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Analyzing Sexual Expression:

Marriage, Prostitution, and the Law

The cover of Time Magazine (July 13, 2009)

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Undergraduate Honors Thesis 2011
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Acknowledgements

I would first like to thank my wonderful thesis advisor, Professor Kristin Kelly, for all of her insight, guidance, and support throughout this year and years past. Neither my thesis nor my interest in this topic would have been possible without her! I would also like to thank Professor Jeremy Pressman for his assistance through a productive thesis class and Professor Mark Boyer for his sustained support as my advisor throughout my Undergraduate career. I am also grateful to Professor Heather Turcotte for facilitating my access to feminist theory which greatly contributed to this thesis and my perspective on the world in general!

Next I would like to acknowledge all of those individuals in my life who make up the support system that got me through this senior thesis. I am grateful to my parents, Linda and Art, for their lifelong support of me and my academic pursuits. I would also like to thank my brother, Peter, and sister, Jenna, for offering support especially during my school breaks, when I wrote much of this thesis. I am also grateful to my loving friends, who every Monday night (amongst others) provided an outlet to relieve my stress through great conversation and delicious beer. I especially thank my roommates Jen, Marilyn, and Grace, my other favorites Michelle, Sarah, Shep, and Kevin, and those who, despite distance, are always by my side, Caroline, Jason, and Emily.

Abstract

Marriage and prostitution laws solidify and propagate norms about sexual expression. Marriage law functions positively to dictate the kind of expression that is acceptable, normal, and natural while prostitution law frames the illegal, deviant, and unnatural. The legal benefits offered to those who marry function as an endorsement of a particular type of sexual expression: monogamous, faithful, loving, long term, and procreative. Equally, the criminalization of prostitution solidifies norms about the wrong, illegal unnatural kind of sexual expression; one focused on pleasure and money, not monogamy, fidelity, love, or procreation. These valuations of sexual expression solidified by the law impact the sexual expression and sexual values of society in general. Even those individuals who are neither married nor involved in sex work possess values about sexual expression that are concurrent with these laws because, ideologically, the laws work to solidify and propagate norms that compose a framework of truth within which we all operate. My thesis examines the relationship between law and society through a mutually constitutive framework, focusing on the relationship between marriage and prostitution law and female sexual expression. I analyze the law and use interviews that I conducted with ten college-aged women to highlight the relationship between the image of sexual expression constructed in written law and that which exists socially, suggesting that the law has a unique place in the solidification and propagation of norms in our society.

Chapter One

Introduction and Theoretical Framework

Introduction

The cover article of a recent Time Magazine issue depicted bride and groom figurines sinking into a white wedding cake (see cover page). Above the picture, it proclaimed: "*Unfaithfully Yours*: Infidelity is eroding our most sacred institution. How to make marriage matter again." The article goes on to describe that a healthy, happy marriage is still our cultural ideal despite the increasing rate of failed marriages. The author, Caitlin Flanagan, cites a study performed by sociologists Maria Kefalas and Kathryn Edin that found that regardless of economic class, our society shares the common goal of "being married forever" (Flanagan 48). Looking critically at our society today, it is impossible to deny the validity of Flanagan's claims. Little girls long for their wedding, designing their white dress and diamond ring, and practicing ceremonies with their friends. In elementary school I remember a fifth grade couple getting married on the playground. The ceremony was complete with a priest, bridesmaids, groomsmen, spectators, and a kiss sealing their eternal commitment.

But there is not just an obsession with marriage in our society. There is an obsession with sexuality in general. Women are constantly critiquing themselves, making sure that this look, that dress, those boots do not make them look like a "whore."[1] It is desirable to be sexy, but not *too* sexy. Women are constantly blamed for their own rapes with the argument that because of what they were wearing or how they were acting, they were really asking for it (Brownmiller 1975; Lonsway & Fitzgerald 1994; McCaul et al. 1990; Suarez & Gadalla 2010).

So what does all of this mean? A legal marital contract is "sacred"? Children revere marriage so much that they practice the ceremony on the playground during recess? Women will do anything to not look or behave like a "whore"? Why? What is the motivation for these desires?

[1] "Whore" should be understood as a derogatory word for a sex worker.

In my thesis, I explore these questions through my analysis of marriage law, prostitution law, and societal sexual expression. I use the results from ten interviews that I conducted with college-aged women and an analysis of marital and prostitution law to construct a hypothesis about the relationship of the law to sexual expression in society. When I refer to "sexual expression" I am referring to the concept of intimacy. That is, I am referring to the kinds of sexual relationships that people engage in, value, scorn, or even just think about. Sexual expression is the term I use to define the ways in which people think about sexuality including their conceptions of "right" or "wrong" and "natural" or "unnatural" sexualities. Sexual expression refers to the framework within which we, as individuals within a society, think about sex.

Broadly I am interested in the place that law occupies in our society. In order to examine this relationship, I focus on norms about sexual expression with an emphasis on determining a relationship between these norms and the law. Rather than suggest that there is any linear, causal relationship between law and norms, I align my study with the mutually constitutive theory of law. This theory, embraced by contemporary law and society scholars, purports that the law influences society but that society also influences the law (Hunt 1993, Merry 1988, Sarat & Kearns 1992, Fineman 1995). The law is constituted of certain dominant norms and it propagates these throughout society, maintaining and extending their dominance. It is important to also realize, though, that lawmakers are members of society and thus make laws under the influence of the societal framework within which they operate. In this way, society is constitutive of law. The mutually constitutive relationship between law and society postulates that neither body causes the other. Instead, law and society exist simultaneously in a cyclical and reinforcing relationship. I adopt the mutually constitutive relationship between law and society to analyze

the relationship between law's governance of marriage and prostitution and societal sexual expression (Hunt 1993, Merry 1988, Sarat & Kearns 1992, Fineman 1995).

An important aspect of the mutually constitutive relationship between law and society is the assertion that law has the ability to influence norms. With this in mind, I explore the power of law by recognizing that it has two functions. First, the law is able to concretely sway or dissuade people from engaging in certain behavior by offering benefits or imposing punishments for that behavior. This is the more concrete function of law.

The second function of the law is its ideological power. This is the law's ability to create norms within a society. The law consecrates certain behavior by deeming it legal; it values that behavior as "right." Conversely, the law demonizes behavior by making it illegal. Rather than simply, concretely encouraging or discouraging behavior, the law also creates the "right" and "wrong." In doing so, law is able to frame our decisions. We operate within a framework of norms and the law has a part in the propagation of certain norms (Hunt 1993, Merry 1988).

I postulate that the law has a place in the valuation of sexual expression in society. That is to say that the legal benefits offered for marriage and the punishments imposed for prostitution have some kind of a relationship to why marriage is valued and the term "whore" is an insult. At the same time, I do not presume that the law randomly created dominant and dominated norms and decided which kinds of sexual expression it liked and then imposed this on a society.[2] Instead, I argue that there are dominant and dominated norms that exist within a society. These norms are then solidified in law and propagated in society, making dominant norms even more

[2] Law and society scholars vary on the law's power in solidifying and propagating norms. Scholars like Alan Hunt and Sally Engle Merry argue that the law, because of its unique position in society and its access to state resources, has a significant, though not unitary, role in norm-solidification. Martha Fineman is more critical of the law's role and argues that other cultural institutions are more powerful. Austin Sarat and Thomas Kearns argue that the interpretation of the law is actually more powerful than the law itself. I elaborate on these differences in my discussion under the title "Law's Power" on page 18.

dominant. Norms are not created by the law and pushed out, linearly, into society. Instead, there is a complex relationship whereby the law assists in the solidification and propagation of dominant norms (Hunt 1993, Merry 1988).

In the case of sexual expression, marriage and anti-prostitution laws solidify characteristics associated with valued sexual expression and deviant sexual expression. The image constructed by marriage law is one of a monogamous, faithful, loving, long term, procreative relationship. This is the kind of relationship that is most rewarded in our society. Marital law functions to sanction this particular kind of sexual activity. The antithesis of these characteristics manifests itself in prostitution. Prostitution exhibits a sexual expression that is about pleasure and money, not love. This kind of sexual relationship is not long term, procreative, monogamous, or faithful. Instead, it is a business transaction focused on pleasure. Prostitution is criminalized, it is the "illegal sex," and consequently, participants incur punishment from the state. Prostitution law, then, functions to label this particular kind of sexual activity as illegal and deviant.

I argue that the valuations of sexual expression expressed in marital and prostitution law manifest themselves in the sexual expression and sexual values of society in general. Even those individuals who are neither married nor involved in sex work possess values about sexual expression that are concurrent with these laws because these laws work ideologically to create norms that compose a framework of truth within which we all operate. The results from my interviews with ten women, all of whom were neither married nor involved in sex work, indicate that despite their seeming removal from these institutions, they held beliefs concurrent with the norms solidified in marriage and prostitution law. Their overwhelming desire to have a long-term monogamous relationships and their aversion to the term "whore" and the implied promiscuity

are only two examples that indicate that their beliefs about sexual expression are impacted by norms solidified and propagated by the law. The law, then, has an impact on members of society even when it does not seem to be directly interacting with those members. Even when a woman is not getting a married license or being arrested for sex work, marital and prostitution laws are still impacting her sexual expression through their solidification and propagation of norms that build the framework within which she operates.

In order to make my case, I have divided my study into four chapters. This first chapter introduces and establishes the theoretical framework that informs my subsequent analysis of marriage law, prostitution law, and sexual expression. Here I establish the mutually constitutive relationship between law and society and the ideological power that law has in governing behavior. This first chapter also includes my research plan which describes my method of examining this phenomenon in more detail.

The second chapter explores marriage within the established theoretical framework. I examine marital law and determine the type of sexual relationship that receives concrete benefits from the state. Then applying the theory of the ideological function of law, I suggest that the image of the legal, "right" sexual expression is reflected in society. Interviews that I conducted with college women serve as examples that highlight this relationship.

The third chapter examines prostitution law within the established theoretical framework. This chapter serves to establish the deviant form of sexual expression that is propagated, again using the ideological dominance theory of law, throughout society, coercively keeping individuals from engaging in such behavior. Using laws dictating the criminalization of prostitution, I extend my analysis to the ways that the law functions to discourage certain

behavior and to create an illegal, "wrong" kind of sexual expression. My interviews again will be used as examples that highlight the relationship between written law and societal norms.

Both chapters analyze the concrete manners through which the law encourages marriage and discourages prostitution through offering benefits and imposing punishments, respectively. Both chapters also examine the way that the law, through its legalization and criminalization, is able to solidify and propagate norms. Those norms value sexual expression that has characteristics of marital relationships and object to sexual expression that has characteristics associated with sex work. This function of the law is not to give benefits to individuals who are married or impose punishments on sex work (though, of course, it does *also* function like this). Rather, here the law functions to create a framework of truth that dictates right and wrong kinds of sex and guides sexual expression. In this sense, society is interacting with the law even when it is not formally doing so.

I use the interviews that I conducted as examples to illustrate the kind of sexual expression that is valued and the kind that is considered deviant in our society. I interviewed 10 women, aged 18-24, who have lived in America for the majority of their lives about their perceptions of sexual expression. The interviewees' responses illustrate societal perceptions of sexual expression while my analysis of the law informs my description of the images the law creates of sexual expression. I seek to demonstrate that the images of sexual expression outlined by marriage and prostitution laws and the values expressed in society by my interviewees are in agreement, thus establishing the place and power that law occupies in society.

