, the offspring of a customer. She may give her child up for adoption, but usually she gives the infant to a family member or tries to care for the baby herself. Unfortunately, since the prostitute was probably raised in an abusive family, she is very likely to be an abusive parent herself.").

68. There is only one published study currently available: Christine M. Sloss & Gary W. Harper, *When Street Sex Workers Are Mothers*, 33 ARCHIVES SEXUAL BEHAV. 329, 329 (2004) ("Many women who engage in street sex work experience pregnancies and become mothers. Unfortunately, little research has examined how their pregnancies and parenting impact themselves as street sex workers and their street sex work."). This article will hereinafter be referred to as the "Sloss-Harper Study."

69. *Id*. ("Research has demonstrated that among female employees in the various facets of the sex industry, those engaged in street sex work tend to be the most marginalized, oppressed, and stigmatized. These women must contend daily with many stressors,

safety of their unborn children.[70] Once the child is born, that fear is replaced by a fear for the child's safety.[71]

In the 2004 study by sociologists Sloss and Harper, the impact, both actual and perceived, of pregnancy, motherhood, and parenting on prostitution was studied in a qualitative manner. The study focused on sixteen women from a Midwestern city who were mothers currently involved in prostitution, and more particularly in street sex work.[72] More than half of the participants had experienced their first pregnancy by the age of sixteen, with a mean of four pregnancies per participant.[73] As a group, the women who participated in the Sloss-Harper Study had a total of forty-seven children.[74] Almost half had lost at least one child to miscarriage or stillborn delivery, and three children were aborted.[75]

> Although many participants had given up or lost custody of a child, a quarter had never been involved with child welfare and almost half had retained custody of at least one child. Only 4 of the 47 children had been adopted, but many had been in the custody of, or living with, someone other than a parent, typically a relative.[76]

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including victimization, difficult clients, and incarcerations.") (citing seven different social science research studies on the lives of sex workers). Much of the Sloss-Harper study will be used in this article because it is virtually the only study on the intersection of motherhood and prostitution. *Id.* at 339 ("[T]his study presents one of the first specific examinations of women who are involved in the sex industry and their dual roles as sex workers and as mothers . . . .").

70. *Id*. at 333 ("Several participants revealed feeling anxious when they were working the street as pregnant women. In particular, they worried about the health of their unborn children and feared acquiring an infection, having a miscarriage, or delivering prematurely. They recognized that working the street prevented them from getting adequate rest, and placed them at risk of physical abuse and disease that could affect their babies."). One participant in the Sloss-Harper Study gave an example: "Them dates out there, they don't care about nothing but getting what they want [sex]." *Id.*

71. *Id*. at 334. Another participant in the Sloss-Harper Study "worried that because of her sex work involvement, a customer might find out about her children and kidnap them." *Id*.

72. The Sloss-Harper Study defined street sex work as "the trading of sexual services for money or drugs at the street level . . . ." *Id.* at 329. This work would be criminalized as prostitution in all cities in the United States other than three areas of Nevada. *See* U.K. HOME OFFICE, *supra* note 15, at 102.

73. Sloss & Harper, *supra* note 68, at 332. Each participant had experienced between one and nine pregnancies. *Id*.

74. *Id*. ("They had given birth to between one and seven children, with an average of three.").

75. *Id.*

76. *Id*. (percentages omitted). Thirty-four children, or seventy-two percent, were in the custody of someone other than their mother.

> At the time of the interviews, 7 (15%) children lived on their own, whereas 31 (66%) lived with a relative, 3 (6%) with a mother, 11 (23%) with a father, and 2

The participants discussed the issues of pregnancy, birth, motherhood, and parenting concerns in general, and how these concerns affected their street work.[77]

> Ten participants said that they experienced greater stress and anxiety in being sex workers after and/or because of having children. A few expressed their concerns about their children's safety and well-being, particularly when they were working. . . . Participants expressed concern about their own safety. All spoke in general about the risks they faced on the street, but some noted their increased anxiety about safety issues because of its potential impact on their parenting.[78]

When a woman becomes a mother, she enters an entirely new world. This was apparent to the sex workers interviewed in the Sloss-Harper Study. The overwhelming sense of each woman was that motherhood meant new responsibilities.[79] Understanding that another person depended completely upon her, many of the women realized that upon becoming mothers they were now responsible for more than themselves and their own personal safety. "They feared being incarcerated, hospitalized, or killed, and thus being unable to fulfill their responsibilities as mothers."[80] They further discussed the "tragic consequences for children whose mothers are killed on the street, and desired that their children not have such an experience."[81]

Once a woman becomes a mother, she gains a new outlook on the wonders of motherhood. This wonderment is generally true for women, but may affect women differently.[82] Mothers generally place a very high priority on their children. This sense of priority and responsibility begins

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> (5%) with a nonrelative. Only three (19%) mothers currently lived with at least one of their children. Women chose to give up their children [56%], family members or the children's fathers insisted on keeping them [13%], or child welfare intervened and removed them. [5, 31%].

Id.

77. *See id.* at 332-36.

78. *Id.* at 334-35.

79. *Id.*

80. *Id.* at 335. These women appeared to be more concerned about the effect their own death or injury might have on their children than the fact that their lives could be ended.

81. *Id*. In addition to this is a fear for their children's own safety, particularly while the mothers were working. *Id*. at 334.

82. Not all women who become mothers share the joy of motherhood. For some women, motherhood pushes them physically, mentally, or psychologically over the edge, even to the point of destroying their own children. For a brief analysis of infanticide, the act of killing a child, and a more thorough analysis of neonaticide, the act of killing a newborn, see generally Lynne Marie Kohm & Thomas Scott Liverman, *Prom Mom Killers: The Impact of Blame Shift and Distorted Statistics on Punishment for Neonaticide*, 9 WM. & MARY J. WOMEN & L. 43 (2002).

during pregnancy, particularly because of the changes that occur in a woman's body during that time, and because a woman can feel her child's movements in the womb. A sense of protectiveness takes over, not only for her child, but also for her own personal care. That sense was shown to be evident in one of the Sloss-Harper study participants: "One woman also discussed the risk while working of experiencing damage to her reproductive organs, and thus being unable to bear and parent more children in the future."[83]

New moral concerns also accompany a prostitute's motherhood. "Eight participants reported that they decreased their sex work during their pregnancies because of physical limitations, their noticeable pregnancy, or moral concerns."[84] Feelings of guilt and sadness over children following in street work were expressed in the Sloss-Harper Study, as was the moral belief that working while pregnant was wrong.[85]

These fears for the child continued after birth. Separation anxiety seemed magnified in the Sloss-Harper Study by the criminal nature of the work of prostitution and the criminal character of the clientele generally.[86]

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83. Sloss & Harper, *supra* note 68, at 335. Three participants in the Sloss-Harper Study noted that some customers were even more attracted to pregnant prostitutes: "Three women shared that they actually worked more when they were pregnant because they had an easier time attracting 'dates.' They asserted that men viewed pregnant women as sexually appealing." *Id*. at 334. Two participants, on the other hand, noticed that their pregnant state made them less able to attract customers. *Id*.

84. *Id.* at 334.

85. *Id*. at 334-35. Generally, this moral view was based on a risk of physical harm to the unborn child.

> These fears seemed rooted in reality. Most of the women who worked the street while pregnant indicated that their unborn children had been negatively affected by their work on the street. Four women shared experiencing severe violence while working and pregnant, three of whom lost their third-trimester babies as a result. One woman believed that her miscarriages or spontaneous abortions (one of which occurred at 7 months) were the result of her having continued to work the street and use drugs even when bleeding. Most also spoke about their prenatal children's exposure to drugs. Although many of these women worked the street in part to acquire drugs, they stated that they also needed to use drugs to help them tolerate their work.

Id. at 333. These statements indicate that a sense of motherhood was developed before the birth of the child.

86. *Id.* at 336 ("If [the women] thought that a customer could be dangerous or a disguised police officer, they were more likely to reject his offer.").

> Many women shared the experience of being separated from their children, although the nature and degree of the separation differed. Some women no longer saw at least one of their children because s/he was adopted by a nonrelative or cared for by a father who had moved, or because of the pain experienced following the visits. On the other hand, the remaining mothers maintained formal or informal involvement in all of their children's lives, and all mothers maintained

Women in all professions generally experience some sense of anxiety over the safety of their children when they are at work, and struggle to balance their work-family roles.[87] The sixteen prostitutes surveyed, "[l]ike other working mothers . . . must manage their occupational responsibilities while dealing with parenting demands. It is clear from this study that participants' pregnancies and parting did affect them as sex workers, and their work on the street, despite their efforts to separate these two often conflicting roles."[88]

Prostitute mothers seem to experience all the same emotions that other mothers experience, including separation anxiety,[89] fear for children's safety,[90] and loss when returning to work.