My fourth chapter is my conclusion. I tie together the theory and illustrate the way that marital and prostitution law function together to solidify and propagate a certain form of acceptable sexual expression. Taking the conclusions that I draw in chapter two about the

implications of marital law and those that I draw in chapter three about the implications of prostitution law, the existence of a recognizable image of female sexual expression is clear. I then extend my analysis of the image of sexual expression to include the racialized and classed aspects that are solidified in the function of the law. Even though marital and prostitution laws do not explicitly address race and class, the way that the laws function perpetuates an image of sexual expression that *is* highly racialized and classed. I examine the images of the Jezebel and the Welfare Queen as controlling images that are both solidified by and constitutive of legal rulings. These images, I suggest, facilitate sexual and economic violence against women of color in our society. I then explore the limits of the law in ameliorating this violence. My examination of these images serves as a suggestion for further research about the way that norms are solidified and propagated both through written law, and through the way that the law functions. Race and class are both significant in the construction of the societal image of sexual expression, and they have real implications, but the primary focus of my thesis is on the image of sexual expression that is propagated in the *law*. As such, I focus on the characteristics of sexual expression that are encouraged and discouraged.

The Mutually Constitutive Power of Law: Literature Review

Introduction

The relationship between law and society has been one of serious question and debate. Inextricably bound to the notion of power within society, there have appeared to be two main poles between which most modern scholars reside. On the one side, the theory that power is a tangible, usable, negative force that one group within society holds and uses to repress another is the notion that Marxism purports (Marx & Engels, 1998). Though the French sociologist Michel

Foucault never outright addresses Marx or his theories, Foucault's work seems to use Marxism as a basis to which he forms an opposing argument (Hunt & Wickham, 1994). Foucault argues that power is the foundation to our reality, to truth in our society. This power is not something that can be won, lost, or used. Rather, it simply exists and functions to form existence as we know it (Hunt & Wickham, 1994). Between these two poles resides much of the literature on the relationship between law and society, as current scholars incorporate elements of both Marx and Foucault.

In this section, I explore these two poles of legal theory as well as the location and content of the various modern theories that reside between these poles. The most accepted and dominant theory that rectifies these poles is that of the mutually constitutive relationship between law and society. Alan Hunt, perhaps the leading law and society scholar, outlines this theory which is seen to lean in a more Foucaultian direction. Hunt argues that law has the power to solidify and propagate norms throughout society, creating a reality as Foucault contends, and that these norms can then function to repress, as Marx argues. Law is able to constitute society by propagating certain norms. However, the law itself is constructed by members of society who operate within the framework of truth created by these norms, and thus in turn, law is constituted by society (Hunt 1993).

This mutually constitutive power of law largely informs my thesis, as it incorporates important aspects of both Foucault and Marx and fuses them to create an understanding of the function of law in society that seems most realistic and pertinent to my study. Hunt's Foucaultian explanation of constructive power, that power can be used to dictate not only what we cannot do, but also what we *can* do, is crucial to the law's development of governing norms in society, which is the basis for my understanding and argument about how laws can govern sexual

expression. Hunt does not ignore the importance of recognizing when certain norms can repress behavior or imagination as he describes the construct within which we make decisions that closes off certain possibilities. When norms are violated, a repressive, Marxist response follows, marginalizing those who are out of step with dominant norms (Hunt 1993).

After my analysis of the mutually constitutive relationship between law and society, I examine the power that law holds. A central debate among mutually constitutive theorists concerns the extent to which law is able to determine norms. Scholars like Hunt and Sally Engle Merry argue that while law is not the *sole* creator or propagator of norms, it is an especially influential one because it has resources, the power of the state, to enforce its norms. On the other hand, Martha Fineman, another law and society scholar that adopts a mutually constitutive approach to her analysis of the law, argues that other institutions like religion or the media are more influential in determining our behavior. A third perspective that I will explore is that of Austin Sarat and Thomas R. Kearns who argue that it is the interpretation of the law in courts, rather than the law itself, that is most meaningful in prescribing our behavior.

In this review, I examine the literature on the power and place of law in society and take my position with the mutually constitutive power of law. This theoretical framework serves as the basis for my subsequent analysis of the relationship between law and sexual expression

Exploring the two poles: Marx and Foucault

In order to explore the literature surrounding the function of law within society, we must first examine the two poles that mark the extremes. Karl Marx and Friedrich Engels developed their famous societal theory in *The Communist Manifesto*. They argue that the ruling, elite class, the bourgeoisie, uses the power of law and government to control and repress the working class,

the proletariat. The small ruling class has all of the concentrated wealth, they posit, due to the inherent values of capitalism. In a capitalist society, all actions and relationships are profit-motivated. Consequently, as the elites seek to maintain their power and influence, they seek to maintain the capitalist system. In doing so, these economic forces penetrate social life. All social relations are organized to promote capital gain. An example of the restructuring of society based on economic forces is the reordering of the family. Engels argues in his *Origin of the Family, Private Property, and the State* that monogamy results from the man's desire to pass down his private property to biological kin. By possessing one woman and only having sexual relations with her, he is able to know for sure that her offspring, as long as she is loyal, are his heirs. In the case of the family, economic forces penetrate and reorganize a social structure (Engels, 1972).

The crux of Marxist argument is that "the bourgeoisie cannot exist without constantly revolutionizing the instruments of production, and thereby the relations of production, and with them the whole relations of society" (Marx & Engels, 1998, p. 54). Society is inherently determined by capitalism and the quest for capital gain. This determinism is a top-down relationship as elites use their power to maintain dominance by repressing the lower class. Here, the law is used as a negative force, a tool that is used to impose restrictions on the lower class and restructure their social structure so that it can be aligned with the profit-motivated capitalist structure that the upper class needs to maintain its own dominance (Marx & Engels, 1998). Such a relationship would imply that the law only has a role in dictating what a society *cannot* do. In the case of sexual expression, adopting this Marxist lens of analysis would suggest that the law is only able to impact society in its criminalization of prostitution as the law can only repress.

From a Marxist perspective, there are clear winners and losers. There are concrete dominant and dominated groups within society, the bourgeoisie and proletariat respectively.

Power is used by the dominant class to maintain their dominance and to repress the dominated class (Marx & Engels 1998). Michel Foucault's theory of power recognizes that there are dominant and dominated parties within a power structure, but he is careful to purport that such a dualistic view of power is too simplistic. Instead he posits that power is everywhere. For this reason, both the dominant and dominated groups hold power, though the amount that each holds varies. Foucault's understanding of power is premised on the idea that power constructs our reality and our truth. As such, there is no way to *not* interact with power or to not have power. There is never a clear cut dominant, power-holding group or a repressed, power-lacking group. There could never be an individual or group without power or an individual or group with *all* of the power or with *none* of the power. All power could never be concentrated in the law, government, or hands of certain individuals because it could simply never be concentrated (Hunt & Wickham 1994).

Most importantly, Foucault describes power as something that is both positive and negative. Not only is power negative in framing what we should not do or cannot do, it is also positive in constructing our reality, truth, and even what we can imagine (Foucault 1977, 1978). He writes:

> We must cease once and for all to describe the effects of power in negative terms: it 'excludes', it represses', it 'censors', it 'abstracts', it 'masks', it 'conceals'. In fact power produces; it produces reality; it produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production. (Foucault, Discipline and Punish, 1977, p. 194)

This position revolutionized the study of power within society. This idea that power affects what we *can* do paved the way for further analysis of the way that law constructs norms in society, the basis for my argument about the way that laws shape sexual expression.

Foucault's expansion on the idea of "discourses" shapes my understanding of power within society. He separates discourses into two categories. First, "discursive formations" are the

more typical forms of discourse that many recognize within society. Namely, discursive formations include scientific theories, laws, political ideologies, and theologies. These are ways of thinking and belief structures that influence behavior and action in society. The second form of discourse within society is the "episteme," the framework within which we operate. These are the "grids for perception" or the "regularities" that we accept as reality (Hunt & Wickham, 1994, p. 9). Foucault views these two forms of discourse as extremely influential in framing the way that we think, act, and exist in society. The episteme is the more significant and revolutionary discourse that will motivate my discussion of the framework of sexual expression within which we make decisions. The episteme is not as easily recognizable as "discursive formations," which take the form of concrete theories, laws, and ideologies. Instead, the episteme is inconspicuous, it is the ideological power. The episteme represents the construction of reality that discourse creates. This is the limiting discourse in that it limits our imagination because we operate within what it constructs, which we know as reality (Foucault 1971). Throughout my thesis, I argue that the law is one form of discourse that functions to create our episteme of sexual expression, our framework within which we operate sexually.

This Foucaultian understanding of the constructive potential of power through discourse is crucial to my argument about the way that norms exist in society in that it recognizes the ability of discourse to limit our imaginations, to place boundaries around what we view as possible. However, Foucault's conception of the relationship between the law and discourse is a bit different than the one that I will argue. Foucault believes that law is discourse that "claims not only to reveal the truth but to authorize and consecrate it" (Hunt & Wickham 1994, p. 12). Law is therefore one discourse that society has come to accept as truthful and valid. However, Foucault does not accept the idea that law is able to solidify discourses and norms for any kind of

purpose. He denies the existence of any kind of "strategist" behind a discourse. However, if these discourses, these "small powers," are simply random constructions floating around society, why is it that power relationships where one group is dominant and another is dominated are produced in a *systematic* manner? This question is similar to one that Hunt and Wickham ask when they assert that Foucault's theory is missing an address of the problem that certain groups are always the ones that are dominated. Poor, marginalized, fringe groups consistently lose in society and in law (Hunt & Wickham, 1994). If there are no "strategists" behind discourse, it seems logical to presume that discourse produced would be contradictory, sometimes serving a certain group and sometimes oppressing it. This is where a bit of Marxist theory is necessary to understand the way that law is used and functions in society. Marx asserts that law is a tool that may be used to repress (Marx & Engels, 1998). Though this may be a bit simplistic, it does importantly call attention to the fact that there are clear winners and losers in certain aspects in society for a reason, not simply out of the blue. One clear, consistent loser in society is the prostitute, as I further argue in chapter three. Sex workers incur punishment for their crime more frequently and severely than clients or pimps. Furthermore, certain kinds of sex workers, specifically low-paid street sex workers, are targeted and disciplined by the state more than their high class counterparts (Hayes-Smith & Shekarkhar 2010). I extend my analysis of the racialized and classed aspects of sexual expression in my conclusion. Because certain kinds of individuals consistently lose in society, the law seems to have the Marxist capacity to repress, though that is not its only function.

Striking a balance: the mutually constitutive relationship between law and society

Alan Hunt synthesizes Marx and Foucault in his view of law as productive in creating "ideological dominance." Before beginning the discussion of ideological dominance, it is important to note that there are two ways that law can function. The first, more obvious function of law is to concretely prescribe behavior through offering benefits for certain actions while imposing punishments for others. Here it is presumed that because an individual would want to reap a benefit, that individual would engage in the activity that garners benefits. Conversely, an individual who wants to avoid punishment would avoid taking part in any activity that could result in punishment. This is the concrete function of the law. Within society, law is presumed to have the power to encourage and discourage behavior in its offering of benefits and imposition of punishments (Hunt 1993).

The second function of law is much more discreet. Alan Hunt's theory of ideological dominance postulates that the law is able to coercively frame what we can do, cannot do, and even what we can imagine. That is to say that the ideological function of law is what Foucault described as the formation of a framework of reality within which we operate. Foucault focused on the power that created this framework, but Hunt and many other modern law and society theorists place much of this power in the law. They assert that law has the ability, in its power to construct legality and illegality, to propagate norms about certain behavior in society. The legal behavior is "good" and "natural" while the illegal behavior is "bad" and "unnatural." In creating these valuations, the law is able to create a framework of truth, of what is right, wrong, and possible, that we operate within (Hunt 1993, Lemoncheck 1997, Merry 1988).