> These emotional reactions to the separations were likely not unique to women who work the street. Nevertheless, participants perceived that their responses to the separation affected their work on the street. One woman responded to her loss with a desire to stop her sex work, and had therefore been trying to spend less time working the street. Another woman said that she had felt so depressed following her loss that she had temporarily decreased her sex work.[91]

Many of the Sloss-Harper Study participants discussed how having a child had caused them to consider some reformative response to their work, even in their personal worries.[92] Some explained that their work was now more necessary because they were mothers,[93] and three participants

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at least regular monthly face-to-face contact with at least one of their children.

Id. at 332 (percentages omitted).

87. This is highlighted in the excellent work of Ellen Ostrow for women lawyers. *See* Ellen Ostrow, *Mothers in Law*, COMPLETE LAW., Vol. 1, No.4 (2005), *available at* http://www.thecompletelawyer.com/volume1/issue4/article.php?artid=42 ("Mothers in law are caught in a double bind. As much as they feel marginalized at work because of their commitments to family, they also feel marginalized at home because they are unable to see what they contribute.").

88. Sloss & Harper, *supra* note 68, at 337.

89. *See supra* note 86 and accompanying text.

90. *See supra* notes 71, 81 and accompanying text.

91. Sloss & Harper, *supra* note 68, at 336.

92. *Id*. at 335 ("[P]articipants shared feeling greater anxiety when working because they feared that their children would observe, or find out about, them working the street through other sources. They worried that discovery by their children of their sex work involvement might result in their children being hurt, losing respect for them, or being influenced toward working the street (or engaging in other street activities) themselves.").

93. *Id*. ("Over half the women . . . explained that their work was necessary because they were mothers and their children had needs. They asserted that as mothers, they were willing to do a job they did not like, because they cared for their children and felt responsibility for them.").

explained that they entered sex work because they became mothers.[94] These reformative sentiments, however, were not held by the other women participating in the Sloss-Harper Study. Many of the mothers had lost custody of their children or had given them to a third party custodian,[95] and most of the participants in the study "indicated that they worked the street more following their separation from their children for a few reasons. First, they no longer had the responsibility to care for their children, and so had the increased freedom, time and flexibility to work the street."[96] Other prostitute mothers felt the emotional pain for the loss of their children and worked the street more to "buy drugs to self-medicate," and others worked more to ease their loneliness.[97]

Case law involving the prosecution of prostitute mothers seems to bear out these concepts as well. Cases often involve mothers engaging in prostitution to pay for child care.[98] A potential loss of custody of a child is a major concern of a prostitute who wishes to remain a mother to her child. Abuse and neglect cases have been brought against prostitute mothers, such as in *Moore v. Moore*, which involved a mother who was denied custody

94. *Id*. ("Three participants asserted that having a child precipitated their initiation to street sex work, whereas almost a third of the women . . . continued or increased their street sex work because of their responsibility to provide for their children.").

95. *See supra* note 76 and accompanying text.

96. Sloss & Harper, *supra* note 68, at 337.

97. *Id*. One woman shared her experience:

> Well it hurted a lot. . . And once they took her away it's like it just messed with my head to the point where I just really, for me it made it worser, because she wasn't there. Again I started getting high. It's like just the fact that they, you know somebody came and took a child away from me . . . so I just stay high all the time. For a long time, just constantly stay high just to hide the thought that she wasn't there. . . . So I just go working.

Id.

98. *See, e.g.*, Stilley v. Stilley, 345 N.E.2d 777, 777-78 (Ill. App. Ct. 1976). In *Stilley*, the state of Illinois charged a prostitute with neglect for leaving her daughter with a babysitter while she earned "money from a 'trick' to pay babysitting costs." On appeal, the Illinois Supreme Court affirmed the circuit court's finding of negligence and deprived the mother of custody. Stilley v. Stilley, 363 N.E.2d 820, 823 (Ill. 1977). In another case, a mother began to work as a prostitute for a vacuum salesman when she needed to make money to pay for the health care of her sick child, but continued in sex work thereafter and was prosecuted for prostitution in *Woodby v. INS* 370 F.2d 989, 990-91 (6th Cir. 1965). Similarly, a mother engaged in prostitution to raise funds to visit her sick child in the case of *People v. Martin*, was convicted under California's statute, as was the 'madam' she worked for. 39 Cal. Rptr. 2d 669, 671 (Cal. Ct. App. 1964). Lastly, *United States* v. *Hon* involved the interstate prosecution of a prostitute who hitchhiked from Maryland to Nevada to see her child, and support her trip with her work, but because the trip was for a purpose other than prostitution (i.e. visiting her child) she was not convicted of an interstate transportation violation. 306 F.2d 52, 53-55 (7th Cir. 1962)

based on the possible detrimental effects that she could have on her child.[99] Although the mother in this case attempted to show that there was no evidence that her drug use and her prostitution would detrimentally affect her child when she was undergoing rehabilitation, she was not granted custody of her child.[100] The bottom line was that her prostitution caused her to continually abandon her child for her work.[101] Because of cases like these, state governments often move quickly to protect even unborn children in the home of a prostitute, often merely based on past criminal conduct and the likelihood that she would commit other crimes and continue to engage in prostitution.[102]