Hunt asserts that the law has an important role in solidifying social order within a society (Hunt 1993). In doing so, he fuses Foucault's idea of the productive power of discourse with

Marx's contention that law can dominate and repress. Hunt argues that law reflects dominant norms in society. In doing so, it is able to create our truth and our reality, as Foucault argues, and this can be detrimental to certain groups, as Marx says. Hunt further expands on Marx's point, asserting that because the law freezes social order, it is able to preserve and strengthen class domination. Though he does focus more on the ideological power of law to strengthen norms rather than its ability to hold class structure, it is important to note that he does retain a Marxist sensitivity to class hierarchies and the potential that they hold to contribute to domination (Hunt 1993).

Hunt also expands on legal pluralism, the theory that there are numerous legal orders, norms, Foucaultian "small powers," operating within society (Hunt 1993). The anthropologist Sally Engle Merry explores legal pluralism through her studies of the way indigenous populations responded to the imposition of colonial law. Merry demonstrates how a change in formal law is not enough to change behavior because there are numerous laws in the form of norms that govern behavior (Merry 1988). Foucault, Hunt, and Merry all agree on the point that there are numerous normative orders operating concurrently within a society that have the potential to shape behavior, thought, and possibility. The difference arises in Hunt and Merry's contention that these orders are competing while Foucault asserts that they simply exist alongside each other. I subscribe to Hunt's and Merry's conviction that there is indeed some form of tension or competition between norms that results in the systematic production of dominant groups and dominated groups because when we observe society, there are certainly conforming, accepted norms (the "winners") and marginalized, deviant norms (the "losers"). This societal valuation of norms demonstrates that certain norms dominate while others are repressed.

Taking a step back, we must acknowledge the ways that these powerful normative orders are able to shape law and the way that they are shaped by law. This is known as the "mutually constitutive relationship between law and society" (Hunt 1993, Merry 1988, Sarat & Kearns 1992). That is, law has the ability to reinforce normative orders in society because it offers benefits for certain actions and imposes punishments for others. In the awarding of benefits, law endorses and validates certain actions as right, thus encouraging such actions in society. The imposition of punishment, conversely, communicates the message that those actions are wrong, thus discouraging society from engaging in such actions. This first concept is concurrent with what we explored as the positive, constructive aspect of law and Hunt's ideological dominance of the law. Hunt and Merry view law as a power that propagates and attaches value to norms in society, though not the sole power. Again, this modern contention of ideological dominance connects to Foucault's theory of the constructive capability of power. Foucault ardently purported that power creates our reality, our opinion of right and wrong, our view of possibility. The difference lies in the fact that Foucault did not view this power in the form of law, as many legal scholars do today. Foucault saw law as one discourse among many other discourses that act to subscribe reality. A second important distinction to draw between Foucault and modern legal scholars is that Foucault argued that these norms were random and existing alongside each other relatively passively, without any kind of strategist motivating their existence. Contemporary legal theorists largely disagree with this contention as they view law as solidifying dominant norms and freezing societal positions. That is to say that law uses its power to solidify and then propagate the norms that *won*, the *dominant* norms (Hunt 1993, Merry 1988).

The second aspect of the mutually constitutive power of law is that normative orders also shape law. This may be a bit more intuitive when we consider the lawmakers. These lawmakers

are, of course, members of society and are themselves impacted by normative orders and functioning within the societal framework created by these norms. Merry defines this process as, "how groups in power attempt to control state law and shape it to their ends at the same time as they are limited by the plural normative orders of which they are a part" (Merry 1988, p. 884). Not only does the power of law work constructively to create reality and possibility for society, and in so doing constrain the society by limiting possibility, but it is also shaped by the normative orders of the society in which it exists (Merry 1988). Furthermore, members of society also interpret law. Such interpretations narrow the meaning of the law, constricting the imagination of society further (Sarat & Kearns 1992). From lawmakers to juries, members of society are the individuals making and interpreting the law. In this sense, society is constitutive of the law.

Law's Power

Even though law is an important factor in the production of societal norms, it is important to recognize that it is certainly not the only factor and may not even be the most powerful one. Rather than arguing that all social norms are created by law, I purport that laws solidify (usually) dominant norms (Hunt 1993, Merry 1988). Hunt writes that, "law is an important constituent of the conditions of social practices, but neither does it determine those practices" (Hunt 1993, p. 3). While law is an important component to the construction of the framework, the reality, within which we operate, it is not the only component. If it were, then a change in law would change norms in society and the ways that we behave. Merry demonstrates that this is simply not the case in her analysis of the way that indigenous populations responded to colonial law. If law were the only component to our reality and of our normative orders, then colonial law should

create different norms and change the way that individuals operated within society. However, this simple causal relationship did not occur, Merry determined, because there were a multitude of norms operating that could not be negated by the introduction of a different type of formal law. These informal laws, practices, customs, and orderings governed the lives of the individuals in the society in addition to formal law. Merry does go on to describe that formal law must be recognized as having an important power because it does have so many resources, especially government sanctions, to use to more strongly promote its norms. Merry recognizes an important difference between formal law and normative orderings that are not state sanctioned when she writes,

> I think it is essential to see state law as fundamentally different [from nonstate forms of ordering] in that it exercises the coercive power of the state and monopolizes the symbolic power associated with state authority. But, in many ways, it ideologically shapes other normative orders as well as provides an inescapable framework for their practice. (Merry 1988, p. 879)

The mere place that the government occupies in society gives it symbolic power as the authoritative, just, legal system, which allows its norms to have more influence and to be more respected. This place and recognition gives the law the ability to coercively create valuations and dominant and dominated norms that a society accepts because the society values the truthfulness and place of the law. Law is considered neutral and just; thus its norms are more influential in society. Furthermore, Merry recognizes the power of state law to shape the norms in society and provide a reality, a framework, within which other norms can be practiced. Here, she most closely aligns herself with Hunt in their agreement that the law is one (perhaps extremely powerful) constituent of norms. Of course this contention from both of these scholars aligns itself with the Foucaultian presumption that power is constructive in its formation of reality, of the episteme. Merry deftly describes this framework as “inescapable” which clearly illustrates the ability of state law to repress because it does have so much power in the form of government

sanctions. Defying dominant norms may lead to social marginalization, but defying state law leads to concrete punishment like incarceration. Being arrested and incarcerated for sex work, for example, is a much harsher punishment than being labeled as a "whore." In this sense, the orders created or at least propagated by law are distinct from and more powerful than other normative orderings in the society (Merry 1988).

Martha Fineman, a prominent feminist legal scholar describes the same legal pluralism as Merry does, however she emphasizes the power of normative orderings rather than formal law. She purports, "In spite of its coercive potential, law does not seem to have a unique or particularly compelling role in proscribing behavior. Religion, group identification, even fads and the media, seem equally or more compelling than formal legal rules in shaping behaviors…" (Fineman 1995, p. 16). When Fineman references religion, group identification, fads, and the media, she is acknowledging other institutions aside from formal law that exist within society. In Fineman's emphasis on these powers, she downplays the ideological potential of formal law. While Fineman recognizes that norms shape our reality, the framework within we work, she differs from Hunt and Merry in her assertion that formal law does not play a particularly compelling role in the creation of this reality.

Fineman importantly contributes to my thesis in her recognition that societal normative orderings are influenced by other institutions, they do not all spawn from formal law. Hunt and Merry agree that these norms have an influence as well, though they think it is important to recognize the resources that formal law has to influence the society. This demonstrates my earlier dissatisfaction with Foucault's idea that norms are not competing, but instead just existing equally and interacting without motive. Here, it is clear to Hunt and Merry that formal law is able to exercise more power in the solidification or modification of norms because of the

resources it has; it is able to triumph over the other norms that it is competing with. Fineman, on the other hand, feels like media, religion, and group identification have more power to influence norms. She sees law as only one norm-solidifying institution among many others, and perhaps simply a product of those other institutions. Law has little influence to modify societal norms, according to Fineman, despite its unfulfilled "potential" to do so by utilizing its many resources. All of these scholars break from Foucault in that they recognize the competitive nature of norms and as such, contribute greatly to my thesis about the mutually constitutive relationship between law and society. However, ultimately I share Hunt and Merry's conviction that formal law does wield great power due to my belief in the importance of recognizing the resources that the law has at its disposal. Again, it is important to remember the difference between social marginalization and incarceration. The law is able to offer concrete benefits and impose punishments in order to propagate certain norms and behavior. This power must certainly be recognized. Throughout my thesis I will treat formal law like a discourse among many other discourses, as all three scholars contend, but I will give law special attention because it does have so much power.

This contention, though, that law has more power in shaping norms does not have to be incongruent with the idea that other normative orders are extremely significant in shaping norms as well. In a democracy, law usually reflects the dominant norms of a society. These norms exist in society and are dominant before the law is written to reflect them. These norms, therefore, come from somewhere other than law. They come from religion, group identification, history, and other institutions that make up a culture. The dominant norms that emerge are then codified in law and propagated throughout the society, freezing the societal order as it is (Hunt 1993). Therefore we must see law as inextricably linked to these other norm-creating institutions.

Perhaps these norms were created and determined by institutions outside of the law, but today they are most successfully propagated by the law. So Fineman is not wrong in saying that other institutions prescribe behavior, and perhaps she would concede that such behavior is solidified in law and then more heavily promoted through the medium of law.

We also see law in this context as inhibiting change in a society as Hunt describes its ability to freeze the social order of the time. Because law solidifies and propagates this order throughout society, the cyclical reinforcement of the dominant norms emerges. That is to say that norms become codified in law because they are the dominant norms in society (usually). Those norms are then in law, so they are propagated throughout society and there are incentives to adhere to such norms and punishments for breaking from such norms, reinforcing the dominance of the norms in society as people comply with the construction of right and wrong that the law promotes. Because the dominance of these norms continues to be reinforced as more and more people comply with them, their position in law is reinforced, and the cycle continues (Hunt 1993, Lemoncheck 1997).

Austin Sarat and Thomas R. Kearns bring another facet to the debate about what kind of power law has. Sarat and Kearns agree with Hunt and Merry that law can solidify one concept, one dominant norm and has significant power to propagate it. However, they argue that the power resides more heavily in the interpretation of the law, rather than in the law itself. It is the interpretation by the courts that closes off meaning even more than the introduction of the formal law itself into a society. That is to say that the first layer of creating a framework of reality and thus closing off possibility that lies outside of the framework is creating the law itself. But the second and more powerful limiting action is the interpretation of that law and the solidification of that one interpretation as “the law,” closing off other possibilities that existed within the

framework. Interpretation is so much more dangerous because it imposes one viewpoint on a society and then, through precedent, that viewpoint is solidified and propagated. The subsequent punishment and marginalization of certain norms, they argue, is where the "violence of law" lies (Sarat & Kearns 1992).

Sarat and Kearns purport that an ideal society is one that allows the expression of the most norms possible. This society encourages legal pluralism, multiculturalism. But, Sarat and Kearns adopt the pessimistic view that no society will ever achieve this status because norms inevitably contradict each other. Even permitting the norm of free speech, for example, opposes anti-hate speech norms. There is no way to unite these two norms in order to allow each position to achieve its goals. Because all norms could never peacefully exist in a society, the law will always be violent in its repression, marginalization, and punishment of those groups that express the norms that are not dominant (translated by law into wrong, illegal norms). This violent repression protects the expression of dominant norms by punishing those who do not align with dominant norms (Sarat & Kearns, 1992).

Like Hunt and Merry, Sarat and Kearns point out that law is backed by the force of the state. The law's access to resources allows it to be more powerful in framing norms. When law assigns meaning, therefore, it is much more influential than when any other institution does so (Sarat & Kearns 1992). Sarat and Kearns describe a similar situation to Hunt's "freeze" of social order. Recall that Hunt described a situation where law solidifies the normative ordering of a society at the time, thus freezing it as it is and inhibiting change or growth (Hunt 1993). Sarat and Kearns argue that first there is the law closing off some meaning in exclusion of some norms in the writing of law (Hunt's contention). Then there is the interpretation of that law, from a very limited number of perspectives. This interpretation is thenceforth set in stone, closing off even

more meaning and repressing even more norms. Not only is expression limited by the parameters of the law, but it is in fact limited by one interpretation, one viewpoint of that law (Sarat & Kearns 1992).