Prostitute mothers also fear for the future of their children. Several prostitute mothers involved in the Sloss-Harper Study expressed their fear that their children might follow them in their work.[103] This fear was evident in a recent documentary dealing with the perpetual cycle of prostitution in the Calcutta red-light district.[104] The film describes with haunting clarity what the future holds for children born in brothels.

> [The film is an] exploration of eight children who live in the red light district of Calcutta where their mothers work as prostitutes. [The filmmaker] purchases cameras and teaches the youngsters how to take pictures, giving them a sense of purpose. But throughout the film, the specter that the girls will end up forced to "join the line" hangs over the group like an ominous cloud.[105]

Countries that legalize brothels and register prostitutes seek both to

99. 479 So. 2d 1040, 1043 (La. Ct. App. 1985) (noting that the trial court had ruled that the appellant mother was unfit to take care of her child based on her drug use, prostitution, and poor housekeeping).

100. *Id*. at 1043-44.

101. *Id.* at 1044 (noting the grandparents, to whom custody was awarded, "often took care of the child when [the mother] was absent").

102. *See*, *e.g*., United States v. Denoncourt, 751 F. Supp. 168, 170-72 (D. Haw. 1990) (emphasizing that prostitution, incarceration, and drug abuse require sufficient rehabilitation to protect even an unborn child, and concluding that a monitoring program was preferred over further (deserved) imprisonment).

103. Sloss & Harper, *supra* note 68, at 335.

104. Susan King, *Video Log: Revisiting the Kids of "Brothels*," L.A. TIMES, Sept. 19, 2005 (reviewing BORN INTO BROTHELS (Thinkfilm 2004)).

105. *Id*.; *see also* Kenneth Turan, *Children Focus on the Art of Survival*, L.A. TIMES, Jan. 28, 2005, at E3 ("[T]hese youngsters, often beaming with the most enrapturing smiles, have spirits as magnificent as their living conditions are miserable. Curious, energetic and fun loving, they are the most winsome, delightfully childlike children you can imagine. This despite a complete and unsentimental understanding, especially on the part of the girls, about how bleak their prospects are, an understanding that questions from older women—'When are you going to join the line?'—only serve to underscore.").

assist in the decriminalization of the women who do the work, and to foster some sort of order and commercial legitimization to the sex trade.[106] What has become somewhat apparent, however, is how this phenomenon has actually contributed to further manipulation and abuse of those vulnerable in sex trafficking.[107] In some parts of the world, such as Thailand, commercial sex is also known as the sex tourism trade, where "each year thousands of young women flock to Bangkok and other urban areas in search of work. Many young women without appropriate skills end up working in bars, massage parlors and brothels. Prostitutes from these areas send back substantial portions of their earnings to their parents."[108] This perpetuation of a cycle of prostitution does not appear to be reformed by the legalization of prostitution and the legitimization of the sex trade, nor by motherhood.

Many prostitutes understand the incompatibility of the dual roles of sex work and parenting.[109] Some even attribute losing custody of their children to their drug use and street work, making them unable to parent.[110]

> It follows therefore, that many of these mothers when asked later in the

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106. LIBERATOR, *supra* note 14, at 5-6.

107. *See, e.g.*, Harriet Jones, *Reports Ignite Prostitution Reform Debate*, PRESS (New Zealand), Feb. 28, 2004, at 6 ("Revelations that young teens are selling sex in Christchurch have reignited the debate over the legalisation of prostitution. . . . Many blame the watershed Prostitution Reform Act for the apparent increase in child prostitutes."); *see also supra* note 45.

108. Allan Weinert, *When Poverty Meets Tourism*, ST. ANTHONY MESSENGER, Sept. 1, 2005, at 16, 18. This article also tells a story of how the sex tourism industry is worked by young girls whose parents are deep in debt.