Sarat and Kearns differ from Hunt and Merry in their view that once our interpretation is shut off, once an interpretation is just handed to us, then our ability to imagine possibilities is shut off (Sarat & Kearns 1992). In this sense, Sarat and Kearns do importantly contribute to my thesis. Prior to reading the work of these theorists, I had not considered the importance of interpretation. Interpretation of the law really does function to narrow the meaning of the law even further through its imposition of one individual's bias on all further understandings of the law. However, I do not see the power of interpretation as in opposition to the idea that formal law is powerful in its solidification of dominant norms. I do not think that it is necessary to subscribe to the idea that *either* interpretation *or* written law closes off meaning. Rather, it would be more accurate to assert that they both do so. It is not as if the law is an objectively neutral institution that only acquires bias when it is interpreted in the courts (and I do not claim here that Sarat and Kearns argue this). In fact, our society was founded and is grounded on one certain dominant perspective. That perspective, of course, is that of a white, land-owning male. "Whiteness" is the neutral. In this regard, Ruth Frankenburg writes, "'whiteness' refers to a set of cultural practices that are usually unmarked or unnamed" (1993, p. 1). So perhaps it is more accurate to say that the bias with which formal law is written simply informs the bias that it *should* be interpreted with. Consider, for example, the conflict surrounding President Obama's Supreme Court nominee, Sonia Sotomayor, a Latina woman. The cover of a 2009 Time Magazine reads, "Latina Justice. Will Sonia Sotomayor Change the Court?" This question, of course, refers to the fact that Sotomayor is the first Latina to be nominated to the US Supreme

Court. The question from all sides of the debate was whether or not Sotomayor would be able to remain neutral, or if she would bring in her "bias" (the assumed bias in this instance is the bias that comes with being a Puerto Rican woman). In order to understand what a bias is and the power that it has in influencing judgment, we must understand what neutral is. That is, in order to understand the deviation from neutrality that necessarily informs a bias, we must first locate neutrality. When white males are nominated to the Supreme Court there is no country-wide hysteria about whether or not they will be able to put aside the biases that come with being white men and be neutral. That would be absurd, of course, because neutrality in the law *is* a white male perspective.[3] The formal law was written from a white, male perspective and thus the way that this law should be interpreted is from a white, male perspective in order to remain congruent and thus, neutral. There is nothing inherently more neutral about a white, male perspective. Instead, this is simply the historically accepted bias. So interpreting the law with a bias that is not congruent with the bias with which it was written is problematic. Sarat and Kearns illustrate how the law is first limiting in its valuation of behavior. Here we see that valuation to be made based in a white, male, land-owning bias. Secondarily, they argue, the law is limiting in the interpretation of that bias. The law is further specified and limited in interpretation. Because Sonia Sotomayor presumably has a bias that is not in line with the original bias the law was created with, her nomination is seen as problematic.

The ability of the law to conceal its bias behind a curtain of neutrality demonstrates the power and place that law holds in our society and thus, its privileged position in propagating norms. The law is seen as neutral, just, and truthful. The law is seen as an institution that values

[3] My critique here speaks, in part, from the field of feminist legal studies. See, for example, Patricia Smith's anthology (1993), *Feminist Jurisprudence*; Catharine MacKinnon's (1989) *Toward a Feminist Theory of the State*; Katharine Bartlett and Rosanne Kennedy's anthology (1991) *Feminist Legal Theory: Readings in Law and Gender*; D. Kelly Weisberg's anthology (1993) *Feminist Legal Theory: Foundations*. See Works Cited for full citations.

objective fact, rather than interpretation. This is the way that law is constructive of truth in our society. Its position and reverence in society allows it, as Merry described, to monopolize and dominate the valuation of norms and to justify its actions with the reasoning that it is "neutral," creating both neutrality and truth. The controversy over Sotomayor's nomination was a result of her bias differing from neutrality with "neutrality" understood to be the perspective from which the law was written; a white male bias. Law is what created and attached meaning to "neutrality" in order to justify the norms that it solidifies and propagates. Law has the ability to value a certain behavior as more than just ritual, custom, or practice. Law has the ability to create reality and the framework within which any behavior is performed in its creation of truth (through dominant norms) and justification of the validity of such truths with its position as neutral.

The controversy over Sotomayor's perceived "bias" highlights the fact that the words that make up formal law are already from a certain interpretation, already from a *certain* bias. Those interpretations or biases that stray from the original bias with which the law was written are cast negatively as "biased." The justification of law as neutral allows interpretation of formal law that strays from the original bias with which the formal law was written to be doubted and shunned. In this sense, interpretation does not hold as much power as Sarat and Kearns purport. Rather, the original bias and the original words with which formal law was written are the inhibitors that inform the "correct" interpretation of formal law, which is the interpretation that is in concurrence with the original bias. Therefore, I take a position that formal law is more prescriptive of a framework of reality than interpretation, but still see value in the recognition of the ability of interpretation to validate and further narrow the law. There have been times, of course, when interpretation has strayed from formal law, but I argue that even when interpretative departure occurs, the formal law still imposes more constrictions on society than

the interpretation itself. Furthermore, the ability of the law to justify its contentions are "neutral" speaks to the specific power that law wields in the solidification and propagation of norms. Hunt and Merry recognize this privileged location, and such recognition informs my understanding of the place of law in society. Being able to justify valuations with the label "neutral" privileges the law perhaps even more than the power of the state does.

While I do think that formal law and its contentions typically hold more power and effectively close off meaning and possibility better than norms coming from other institutions or the interpretation of formal law, I think that it is important to realize formal law is not the sole power in determining norms within a society and that the interpretation of formal law can change its function even if only slightly. Looking back on the nomination of Sonia Sotomayor, she was eventually approved and appointed as the new Justice. In this case, the bias of the law did not completely inhibit the acceptance of an interpretation bias recognizably different than the original legal bias. However, in order to get appointed, Sotomayor had to constantly defend her ability to be "objective" and "neutral." Again, this understanding that the law is "neutral" demonstrates the privileged location of law in society and thus the unique power that it has in solidifying and propagating norms.

Conclusion

The law occupies a significant place within our society. The law has resources that allow it to concretely sway our behavior by offering benefits and imposing punishments for certain actions. Individuals within society are therefore encouraged to align their actions with those that reap benefits, and to stay away from engaging in activities for which they will incur punishment. Deeper than this, the law's place in society allows it to value certain actions while devaluing

others. This is the function in which law coercively creates our truth, thus governing our behavior in a much more subtle way. It constructs, or at least solidifies and propagates the existing dominant construction, of reality and the framework within which we function, think, and imagine. The law then justifies its constructions with its position as the interpretive authority for truth, justice, and neutrality. Upon closer examination, however, it becomes obvious that law constructs the exact ideals of which it is thought to stand for.

The place of law which I have established in this review informs the rest of my thesis. From here, I use this theoretical framework to analyze the way that marriage and prostitution law shape female sexual expression in society. These laws, I argue, have significant power in both the concrete benefits offered for marriage and punishments imposed for prostitution as well as the ideological creation of truth associated with certain kinds of sexual expression. Marriage laws give benefits to those who adhere to the dominant norms that are constructed positively as the right, natural, and normal characteristics of sexual expression, as I explore in chapter two. Prostitution laws, then, punish those whose sexual expression is not concurrent with the dominant norms encouraged by marriage laws, as I expand on in chapter three. Not only do these laws privilege and punish, though, they also solidify an ideological framework deeming certain kinds of sexual expression normal, right, and natural, while others weird, wrong, and unnatural. The place of the law as neutral makes these ideological valuations possible. The law is not seen to have a bias, but instead to stand for an objective truth. As such, it is able to influence what we see as normal and natural. The illegal form of sexual expression is equated with unnatural and weird while the legal is natural and normal.

As the next two chapters will demonstrate, the legal valuation of sexual expression reaches beyond its concrete offering of benefits and imposing of punishments. The valuations

that are solidified in marital and prostitution law, the "right" and "wrong," "do's" and "don't's" of sexual expression are norms that are propagated throughout society. Even when a woman is not directly interacting with the law, the law is still very much a part of the way that she acts as her thoughts and beliefs are framed by a truth constructed by norms solidified in law.

From Theory to Practice: The Research Design

Introduction

In order to examine the mutually constitutive relationship between law and society, I look at the concrete example of the relationship between marital and prostitution laws and female sexual expression. The goal of my thesis is not to theorize a causal relationship between law and sexual expression. My decision to not focus on causality derives from my view that the relationship between the laws that regulate marriage and prostitution and female sexual expression is too complex to be captured by a linear link between the two. Instead, I seek to observe the existence of general societal sentiment about sexual relationships: what is right, wrong, natural, or unnatural. Concurrently, I observe the kind of image of a sexual relationship that marriage and prostitution laws work to create. Then, I suggest a possible relationship between the two images, societal and legal, that is mutually constitutive. The connection is not that the laws create a certain kind of sexuality and impose it on society. It is also not that a certain kind of sexuality is "natural" in society and is simply reflected in law. Instead, I argue that a dominant norm of a sexual relationship does exist in society and is then codified in law, as society is constitutive of law. As law, that norm is perpetuated throughout society, making it more dominant, limiting and discrimination against other forms of sexual expression, and thus constituting society.

Hypothesis

I postulate that marital and anti-prostitution laws solidify and propagate norms about sexual expression that function to create a framework of truth about sexual expression in society. The law values marriage-like relationships, those that are monogamous, faithful, loving, long-term, and procreative. The antithesis to these characteristics is embodied in prostitution, the illegal form of sexual expression. As such, the law devalues characteristics of sexual expression associated with prostitution such as sex involving multiple-partners, not faithful, not loving, short-term, and with the purpose of pleasure (for the client) or money (for the sex worker). Women in society, even when not interacting with marital or anti-prostitution law, hold values that are solidified by these laws; associating characteristics of marital relationships with positive, natural, and normal forms of sexual expression while seeing those characteristics associated with prostitution as deviant, undesirable, and unnatural. As such, their beliefs and actions are impacted by the law even when they are not directly interacting with the law.

Plan of Action and Limitations

In order to explore the relationship between law and sexual expression, in chapter two I examine the image of sexual expression promoted by marriage law and the benefits that it offers to marriage-like relationships. Examining the characteristics of typical marital relationships and the way that those characteristics are solidified in law informs my contention of the positive constructive power of law; that law is able to formulate what we *can* do, what we choose to do, rather than just what we cannot. The characteristics of sexual expression that qualify for legal benefits that come with marriage are thus ideologically constructed as the right, natural, and

normal characteristics. This ideological function of the law frames societal views of desirable forms of sexual expression.

In chapter three, I examine the criminalization of prostitution, determining the kind of sexual expression that prostitution expresses and illustrating how the criminalization of such expression informs what we cannot do, the illegal forms of expression. I use the theoretical framework from this chapter to analyze marital and anti-prostitution laws and to draw conclusions about the images propagated in the law of legal, right, and illegal, wrong, sexual expression. This negative function of the law is not only its ability to punish those who engage in the "wrong" kind of sexual expression, but also its ability to construct an image of the wrong, unnatural, illegal form of sexual expression.

In both chapter two and three, I examine the views that women hold about sexual expression in society in order to observe how they are concurrent with those of the law. In order to generate empirical data for this examination, I interviewed ten women between the ages of 18-24 who are students at the University of Connecticut about their views of sexual expression. Because this is an "exploratory study," I chose a methodology focused on interviews involving open ended questions (Silverman 2000, p. 88). As such, this study does not seek to confirm an objective truth, but rather to explore a topic and contribute to the construction of a hypothesis (Silverman 2000). My thesis is an on-going construction of a possible hypothesis, or a possible way of understanding the topic of sexual expression in society.

It is important to emphasize that I use my interviews throughout my thesis to highlight the societal implications of my theory. Notably, I do not use my interviews to conclusively prove the presence of a causal relationship between the image of sexual expression in law and in

society. Instead, I use my data to highlight conclusions that I make about sexual expression using the theoretical framework established in this chapter and an analysis of the law.

My interviews consisted of 35 questions about sexual expression in general. These questions sought to discern the beliefs that the interview participants held about sexual expression, as opposed to their own sexual expression. In this regard, the questions were not personal, but rather focused on the societal perceptions of sexual expression. The questions were largely grouped into three categories. The first category focused on monogamous and marital-like relationships. The second set focused on the terms "whore," "slut," and "loose" woman and the characteristics associated with promiscuity. The final set of questions addressed real sex workers (not women called "whores" pejoratively).

I chose to *interview* women because the topic of sexual expression is nuanced and complicated. Answers to open-ended questions like "Why characteristics does an ideal monogamous relationship have?" are complex. Through having a conversation, the women I interviewed were able to articulate their beliefs about the topic completely. Such a discussion allowed for a more robust understanding of societal perceptions of sexuality than would have resulted from something like a survey. Conversation allowed me to understand not only the beliefs that my interviewees held about sexual expression, but also their reasoning, their framework of thought that informs their beliefs. This deep understanding has been called "thick description" by Clifford Geertz (1973) and is the data that I use to exemplify and highlight the way that the theory of the ideological function of law manifests itself in reality (Rubin 1995).

While open-ended questions do provide for a deeper understanding of a topic, it is important to note their limitations. I do not purport to have achieved an "answer" or "objective truth" about sexual expression because, in my view, such an answer most likely does not exist.

Certainly it would be impossible to draw a generalizable conclusion about the way that all of society thinks about sexual expression from ten interviews. My sample is extremely limited not only by the small number of subjects, but also by the demographic of my sample. All of the interviewees were students at Connecticut colleges and thus reside for a majority of their present lives the Northeast and currently attend a University in that region. This indicates that the women all reside in a similar geographical area and are in the process of being educated in a formal environment. Perhaps due to this geographical limitation, eight of the ten women I interviewed were white women; only two women in my sample were women of color. This is especially limiting to my conclusion, in which I analyze the racialized aspects of the image of sexual expression. Furthermore, I recruited interviewees both from respondents to my request through student group leaders and from a snowball technique of subsequently asking my interviewees to refer other women they knew to me if they were interested in participating. This first limits my sample to either those who are involved in groups on campus or those who are connected to people involved in groups. Moreover, a snowballing technique results in a sample that is not completely random.

At the same time, it is important to note that these limitations are not paralyzing. My theory suggests that there is an image of sexual expression solidified in law, and thus it is understood that this image is recognizable to all members of the population, regardless of age, gender, education, or interest. Still, my study would have perhaps been more valid if I had been able to compare the image of sexual expression that women with very different identities (racial, geographical, occupational, economic) held. Such an analysis would have strengthened my hypothesis of societal sexual expression.

In terms of gender, it would have made a more robust study of the image of sexual expression if I had interviewed men about their perspectives as well. However, I focused my study on women because they are more directly targeted in prostitution law. While prostitution law applies to both men and women, the majority of prostitutes are women, so the effect of the criminalization of prostitution should be more apparent in their sexual expression than in men's (men are rarely the "whores" and "sluts") (Frug 1992). Even though my study solely focuses on women, I do not want to ignore that norms solidified in law do not affect the way that men view their own sexuality and the sexuality of women. Nevertheless, because I chose to look at marriage and prostitution law, I chose to look at *female* sexual expression in particular.

There are some strengths and weaknesses to the method of interviewing in general that are also worth noting. First, as some critics of qualitative approaches point out, it is impossible, as the researcher and interviewer, to stay totally neutral. Reactions to answers and questions, even when the best attempt to hide such reactions is made, can show. Nevertheless, this limitation can also function as a strength. Herbert and Irene Rubin suggest that, "Even if a neutral role were possible, it is not desirable, because it does not equip the researcher with enough empathy to elicit personal stories or in-depth description" (Rubin 1995, p. 13). Interestingly, establishing a relationship with the interviewee is important as it will make the interviewee more comfortable, which is necessary in order for her to explain her positions fully (Rubin 1995).

It is also important to note that in interviews, it can be easy to assume that interviewees have a "privileged status" in analyzing their beliefs and actions (Silverman 2000, p. 177). In reality, interviewees may not have a good understanding of what they believe or why they believe it (Silverman 2000). Such a limitation is problematized in my study because my theory

postulates that members of society are not conscious of the way that the law solidifies and propagates norms, thus framing their realities (Foucault 1978). My theory suggests that the women I interview would not have a good understanding of why they believe what they do, but instead that they would simply believe it and see it as normal and natural. Therefore, the fact that my interviewees may not have a "privileged status" in analyzing their beliefs and why they believe them may in fact contribute positively to my understanding of the way that law creates our natural order, our "raison d'etre" (Foucault 1978).

Conclusion

The place and power that law occupies in society is a significant and contentious subject. Modern law and society theorists have made great strides in examining this question. For the most part, these scholars have been able to synthesize the two extreme views of law, Marx's tool of repression and Foucault's entanglement with power and reality, into a mutually constitutive relationship between law and society. This theory allows for the consideration of both the concrete and coercive functions of law to be recognized. Furthermore, it incorporates Marx's negative aspect of law, in its ability to repress, with Foucault's positive conception of power's ability to frame not only what we *cannot* do, but also what we *can* do. Within this framework, theorists debate the power that law holds, whether it is only one of an innumerable amount of norm-creating institutions or the most powerful determinant in framing our behavior. Furthermore, scholars question which form of the law is most influential, whether it is the written law itself or its subsequent interpretation in the courts.

This chapter has sought to convey that the law is powerful. Not only does it concretely persuade and dissuade actions through its benefits and punishments, but it also functions

ideologically to create a framework of reality within which we, as a society, operate. With the ideological function of the law accepted and established, the mutually constitutive relationship between law and society then becomes evident. Because the law is constitutive of our reality in its valuation and propagation of norms, it is able to influence and shape society. In turn, members of society are the makers of the law and cannot operate out of the framework of society. Thus, society is constitutive of law. The mutually constitutive relationship between law and society is theoretical base of my thesis. From this point, I examine the relationship between marital and prostitution law and societal sexual expression.

Chapter Two

Marriage: the positive function of law

Introduction

The law has the ability to operate both concretely and ideologically to influence society (Hunt 1993, Merry 1988, Sarat & Kearns 1992, Foucault 1978). When it comes to sexual expression, certain sexual alignments are rewarded by the law and others are criminalized (Frug 1992, Warner 2002, Alexander 1994, Agathangelou, Bassichis, & Spira 2008). Legal marriages offer a plethora of benefits to those who seek such a union. The specific sexual expression associated with marriage is rewarded in the form of material benefits. Concretely, it is understood that marital law operates to encourage individuals to get married in order to reap the benefits (Warner 2002, Fineman 2006).

But this concrete function is not the sole manner in which the law is able to operate in society. The law, in rewarding certain behavior, has the power to deem that behavior "legal," and "right" (Hunt 1993). Marital relationships are rewarded in law and thus sexual expression mirroring such a relationship is considered right, natural, and normal in society. Even when a woman is not getting a legal marriage contract to obtain the associated material benefits, she is nevertheless interacting with the law. Her beliefs about sexual expression are influenced by the norms that are solidified and propagated in marriage law. In this way, the law is able to frame a reality and truth of sexual expression in which this woman acts and thinks (Foucault 1978, Frug 1992).

The norms that compose this reality and truth which is framed by the law do not necessarily arise in law; instead, these norms could arise from a multitude of places within society. Locations like religious institutions, cultural practices, and societal traditions all function to create norms in society (Fineman 1995, Merry 1988, Hunt 1993). While an interesting focus of inquiry, the origin of these norms is outside the scope of this thesis. Instead, my research

focuses on the ability of the law to *solidify* and *propagate* these norms, creating a value system and a truth in which society operates (Hunt 1993, Merry 1988, Foucault 1978).

The law occupies a unique place in society largely for two reasons. First, the law has the power of the state to enforce the normative judgments that it makes. This refers to the ability of the government, through law, to impose violence on those who deviate from its normative value system. Those who deviate could be severely punished in a myriad of ways including the imposition of fines, prison sentences, and even death sentences. The law has resources that make *its* norms more powerful in society because rather than "simply" being shunned from a group due to a deviation from their norms, the law is able to incarcerate those who deviate. As such, the law is able to inflict real, concrete, *legal* violence on those who do not adhere to its norms (Sarat & Kearns 1992, Merry 1988, Hunt 1993, Agathangelou et al. 2008).

This first characteristic, the ability of the law to punish with the force of the state, is not particularly relevant to marital law as there is no formal punishment that is incurred by those who do not get married. Rather than discouraging people *not* to get married through punishment, the law encourages people to get married by offering benefits (Warner 2002, Fineman 2006). This is the positive function of power. As Foucault articulates, power has the ability to dictate not only what we *cannot* do, but also what we *can* do (Foucault 1978). In withholding certain benefits from non-married people and granting benefits to married people, the law is able to positively construct what we can do, the right alignment of sexual expression (Foucault 1978, Warner 2002, Frug 1992).

The second factor that bestows significance on law is the appeal to the "neutral." The law is thought to be true and just, a neutral body operating to enforce the objective right or good and to punish the objective wrong or bad. The law is not seen as a creator of value, but rather as a

mechanism for institutionalizing an already existing truth. The idea is that there is an objective truth and that the law functions concurrently. As such, the law has a significant amount of power that backs its normative value judgments. Such judgments are seen as the right ones, the natural truths, because they are guarded by the neutral mechanism which is in place to enforce such truth (Sarat & Kearns 1992, Hunt 1993, Frug 1992, Foucault 1978).

Because the law is seen as the neutral mechanism that is true, just, and right, its encouragement of marriage positions marriage as the right kind of sexual expression. That is to say that the norm encouraging marital relationships is justified with an appeal to truth, to nature. Marriage-like relationships are the most "natural." Even when individuals in a society are not seeking to get married, they are still influenced by the normative judgments solidified by marriage law and their justification as natural. Such valuations are embedded in society and function to frame a truth. A marriage-like relationship is understood to be the natural kind of sexual expression. Characteristics like monogamy, faithfulness, and procreation are all seen as natural and, in general, desirable (Frug 1992, Alexander 1994, Foucault 1978).

I do not attempt to argue that the characteristics of marital relationships, like monogamy, fidelity, or a focus on procreation, are inherently unnatural and simply created and propagated through law. Again, in this thesis, the origin of these norms is not a primary focus. Instead, I seek to explore the way that the law solidifies certain norms and through its position as "neutral" functions to frame a truth in which society operates. As I argue in this chapter, marital law solidifies norms that the appropriate, natural form of sexual expression is characterized by monogamy, fidelity, love, and procreation. Sexual expression that is out of step with these characteristics is seen as unnatural, wrong, weird, and even illegal.[4] This chapter focuses on

[4] I explore the implications of this opposing form of sexual expression in my analysis of prostitution law in the next chapter, chapter three.

marriage law and the power that it has to solidify and propagate a right, natural, desirable form of sexual expression.