> Sunisha and Ahmee are teenage sisters who grew up in the mountains in northern Thailand and belong to a tribal village with its own language and customs. Their family makes its living as tea cutters—cutting the tea leaves and stalks. Their parents fell into debt and lenders were pressuring them to repay the loan of 4,000 bahts—less than 100 U.S. dollars. In exchange for payment, the lenders offered to take their daughters to Bangkok to work in the food stalls to pay off the loan.
>
> All parents want what is best for their children. But the people of this village know what working in 'restaurants' or 'tea parlors' really means. These young women would be working in the sex tourism industry. After Sunisha and Ahmee were brought to Bangkok and saw what the 'food stall' really was, they were able to run away. Doing so was no small miracle.

Id. at 16.

109. *See* Sloss & Harper, *supra* note 68, at 337. The Sloss-Harper Study did not focus on this aspect of work satisfaction, but the participants wanted to discuss it nonetheless.

> These statements were made when speaking not about how their parenting affected their street sex work, but about how their street sex work affect[ed] their parenting, an area not covered in this paper. Most believed that their street sex work had negative repercussions on, and was incompatible with, their parenting.

Id.

110. This was true of most of the participants in the Sloss-Harper Study. *Id*.

> interview about their goals, explicitly expressed the desire to discontinue street sex work or indirectly implied this intention by indicating their intention to become clean from drugs and obtain an alternative job. Twelve women also spoke about their desire to become better parents and spend more time with their children (in many cases being reunified with their children).[111]

Children might further have an affect on their mothers' work choices when that choice can inevitably lead to incarceration. Do children of prostitutes plead with their mothers (in various unwitting ways) to give up a criminal livelihood and come home?[112] A California case focused on the prosecution of a prostitute mother who would take her daughter along with her on the streets for protection from police suspicion.[113] The mother was brought up on charges for pandering when it was discovered that she had hired out her own daughter.[114] The stark reality appears to be that some prostitute mothers do not choose motherhood or their children's best interests over their work. Other prostitutes, however, indicate a desire to become better parents if they were to find alternative work and quit using drugs. For example, one prostitute in the Sloss-Harper Study stated, "Well, I would like to have a job (legal job) and not be working the streets. I'd be off drugs and be raising my children."[115]

III. MOTHERHOOD AS THE PROSTITUTION REFORMER—OR NOT?

Motherhood has an important effect on a prostitute and it does indeed

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111. *Id.* (numbers omitted).

112. *See* Hornsby, *supra* note 36, at 124. Writing about the story of the prostitute Gomer in the Old Testament book of *Hosea*, explaining how Gomer's children requested she end her prostitution, Hornsby writes, "From the beginning of [chapter] 1, God seeks to possess Gomer (Israel). He urges the children to go plead with their mother to come to him and give up all her other suitors, or, rather, to abandon her livelihood and come to his house." *Id.* Hornsby continues her narrative analysis by comparing the book of Hosea to God's relationship with Israel. "However, the stark reality is that Israel, the strong, independent woman, never chooses to be with God. God (as re-enacted by Hosea) must ultimately hire the prostitute and promise her he will support her and not have sex with her before she will stay with him." *Id*. In Hosea, Gomer's children were not able to persuade her to choose her husband, Hosea, over prostitution, nor to choose God, who would not only care for her, but love her unconditionally.

113. People v. DeLoach, 254 Cal. Rptr. 831, 832 (Ct. App. 1989).

114. *Id*. at 834.

115. Sloss & Harper, *supra* note 68, at 337. Another participant stated:

> I would like to get all, all my kids back together you know, take care of them. But I have to get myself cleaned up first before I do that. I would get myself a job (legal job). . . . [S]how them that I'm doing myself, you know, getting myself up too, you know.

Id.

affect her work accordingly. The Sloss-Harper study noted that "[o]ne of the roles on which these women place considerable importance is that of being a mother, a role that this study has demonstrated affects them as sex workers and their street sex work."[116] Even though many negative emotions generally accompany a prostitute's pregnancy or motherhood, those negative emotions do not seem to reflect a feeling about parenting, but rather how prostitutes who are mothers gain a new perception of the interaction between their parenting and their sex work.[117]

> [M]any of the factors . . . associated with positive well-being in working mothers seemed to be absent in this sample's situation. In general, the women in this study did not want to be working the street, were not satisfied with their jobs, were not receiving support from family members or society, were not pleased with childcare arrangement, and may not have had positive relationships with their children (as evidenced by the many children out of their custody).[118]

Because they feel, or actually are, more or less trapped in a cycle of prostitution and drug use, these women often increase their drug use to handle emotional strain of parenting and prostitution, rather than being able to focus on childcare and nurture.[119] This seriously inhibits any of the reformative effects motherhood might possibly have on prostitution.