In this chapter, I explore the material benefits that accompany legal marriage. In doing so, I demonstrate the concrete ways that the law encourages marriage. But beyond this, I use the theory of the ideological function of law to suggest that the benefits offered to marital relationships extend beyond a court room or town hall. Those benefits constitute an endorsement of a certain kind of sexual expression that the law solidifies (Warner 2002, Alexander 1994). The law functions here to frame the opinions that women hold about sexual expression. Marital law constructs, using the Foucaultian positive power, norms that deem the characteristics of a marital relationship right, natural, and normal. I highlight this point with the interviews that I conducted. The women I spoke with clearly identified the positive image that marriage and marriage-like relationships have in our society, illustrating the power that the law has to solidify and propagate norms that influence society. I analyze the congruency of these societal norms and the qualifications of a legal marital relationship through the mutually constitutive framework, pointing to the ability of law to regulate our actions concretely, by offering benefits and imposing punishments, and coercively, by creating valuations and epistemologies, frameworks of truth within which we operate.

Concrete Benefits of Marriage

There are numerous material benefits of a legal marriage.[5] One significant benefit for married individuals is the ability to file a joint income tax return with the IRS or any state tax

[5] It is important to note that one of the privileges of marriage is the way that these benefits are bundled together. Most of the benefits allocated to marriage could be achieved through other legal arrangements, though some of them are indeed reserved for marital relationships, but the combination and ease of a marital arrangement makes it a desirable legal union (Warner 2002).

collection agency. The couple can also create a "family partnership" which allows a spouse to spread his/her business income across all members of the family. There are also certain tax deductions, credits, rates, and exemptions for a married couple (Warner 2002).

Federal programs also favor married couples. One spouse can receive Social Security, Medicare, disability, public assistance, crime victims', veterans' and military benefits for his/her spouse. Many federal programs are centered on the concept of the "family," for which a married couple qualifies, including living in "family-only" housing units. The same is true when it comes to consumption; married couples are qualified to receive "family rates" for health, automobile, homeowners', and other types of insurance (Bedrick 2004).

Furthermore, one spouse can receive the benefits that an employer confers on the other. This includes the ability to obtain health, life, disability, and accident insurance benefits through a spouse (Fineman 2006). In fact, in many cases a spouse can continue to receive health care through his/her spouse's employer after that spouse dies or divorces. The legal scholar Michael Warner comments on the importance of health care when he writes, "Health care is uppermost in the minds of many couples who apply for domestic partnership where it exists, and it is the issue that gives an edge of urgency to marriage" (Warner 2002, p. 280). Additional employment benefits include the ability to take unpaid leave a spouse is ill, bereavement leave a spouse dies, and receive wages, workers' compensation, and retirement plan benefits for a deceased spouse (Bedrick 2004).

Medically, spouses are awarded hospital visitation and medical decision privileges (Fineman 2006, Warner 2002). If a spouse does then die, the other is entitled to receive a portion of the inheritance and is the preferred representative of that spouse in making funeral and burial

arrangements. Furthermore, a spouse has the ability to sue for the wrongful death of his/her partner (Fineman 2006).

There are also rights that married couples enjoy with regard to foster care, adoption, and the ability to be legally considered a parent as a "step parent." Currently, Florida is the only state that bars same-sex couple adoptions, though Utah does not allow any non-married couple to adopt. Of course, legally married, heterosexual couples may adopt anywhere (Smith 2004). When parents divorce there are certain rights about visitation of children, child custody, and child support. Furthermore, spouses have rights to property division and financial support after a split (Warner 2002).

Perhaps at the forefront of these benefits is the right to privacy that the marital bond retains. Spouses can claim marital communications privilege which allows them to withhold from the courts information in confidential communications between themselves (Fineman 2006). Significantly, while all other communications are potentially subject to governmental intervention, spousal communication remains a haven of privacy.

Marriage as a Regulatory Mechanism

As the above discussion makes clear, marital relationships receive material benefits legally. In the concrete sense, the law encourages people to marry by offering these benefits. But the law goes further than this simple, material function (Hunt 1993, Merry 1988, Foucault 1978). The benefits that the law offers for marital relationships serve as a legal endorsement of this kind of sexual expression (Frug 1992, Alexander 1994). The law's designation of marriage as the "right," "natural" form of sexual expression creates a framework of truth, the episteme, in which society operates (Foucault 1978, Frug 1992). In this section, I examine the way that marital law functions ideologically to create an image of a natural, right, desired form of sexual expression.

This image is embedded in society as the natural form of sexual expression. As such, marital norms compose a regulatory mechanism that assists in prescribing sexual expression (Foucault 1978, Frug 1992).

The desire for inclusion is characteristic of a normative system. The fact that people want to be included in the dominant norm does not mean that that norm is natural or that the system is valid, but instead that it *is* a regulatory system (Warner 2002, Alexander 1994). A normative system like the one regulating sexual expression shapes desires within society (Warner 2002). The push for same-sex marriage illustrates the power of marriage as a regulatory mechanism. Homosexual individuals are fighting to be included in the institution of marriage. This desire for inclusion, to be granted the same rights and privileges as those heterosexual, monogamous, faithful couples, is indicative of the allure of the legal, dominant norm. People *want* to be included because they want to occupy a privileged position, rather than an oppressed one, in society (Warner 2002, Agathangelou et al. 2008). Recently, some states have started to legalize same-sex marriages, civil unions, or domestic partnerships.[6] But even when same-sex couples can obtain a partnership with the same, or very similar, benefits as a marital relationship, the term "marriage" is still reserved, by and large, for heterosexual couples.[7]

In Connecticut, same-sex couples were granted the right to "marriage," not to civil unions, in 2009. The case, *Kerrigan v. Commissioner of Public Health,* argued that the term "marriage" was a benefit simply because it is such a respected type of partnership in our society. The court ruled that same-sex couples must have access to the term "marriage" because, relying on the precedent of *Brown v. Board of Education,* separate is always inherently unequal.

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[6] As of January 2011, same-sex marriages are legal in CT, DC, IA, MA, VT, and NH. Civil unions exist in IL, HI, and NJ. Domestic partnerships are available in OR, WA, NV, and CA. Unions which do not contain the same amount of benefits as marriage are available in MA, ME, CO, and WI. See the organization Freedom to Marry's website at: http://www.freedomtomarry.org/states/.

[7] With the exception of the five aforementioned states (CT, IA, MA, VT, and NH) and DC

"Marriage" privileges a union above all others, even those that receive the same material benefits. The ideological privilege associated with marriage is the positive norm attached to it in society. This case demonstrates the solidity, dominance, and privilege of even just the term "marriage" in our society, as it was decided by the courts that the lack of access to this privileged term disadvantaged certain individuals (Klein & Redman 2009).

I want to emphasize the importance of this court case in the way that it illustrates the privilege that marriage holds over all other alignments of sexual expression. Even when other alignments reap the same concrete benefits, the desire for the ideological benefits associated with the term "marriage" penetrates society. Warner explains that there is a "respectability and public acceptance" that comes with being married (p. 268). A lot of the time, couples want to validate their union and receive this ideological benefit by getting married (Warner 2002). M. Jacqui Alexander argues that the legal sexual expression "shapes the definitions of respectability" in a society (1994, p. 7). In my interviews, all of the women expressed the sentiment that marriage represents the "next step" in a relationship, whether they identified this as their own opinion or a societal opinion. They described marriage as a way to "solidify" a relationship. One woman said that after a wedding, the couple is more comfortable, she said, "Its solidified – they're married, they're not dating." Another woman said that marriages are "more committed than just dating relationships, even when you're dating long term." Overall, the sentiment was that a marriage represents a solidification of a committed relationship.

Many of the women also described that they perceived societal reactions to married individuals to be more positive than those to single individuals. The consensus, by and large, was that married individuals are taken more seriously and given more respect in society. One woman mentioned that there is a "perception that you're wiser" when you're married. Almost all of the

women mentioned that married people are seen as more responsible and mature than being single or dating. After college, one woman said that it was time to for "settling down and getting serious." When asked about the difference between married individuals and singles, one woman said that they spend their money differently. Married people tend to save their money, she said, while single people go out to bars, clubs, and shopping more. Furthermore, almost all of the women mentioned that when you are married, you are seen as an "adult" in society.

Recently, there has been a progression toward the inclusion of same-sex unions into society. While these unions are still less privileged than "marriages," their incorporation has been viewed as progress for many gay rights activists. However, some have argued that the push for gay marriage has obscured a critique of the institution of marriage, as the only same-sex unions that are sanctioned by the state (sometimes) are homosexual couples that mirror married individuals. Anna M. Agathangelou, M. Daniel Bassichis, and Tamara L. Spira argue that this "homonormatization" has been functioning to incorporate one specific kind of previously deviant sexuality, homosexuality, while ignoring and thus further marginalizing all other forms of criminalized sexualities (including those forms of homosexuality that do not mirror heterosexual marital relationships). They write, "In the case if gay marriage, the push for state-sanctioned kinship reconsolidates the exclusionary practices of the institution of marriage" (Aganthangelou et al. 2008, p. 122). Homonormatization reaffirms "good" relationship characteristics like that of monogamy and privacy and consequently punishes deviations from these norms. This ability to incorporate *some* kinds of sexualities, giving the perception that there is "progress" being made as the state is seen as more tolerant in its incorporation, while simultaneously further marginalizing and punishing others, is termed "incorporation and quarantining" and is a part of

the process of "enemy production."[8] The state, in incorporating the *right* kind of queer relationships, those which are only once-removed from the marital norm, succeeds in giving the perception of "progress" and thus debilitates pushes for structural change that would seek to eliminate the state's ability to sanction certain kinds of sexual expression and marginalize others (Aganthangelou et al. 2008).

Marriage is a coveted alignment that is imbued with significant meaning. That meaning is what has an ideological force in society, an ability to govern with norms. Michel Foucault describes such a regulatory mechanism perfectly when he writes,

> The machinery of power that focused on this whole alien strain did not aim to suppress it, but rather to give it an analytical, visible, and permanent reality: it was implanted in bodies, slipped in beneath modes of conduct, made into a principle of classification and intelligibility, established as a raison d'etre and a natural order of disorder. Not the exclusion of these thousand aberrant sexualities, but the specification, the regional solidification of each one of them. The strategy behind this dissemination was to strew reality with them and incorporate them into the individual (Foucault 1978, p. 44).

There are two important features that must be addressed in this quote. First, Foucault argues that the regulatory mechanism is "incorporate[d]…into the individual," which is to say that the normative system shapes society's preferences, desires, hatreds, thoughts, indeed all of their epistemologies and ontologies in a quiet, undetectable manner. Second, he speaks to the naturalization of the dominant norm, the "raison d'etre" which means reason or justification for existence. This is to say that the dominant norm, the marital ideal, is justified with an appeal to nature.

Taking Foucault's first point, that the regulatory mechanism is incorporated into the individual, we turn back to Sarat and Kearns and their theorization about the way that norms function to limit the imagination of society. Our thought is confined by the framework in which

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[8] The terms "incorporation and quarantining" are used by Aganthangelous et al. but were originally developed by Jasbir Puar and Amit Rai in their essay, "Monster, Terrorist, Fag." The further link to "enemy production" has largely been articulated by M. Jacqui Alexander.

we are operating. But even within our epistemologies, certain actions are considered normal and desirable. So this is to say that our choices are first limited by our narrow framework of truth, and subsequently limited by the norms occupying our truth that function to govern our decisions (Sarat & Kearns 1992).

Getting married is a way to communicate to society that you have chosen the right kind of sex, the legal sex, the loving, faithful, heterosexual, monogamous sex. As my interviews demonstrate, marriage communicates to society respectability and adulthood. As marriage communicates a message to society, the lack of marriage, then, communicates as well. Women who do not marry are subject to questioning. Is their body open for sex and what kind of sex? (Frug 1992). Just like the law that privileges marital communication as the only form of private communication, a marital relationship is the one arena of privacy. As long as people get married and the institution is firmly in place, the state will have access to the lives of those who do not marry. The state will not recognize the love or sexual expression of non-married individuals as legitimate and as such, their privacy will be limited. Warner articulates this point when he says, "…marriage has become the central legitimating institution by which the state regulates and permeates people's most intimate lives; it is the zone of privacy outside of which sex is unprotected" (Warner 2002, p. 267). Again, a marital relationship is the legal, correct form of sex and thus renders other forms of sexual expression incorrect and therefore without a need for preservation. Warner continues as he illustrates the implication of this system. He says, "In this context, to speak of marriage as merely one choice among others is at best naïve. It might be more accurately called active mystification" (Warner 2002, p. 267).

The "active mystification" that Warner talks about is the solidification of certain norms and the subsequent naturalization of those norms. In the case of sexual expression, it is the

argument that a marriage-like relationship is the natural sexual relationship that humans are destined to have. This is Foucault's "raison d'etre," perceived natural order. Alexander importantly notes that the naturalization of any kind of alignment in law does not "imply rationality of even internal coherence" (1994, p. 6). Simply because the law endorses a certain form of sexual expression, then, does not indicate that it is the natural form of sexual expression (Alexander 1994).

The legal rules that produce these norms are the same rules that are perceived to be "neutral," simply advocating what is already "natural," what is already existing truth (Frug 1992). The perceived neutrality of the law exempts it from having any instrumental bias, though neutrality is really simply the accepted, (usually) dominant bias. This naturalization extends in the case of marriage to the justification that marriage is for "pure love." That is to say that marriage is not only natural in terms of the need to procreate, but it is also based on a natural love. This love that is true, real, and natural then seeks certification in law, creating the paradox of certifying the existence of something that was supposed to be beyond any kind of certification (Warner 2002).

The normative system governing sexual expression does not only coerce society into aligning its sexual relations in a certain way, but it also marginalizes those who do not align with the dominant norm. Part of the motivation for this disciplining of non-dominant individuals is that by revoking meaning from non-marital relationships, a marital relationship has more value. Many of the women who I interviewed said that marriage made a relationship seem more mature, valid, stable, and legitimate. Warner recognizes this same stigma and he then marvels, "Even though people think that marriage gives them validation, legitimacy, and recognition, they somehow think that it does so without invalidating, delegitimating, or stigmatizing other

relations, needs, and desires" (Warner 2002, p. 268). Agathangelou et al. agree that it is impossible to confer value upon anything without revoking it (or denying it) from something else. They write, "Just as we have argued that promises of belonging, value, recognition, and worth are issued to certain marginalized subjects, it is always on the ground of other (non)subjects" (Agathangelou et al. 2008, p. 135). Even when some are being promised that they will be included into the regulatory system and thus receive the associated value, this process can only occur with the existence of a perpetual lack of value and not even promise of a potential gain of that value to other subjects (which they appropriately deem "(non)subjects" as their lack of value in the state system does not even view them as citizen-subjects deserving of rights. It is this creation of the "Other," non-citizen, non-subject, that facilitates the definition of citizen, subject. As such, the value embedded in the position of citizen-subject, in the associated rights, does not exist without its opponent, the devalued (Agathangelou et al. 2008). This contention was reflected in my interviews. Eight of the ten women interviewed said that they hoped to get married. However, all of the women said that they did not care if others in society got married. They identified marriage as a norm that people follow and said that they felt it was unnecessary to do so, but the majority of them still wanted marriage for themselves. These women viewed marriage as a choice and one that they wanted for themselves, but they did not mention the potential negative consequences that *not* adhering to this norm could have. Instead, they viewed not getting married as a free choice and they respected that choice.

Analyzing the Image of Sexual Expression

Regulatory mechanisms, systemic frameworks, norms, epistemologies are not easily observed because they do not occupy a concrete existence. We cannot study marriage as a

regulatory mechanism because it functions ideologically in addition to concretely. We can examine the concrete function of marriage, in encouraging people to marry in order to reap material benefits, by looking at the benefits offered. But confining our study to such concrete terms limits our ability to understand the ability of law to function ideologically to create norms, structuring a system of truth, that impacts society.

We cannot observe the law functioning ideologically, but we can observe the effects that it produces. In order to examine the regulatory mechanism of marriage, we must examine the impact that it has on societal perceptions of sexual expression. In analyzing societal perceptions of sexual expression, I do not presume that these perceptions solely originate from legal rules. Instead, it is my argument that legal rules solidify and propagate already existing dominant norms. If law does indeed have this ability, then dominant societal norms should be in line with the legal rules that presumably propagate such norms. In this section, I examine three norms of sexual expression and attempt to demonstrate that the existing societal norms are congruent with legal rules. The characteristics of relationships that I examine are monogamy, fidelity, and a focus on procreation.

Monogamy

A marriage can only be obtained by a monogamous couple. Anti-polygamy laws further enforce the designation that marriage be monogamous. Polygamy is illegal in all 50 U.S. states. An individual in a marriage would not be able to marry another person while retaining their first partner. That is to say that one person may only be married to one other person. President Lincoln was the first to outlaw polygamy in his passage of the Morrill Anti-Bigamy Act in 1862. This Act was primarily directed at Mormons, members of the Church of Jesus Christ of Latter-

Day Saints (LDS Church), who, as part of their religion, practiced polygamy. Those practicing polygamy could face fines up to $500 and imprisonment up to 5 years (Sears 2001).

The Edmunds Act was then passed in 1882, making polygamy a felony. This act imposed restrictions not only on those individuals practicing polygamy, but also on those who believed that it was a legitimate practice. This act prohibited polygamists and those who believed in polygamy from voting and thus serving on a jury and holding public office. As a consequence, all public offices in Utah were vacated, a commission was formed to certify individuals who neither engaged in nor believed in polygamy, and new elections were held state-wide. Furthermore, about 1,300 men were prosecuted through the Edmunds Act. The Edmunds-Tucker Act was passed in 1887 to extend penalty to organizations who advocated polygamy, namely the LDS Church. This act dissolved the LDS Church, required voters to take an anti-polygamy oath, removed the spousal privilege law (thus compelling wives of a polygamist to testify against him in court), among other things. This act was eventually repealed in 1978 (Sears 2001).

The illegality of polygamy serves to strengthen the requirement of a marital contract that the couple obtaining the contract be monogamous. Anti-polygamy laws reinforce the marital requirement of monogamy. Because it is legally impossible to obtain state recognition for a polygamous relationship, the dominant norm of monogamy is solidified and propagated throughout society as the normal, legal sexual alignment. The illegality of polygamy solidifies the norm that the appropriate, natural, right kind of sexual expression is in a relationship with only one partner.

But going beyond the illegality of polygamy and consequent privilege of monogamy, it is necessary to note that marital contracts last indefinitely unless one party seeks to terminate the contract. This suggests that relationships not only be monogamous, but that they be long term as

well. This aspect of a marital contract solidifies the norm that sexual expression be practiced with one individual for a significant period of time, marking the relationship as both serious and monogamous.

My interviews illustrate the dominance of positive norm of monogamy in our society. One of my questions asked the women about the kind of relationship they felt that most people had for most of their lives in America. Nine out of ten answered that they perceived long term, monogamous relationships to be the most common. One woman said that she felt that most people are looking for a long term, monogamous relationship for most of their lives, but that the search occupies more time than actually being with that person.

When it came to the kind of relationship that they hoped to have in their own lives, there were generally three kinds of answers. Six of the ten women said they absolutely wanted to get married in the future and saw that as a significant goal in their lives. When asked if she envisioned herself marrying another individual in the future, one woman replied, "Oh God, I hope so." The other four women had two ways of answering this question. Two of them said that they would probably get married in the future but that they would not "settle." Rather than marrying someone just in order to marry, they said they would happily marry if they were with the right partner. The other two women said that it is possible that they would get married in the future, but that they were not positive that long term monogamy would be the right alignment for them.

My interviews serve as an example of the generally positive societal sentiment about monogamy. These women are impacted by marital contract and anti-polygamy laws even when they are not directly interacting with these laws because they exist in a society that is framed by the norms that these laws solidify (Hunt 1993, Frug 1992). The laws that make polygamy illegal

and that reserve marriage for monogamous couples influence society both concretely and ideologically. Monogamy is solidified as a dominant norm and is propagated throughout society as a natural, desired characteristic of a sexual relationship (Frug 1992, Agathangelou et al. 2008).

Fidelity

Fidelity is another characteristic of marriage that is embedded in the law. Though adultery is not a criminal offense, it does constitute grounds on which a divorce could be filed (Frug 1992). Adultery is defined by Connecticut law as grounds for divorce as, "voluntary sexual intercourse between a married person and a person other than such person's spouse." [9] If one spouse is not faithful, then the marriage may be terminated.

While adultery is no longer illegal, it is grounds for the termination of the marital contract. This termination involves the loss of all marital benefits and societal privilege as a married individual. In this case, the designation of a marriage is largely dependent on fidelity. When a spouse is unfaithful, a significant characteristic of marriage is broken, and the marriage can be dissolved. Fidelity is a definitive legal component of marriage.

It is clear that marital law values fidelity and such a value in society was reflected in my interviews. The first question that I asked was about the characteristics that normal, monogamous relationships have. Seven of the ten women specifically mentioned "trust" as one of the main components to a relationship. Three of the women emphasized trust as the first and most important characteristic.

When I asked about their ideal relationship, one woman responded that neither she nor her boyfriend would "hook up with other people," because, "that's just really wrong." Another woman said that her ideal marriage would involve trust because she would not want to have to

[9] CT law – Chapter 815j; Sec. 46b – 40; bullet F

"worry about secretaries." All of the women interviewed made it clear that trust and fidelity was central to any healthy relationship.

The general consensus seemed to be that most people enter monogamous relationships hoping that they will last forever, and that sometimes they do. However, one woman specifically mentioned the negative light that celebrities bring to marriage as they "rush into things" and have high divorce rates. The divorce rate then dissuades people from getting married. Another woman first said that she thought monogamy was the natural for humans, but then questioned herself saying, "Well, actually if you look at the rates of cheating, maybe that's not the case." Both of these women expressed the views that divorce and adultery are negative characteristics that destroy relationships, and consequently are undesirable.

When I asked women what they perceived to be the most common form of sexual relationship in society, they all answered monogamy, marital, or a series of monogamous relationships. I then asked whether they viewed this alignment, monogamy, to be beneficial to society. Nine of the ten women responded that monogamous relationships were beneficial to society. Their reasoning was that certain skills and characteristics of those in monogamous relationships are transferable to other aspects of their lives and subsequently to society as a whole. Many of these characteristics centered on the idea of fidelity. They mentioned that dedication, the ability to communicate and compromise, structure, stability, and support were all transferable skills that people have in monogamous relationships. One woman said that she felt marriages were typically beneficial to society, but that they can be negative when "affairs are involved." In the case of adultery, marriages are in fact detrimental to the fabric of society.

My interviews serve as examples that illustrate the value that society attaches to fidelity within a relationship. The women interviewed not only indicated the importance of fidelity in

monogamous relationships, but also identified fidelity as a criterion for attaching social value to marriage itself. Such a value is solidified in the law. Though adultery is not illegal, it is grounds for a divorce. The dissolution of a marriage has real, negative consequences on those involved. Just as a marriage contract entails substantial material benefits, the loss of such a contract is the loss of such benefits (Frug 1992). Legally and societally, fidelity is a favored characteristic of sexual expression.[10]

Focus on Procreation

Another key aspect of both the legal and societal definition of marriage is its focus on procreation and raising a family. When examining the material benefits of marriage, we observed that for many governmental programs a married couple constitutes a "family." As such, a couple qualifies for things like family-only housing units. Furthermore, many consumer benefits that are awarded to families like special rates on insurance, like that of health and automobile (Bedrick 2004).