As indicated earlier, some of the strain on prostitute mothers derives from their moral beliefs, their overwhelming sense of responsibility, and from the pain and stress brought on by the conflict of motherhood with prostitution.[120] When prostitutes become mothers, they seem to experience some dishonor or embarrassment in their profession (as a crime or otherwise) that is initially magnified when they realize that their own children will now essentially be forced to be part of that crime; "greater shame" and "guilt and regret" were words used to describe the prostitutes'

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116. *Id*. at 340.

117. *Id.* at 336-37. Sloss and Harper write, "Assertions by this study's participants, as well as those from other research, demonstrate that many sex workers do care for their children and value their parenting role." *Id*. at 338 (citing ROBERTA PERKINS & GARRY BENNETT, BEING A PROSTITUTE: PROSTITUTE WOMEN AND PROSTITUTE MEN (1985)). *See also* Xochitl Castañeda et al., *Sex Masks: The Double Life of Female Commercial Sex Workers in Mexico City*, 20 CULTURE MED. & PSYCHIATRY 229, 229-47 (1996); Rochelle L. Dalla, *Et Tú Brutè? A Qualitative Analysis of Streetwalking Prostitutes' Interpersonal Support Networks*, 22 J. FAM. ISSUES 1066, 1066-85 (2001); Karen L. J. Hardman, *A Social Work Group for Prostituted Women with Children*, SOC. WORK WITH GROUPS, June 12, 1997, at 19-31; Cynthia M. Sloss et al., Mothers Engaged in Street Sex Work: Their Parenting Perceptions (2004) (unpublished manuscript)).

118. *Id.* at 338.

119. *Id.* at 333; *see also supra* notes 9-10, 61 and accompanying text.

120. *See supra* notes 78-80, 84-87, 89-91 and accompanying text.

feelings in the Sloss-Harper Study.[121] Consequently, these women generally reported decreasing or discontinuing their sex work while pregnant,[122] but it is unknown how many of them permanently put an end to their work as prostitutes.[123]

Much like the women's moral concerns, the criminal nature of prostitution does not seem to cause them to decrease their work when they become mothers.[124] This may be because a prostitute does not see herself as a criminal, but views her clients as having a criminal nature and being a danger to her children.[125] The entire criminal environment surrounding sex work appears to be a greater motivator of fear for the safety of a prostitute's child, rather than fear of incarceration for participating in the crime of prostitution.[126]

The Sloss-Harper Study implies that mothers who are prostitutes do not believe it is possible to be successful at both working the street and being a good mother. "Almost all of the women in [the Sloss-Harper Study] disclosed their desire to stop sex trading, and find alternative employment."[127] This appears to be the clearest indicator that motherhood has some effect on women's decisions regarding prostitution. Whether that effect is toward reform or rehabilitation is unknown.

The ultimate subordination of prostitution, combined with the responsibilities of motherhood, tends to drive these women into deeper despair. They have well-founded fears that they will be deemed unfit mothers, and thus become separated from their children,[128] so they do not seek assistance with drugs or emotional problems, even though their work puts them at a great risk for both, and that risk is increased when they

121. Sloss & Harper, *supra* note 68, at 333. These moral beliefs and concerns were not suggested to these women. Although the interviewers asked open-ended questions, the Sloss-Harper study was a purely empirical research study using a qualitative methodological approach. *See id.* at 329, 339 & 331.

122. *Id.* at 333.

123. Sloss and Harper stated:

> [I]t was not possible to determine from this study if becoming mothers leads some women to stop street sex work permanently. As expressed by some women in this study, individuals experienced the dual roles of parenting and street sex work as incompatible, and thus choose parenting over their involvement in this facet of the sex industry.

Id. at 338.

124. *See id*.

125. *See id*. at 334-335; *see also supra* note 86.

126. *See* Sloss & Harper, *supra* note 68, at 335.

127. *Id*. at 339.

128. *Id*.

become separated from their children.[129]

The anxieties of prostitute mothers are similar to other professions, though they are much more profound because of the criminal nature of the work and the criminal elements that engulf it. The legalization of prostitution as a regulated industry may not alleviate these anxieties, however, because of the stress of the work itself. The Sloss-Harper Study recommended that the comparison of research studies should be done on mothers working in legal professions to identify analogous situations faced by sex workers.[130] Further study is needed to build programs that would help insure that a woman who turns from prostitution to legal work can make serious reforms in her life. As things stand, even when a woman makes the decision to recover from substance abuse to break the cycle of her sex work, she faces a range of other issues that inhibit any authentic reform.[131]

CONCLUSION

In Solomon's wise decision, two prostitutes who became mothers bring their dispute to the king.[132] One of them has a baby whom she claims to be her own.[133] The other prostitute claims that the baby is hers because the first prostitute switched her own dead baby for the second prostitute's live child.[134] When the king orders his servants to bring him a sword to cut the child in two for each woman to share, the essence of motherhood is revealed.[135] While the first prostitute affirms that the king ought to go ahead and cut the baby in two, the true mother appeals to the king for the child's life, saying, "Please my lord, give her the living baby! Don't kill him!"[136] King Solomon realizes that a "true mother" puts her child's interests above her own, even if that means she will be separated from her

129. *Id.*

130. *Id.* at 340 ("In addition, research that has been conducted with mothers who are involved in legal professions should be replicated with women in the sex industry to examine its applicability to this population."). Why would a study of women who work within the parameters of the law be seen by social science researchers to be analogous to women criminals? Is it merely because of the participation of both groups in motherhood? Or might polar opposites have analogous concerns and outcomes? Or could this be a comparison of "legal" work and "illegal" work?

131. *See* Hahn, *supra* note 44, at 415-16 (noting that other issues include the difficulty of obtaining alternate employment, education, housing, self-esteem, intimacy, friendship, or recovery from abuse).

132. 1 *Kings* 3:16-28 (New International Version).

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

child.[137] He decides that the one who would rather have the child live, even if not with her, is the true mother.[138] This ancient story may reveal the redemptive aspect of motherhood as a reformer of a criminal livelihood. It also tracks the lives of the prostitutes in the Sloss-Harper Study—many of these women chose to give up their own children to others.[139]

Would not even the prospect of motherhood prove to be redemptive in a prostitute's life? From this research it appears that motherhood may trigger redemptive desires, but though a prostitute may in spirit wish to turn away from her life of prostitution, in flesh she will often be bound by substance addictions and her resolve will prove to be very weak. Generally speaking, a prostitute's drug dependencies perpetuate a cycle of crime that even motherhood does not appear to break.[140] Generally, the child of a prostitute will be removed from the cycle of crime by the law or by a third party who cares for the child, or by the prostitute mother herself when she realizes she cannot break her addictions to care for her offspring as she would like.[141] The child's best interests often prevail, even if motherhood does not redeem the mother herself. A prostitute may make a decision for adoption based on the realization that the harmful and illegal circumstances in her life are not likely to change just because she has become a mother.

The question remains whether change or reform is even possible for a woman who has funded her survival and drug dependency with the sale of her body. Prostitution reform is possible, but not because of motherhood.[142] This article explored whether motherhood may have any restorative effect on prostitution. Motherhood does appear to shake the flimsy foundations that set a woman on the path of prostitution, even to the point of considering reform, but generally not to the point of penitence and turning from a life of crime and dependency. That requires much more strength than the positive emotions that becoming a mother provide.

Motherhood has effects on prostitutes, but does not seem to serve to reform them generally, although there is some indication of that desire. It does serve to further complicate the lives of prostitutes, and does little or nothing to stop the perpetuation of the oldest criminal profession known to

137. *Id.*

138. The King realizes the spite and disdain prevalent in the childless prostitute, even if it is due to the pain of her own child's death. Nonetheless, her emotions do not reveal the protective nature of motherhood. *See id.*

139. *See supra* text accompanying note 76.

140. *See* Sloss & Harper, *supra* note 68, at 333.

141. *See id*. at 336; *see also supra* note 91.

142. *Cf.* Hahn, *supra* note 44, at 416 (describing the Christian path to reform by receiving love when it is unexpected from Christ Himself and from those who represent Him and His love).

mankind.

There exists a deep need to reform methods dealing with prostitution, beyond the punitive remedy of incarceration. Reform would need to include provisions for drug rehabilitation, alternative job offerings, and professional training to rehabilitate these mother criminals so that they may indeed parent their own children appropriately and legally, without relying on a life of crime. Years of destructive and abusive relationships, arrests and incarceration, poverty and neglect lead some to believe that they have no hope, or are "bad and therefore unlovable."[143]

We do not know if the birth mother mentioned at the beginning of this article chose a new life for herself. It was apparent that drugs and crime were her life—but she chose, even if unwittingly,[144] a better life for her child, if not for herself.[145] She, on the other hand, was left alone, incarcerated, mired in the ultimate subordination of heart, mind and body.[146] Some programs, however, may offer hope in the rehabilitation of prostitutes rather than incarceration.[147]

There may be hope despite the crime of prostitution.[148] A prostitute may even turn out to be a heroine when acting in the best interests of others.[149]

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143. *See id.*

144. See discussion *supra* notes 10-12 and accompanying text regarding the logic of this prostitute mother's choice for adoption.

145. Regardless of the actual thought processes or motives behind this woman's decision, it is imperative to note that she chose life. The real issue may not be one of how to reform prostitution, but rather how life experiences, including the birth of a child, can lead to the reformation of a prostitute, to transform her into a new creature. This necessarily implies a process; thus, a prostitute's choice to become a mother, even if unwitting, may one day have redemptive value. Personal faith cannot really be discussed or challenged logically, but merely proffered as a solution from experience. *See* Robert L. Palmer, *Is God on Your Seating Chart? Discussing Religious Beliefs in Class*, L. TCHR. (Inst. L. Sch. Teaching, Spokane, Wash.), Fall 2005, at 1, 2.

146. Hahn describes the opportunity for true reform and transformation of one's inner person through a personal relationship with Jesus Christ. Hahn, *supra* note 44, at 416. This may reveal that true autonomy and strength are only found in a Supreme Being. How often that option is chosen by prostitutes who become mothers is an interesting avenue of study, but beyond the scope of this article. Hahn discusses the work of Genesis house, where a prostitute can indeed know and understand that the love of Jesus Christ allows women to understand that there is a life after prostitution: "Ultimately a woman must become responsible for her own future and choose for or against the street life." *Id.*

147. *See, e.g.*, Kris Hudson, *Voters Weigh Pros and Cons of Proposed Justice Center*, DENV. POST, May 1, 2005, at C-01 ("Among the city's new offerings [is] a federally funded program aimed at rehabilitating prostitutes . . . .").

148. *See, e.g.*, Richard Bauckham, *Tamar's Ancestry and Rahab's Marriage: Two Problems in the Matthean Genealogy*, 37 NOVUM TESTAMENTUM 313, 320-29 (1995) (discussing Rahab, a biblical prostitute who made history in a positive manner and became part of the ancestral lineage of Christ).

149. Phyllis A. Bird, *The Harlot as Heroine: Narrative Art and Social Presupposition in*

The biblical prostitute Gomer[150] and Solomon's wise decision[151] proffer pictures of redemptive hope. These ancient stories might reveal that at the core of motherhood is a desire to do the best you can for your child. Neither they nor the recent studies on prostitute mothers show that motherhood is a reformer of a criminal livelihood. The fact that motherhood is a privilege available only to women might motivate a woman to avoid a life of crime altogether, even if such intent is latent,[152] but research thus far has not revealed this to be true.

It appears that prostitution and drugs drive women toward a cycle of crime that even motherhood apparently cannot break. The analysis of the available research for this article reveals that attempts to afford women complete autonomy and sexual liberty in arguing for the legitimacy of prostitution has turned that liberty into legitimizing sex work that traps women within it.[153] Prostitution is the ultimate loss of autonomy, power, and control over one's body, and ultimately over one's life. Not even motherhood can reform a woman who is trapped in a life of crime and drug abuse. If women who have become mothers have turned away from prostitution for that reason, they have not yet been found, nor studied, nor have their experiences been researched. Without that evidence, the thesis of this article remains unrequited; it does not appear that motherhood has a reformative effect on prostitution.

Three Old Testament Texts, 46 SEMEIA 119, 129-131 (1989) (showing how Rahab was a heroine in giving the city of Jericho over to the Israelites in return for her family being saved).

150. *See generally* Hornsby, *supra* note 36.

151. *See supra* text accompanying notes 132-138.

152. Further study in this area of prostitution and motherhood could be done on the aspects of mothers who resort to prostitution to feed their children compared to those who are prostitutes at the outset. Though interesting, a comparison of prostitutes who become mothers with those who are mothers and then become prostitutes is beyond the scope of this article. Further study could be done on whether the perceived need for survival is the key.

153. Two questions have been underlying some of the analysis for this article: 1) Does any girl dream of being a prostitute when she grows up? 2) Would a young woman who is financially secure and well educated choose a life of prostitution? Or do so over a life of joy in motherhood? This view of motherhood may be somewhat idealistic. *See supra* note 82. The joys that are returned, however, to a woman who understands that her legacy and life blood may be best represented in the children she bears and raises are uncountable. Thus, there exists the hope that motherhood might indeed be a reformer of a life of crime, more particularly of a crime where a woman's body is sold over and over. This article has demonstrated, however, that such a hope is not realized in the research that has been done on this topic to date.