Not only do marital relationships constitute families, but in family law, the organization of the entire concept of "family" is centered on this monogamous, heterosexual, faithful, loving, sexual relationship (Fineman 1995). The legal scholar Martha Fineman contends that even when we are "expanding" the concept of the family, we are still basing our "new" organization on images that mirror marital relationships like including same-sex couples or unmarried,

[10] Marital laws and benefits indicate that fidelity is an important component of marriage; that sex should not occur outside of a marriage. Marriage is the legal category by which sex is justified. In examining consortium laws, we see that infidelity is not only punished, but the lack of sex *within* a marriage is punished as well. One spouse is able to sue the other for a "loss of consortium," a loss of intimacy (Fineman 2006). This speaks to the governance of *how* sexual expression looks even within the context of a marital relationship. One partner is allowed to sue the other for not being sexually active enough in the relationship. Not only is marriage where women are supposed to express themselves sexually, but it is where they *must*.

"committed," heterosexual couples (Fineman 1995). The concept of the family is still grounded in a monogamous, sexual relationship.

Considering both the legal designation of married couples as families and the legal definition of family as centered on marriage, the legal link between a marriage and family is clear. Ideologically linking the concept of marriage and family in the law solidifies a congruent norm in society. Socially, marital relationships and marriage-like relationships are then viewed as naturally involving children and constituting a family.

In the interviews that I conducted, *all* of the women mentioned that a main reason that many people get married is in order to have children and raise a family. When I asked if there were certain characteristics that married women share, all of the women mentioned that they want a family or are already mothers. When asked if they were planning on getting married themselves, seven of the ten women said that they were planning on marrying in order to raise a family. One woman, when asked why she planned to get married, responded, "We're brought up with the family being the major unit in someone's life. That's the idea of marriage – it's a commitment to raise children." Here, marriage has the expressed purpose of being the basis for having a family and raising children.

Only one woman mentioned that it is important to be married before raising a family "because of the legal rights that come with that." None of the other nine women discussed the material legal benefits that would sway them to get married. To me, this is significant in two ways. First, I think the woman who mentioned that legal benefits that accompany marriage and that are important to obtain before having a family demonstrates the concrete power of the law to encourage certain behavior (in this case marriage) by offering benefits. She rationally recognized what the law could offer and decided it included valuable legal benefits. The second important

aspect is that nine of the ten women did *not* mention legal benefits of marriage as important for raising a family. This demonstrates the ideological function of law. All of these women aligned marriage with procreation as they all mentioned that one of the main reasons women get married is to have children. However, they did not see the law as involved. Rather, this was just a natural reason why people want to get married: to raise children. The norm that associates marriage with procreation is framing the views of these women though they did not acknowledge the law's place in solidifying that norm. This failure of recognition is a key component in the power of ideology to shape our framework of truth. Foucault addresses this in his theory of the episteme, that truth is created ideologically and we are limiting by that framework (Foucault 1978). Marx also discusses this concept in his notion of false-consciousness, that the masses are not capable of analyzing the forces that construct their reality (Marx 1998). Of course while Foucault and Marx differ on the role of "strategists" behind this ideological function of the law, it is nevertheless important to note their discussion of the inability of members of society to recognize the forces shaping their lives.

Many of the women I interviewed described the "typical family" which they recognized to be a societal norm, but nevertheless said that they hoped to achieve for themselves. The typical family consists of a marriage, "two kids, and a dog." Some of the women even cited this structure as the "American Dream" and our "cultural ideal." One woman described the progression from dating to marriage to having children as the "cycle of the right thing," and many mentioned that such a cycle was "what you're supposed to do."

My interviews serve as examples that illustrate the way that the legal link between marriage and procreation is a norm that penetrates society. The law solidifies this normative connection and expands its influence throughout society. Even when my interviewees did not

acknowledge the impact of the law on their beliefs, we are able to postulate that the law did have a role in at least strengthening those norms that compose their idea that marriage is connected with family.

Conclusion

Marriage, through the legal benefits that are offered, is a regulatory mechanism in our society. The law is able to designate the sexual expression associated with marriage and marriage-like relationships are the right, appropriate, natural, desirable, legal type of sexual expression. Through offering legal benefits, the law solidifies and propagates these norms that value characteristics associated with marital relationships as positive. Marriage is thus part of the construction of a truth of sexual expression that regulates society; it is the positive, desirable encouragement. Characteristics of marriage and marriage-like relationships like monogamy, fidelity, and a focus on procreation are favored in law and in society.

This is the positive function of power, the ability of the law to dictate what you *can* (and want to) do. It is too narrow to view law as a regulatory mechanism solely in its ability to punish "bad" behavior. Rather, in examining its encouragement of marriage through marital benefits, we are able to understand the function of the law to solidify norms, to create the "right" kind of sexual expression. That sexual expression is not necessarily marriage. Instead, it is an expression that has characteristics of a legal marriage. Society understands these characteristics of sexual expression to be normal, natural, and desirable. The law has the ability to solidify and propagate those norms, valuing marriage and marriage-like relationships above all other forms of sexual expression.

Chapter Three

Prostitution: the negative function of law

Introduction

The legal institution of marriage illustrates the positive function of the law, the ability of the law to govern what individuals *can* do. However, the law also functions negatively to communicate what a society *cannot* do. In the case of female sexual expression, prostitution law serves to solidify negative norms that create images of wrong, unnatural, bad, and/or illegal forms of sexual expression. Even when women are not concretely interacting with prostitution law, their thoughts and actions are influenced by the law through the framework of truth that its norms compose (Alexander 1994, Frug 1992).

The law functions in two primary ways. First, the law is able to concretely encourage or discourage behavior by offering benefits and imposing punishments on certain kinds of activity (Hunt 1993, Merry 1988, Foucault 1978, Frug 1992). My previous chapter explored the way that material benefits offered by the legal institution of marriage encouraged people to get married. In this chapter I will explore the way that laws criminalizing sex work discourage society from engaging in such an activity by imposing punishments on those who do so (Hayes-Smith & Shekarkhar). This concrete function of the law seeks to dissuade members of society from participating in sex work for fear of the legal repercussions in the form of fines or incarceration.

However, the law also functions ideologically as it creates norms that work to frame a truth in which individuals think, act, and decide (Hunt 1993, Foucault 1978, Frug 1992). Prostitution law serves to create norms about sexual expression. While marriage laws functions to create positive norms that encouraged sexual expression mirroring a marital relationship, prostitution law does the exact opposite. The illegality of prostitution functions to solidify and propagate norms about wrong, deviant, weird, unnatural, or undesirable forms of sexual expression (Frug 1992, Alexander 1994).

The format of this chapter will mirror the previous chapter on marriage. Through the exploration of prostitution law, this analysis will illustrate the way that law can function to dictate what members of a society *cannot* do. Even when the law is not imposing direct, concrete punishments on individuals for certain actions, it is able to have an impact on discouraging such actions (Foucault 1978, Frug 1992, Alexander 1994). In this chapter, I first explore the concrete punishments imposed through prostitution law that concretely dissuade engagement in such work. I follow this section with an analysis of the ideological function of prostitution law to create norms that govern behavior of women in society.[11] This second section will include illustrations from my interviews that will serve as examples of the societal perceptions of negative sexual expression that I discuss.

Concrete Punishments of Prostitution

In the United States, prostitution is illegal in every state except Nevada. It is described as a "public order crime," meaning that it is, "a crime that disrupts the order of a community" (Hayes-Smith & Shekarkhar, 2010, p. 43) and is typically considered a misdemeanor. Prostitution is organized into three categories: street, brothel, and escort. All of those parties involved in prostitution, the prostitute, pimp, and customer, are subject to arrest. However, it is important to note that it is prostitutes who are punished most frequently for this crime (Hayes-Smith & Shekarkhar, 2010).[12]

Not only is prostitution illegal and as such, those involved in the practice are subject to arrest, but prostitutes are also denied protection by the law. Prostitutes, for example, cannot

[11] While prostitution law applies to both men and women, prostitutes are overwhelmingly female. As such, the norms solidified and propagated through prostitution law effect the sexual expression of women much more so than men (Frug 1992, p. 131).
[12] And within the category of prostitutes, poor prostitutes suffer much more than their wealthier counterparts. See Hayes-Smith & Shekarkhar (2010).

report crimes committed against them like rape or sexual assault for fear of being arrested for *their* crime of prostitution (Hayes-Smith & Shekarkhar, 2010). Women are dissuaded from becoming prostitutes not only for fear of arrest, but also for fear of living a life that is "outside" of the law, knowing that they will have to give up any protection that they may have had previously under the law.

This is not only the case for crimes that are committed against them while they are working, though. Such a fear rightfully extends to when they are not working as well. In her piece, *Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment,* Julia Simon-Kerr chronicles the history of using a woman's sexual history to destroy her credibility as a witness, and argues that such a practice lives on today for sex workers. First, it was outlawed that a woman's chastity be used to determine her truthfulness in court. Then it was outlawed that a woman's sexual history be used to determine whether or not she consented to rape, as many states now have rape shield laws. This practice of linking truth and chastity, rather than being erased, has moved successively from all women to rape survivors to prostitutes. Simon-Kerr says that prostitution "stands as a remnant of a seemingly antiquated moral code" (2008, p. 1893). She argues that many states have and are able to use a history of prostitution as grounds for discrediting a woman in court. She explains that many states have adopted the Uniform Code of Evidence which limits the ability of the courts to use someone's history of convictions as evidence to impeach them *except* in the cases of crimes punishable by more than a year (felonies) and crimes involving dishonesty. Prostitution is typically a misdemeanor but many states have allowed a history of prostitution to impeach a witness on the grounds that it is a crime involving dishonesty. When this approach has not worked, states have also introduced a history of prostitution on the grounds that it is a crime involving "moral turpitude," and as such

may be used to impeach a witness. Simon-Kerr observes that, "In this way, the law once again links unchastity, now in the form of prostitution, with untruthfulness" (2008, p. 1894).

Not only does the law, in criminalizing prostitution, seek to incarcerate and punish those involved in the practice, but it also denies protection to those currently or formally involved in it. Such legal punishment concretely dissuades women from engaging in prostitution for fear of incurring the negative consequences in the form of both punishment and denial of protection. This function of the law, its ability to dissuade certain behavior by criminalizing it and imposing punishments on those who engage in such behavior, is the concrete function of the law (Hunt 1993, Foucault 1978).

Prostitution as a Regulatory Mechanism

So prostitution, it is clear, is discouraged concretely through its illegality. For fear of arrest or legal discrimination, a woman is dissuaded from engaging in sex work. However, the criminalization of prostitution also functions ideologically to discourage certain forms of sexual expression and contribute to the framework of truth surrounding sexual expression in which individuals form beliefs and make choices (Frug 1992, Alexander 1994, Foucault 1978). Just as marriage law creates a positive image of sexual expression that is promoted, functioning to mold ideals of the "right" kind of sexual expression, prostitution law composes the opposite side. Characteristics associated with the *illegal* kind of sex, prostitution, are reflected in negative norms surrounding sexual expression and thus contribute to the truth about sexual expression within which we form our beliefs and make choices. In this way, a woman in society interacts with prostitution law even when she is not being arrested for the crime. Anti-prostitution law contributes to our reality of sexual expression, in its formation of the illegal, deviant image of

sexual expression, and thus partly governs our thoughts and choices (Foucault 1978, Frug 1992, Alexander 1994).

In the interviews that I conducted, all of the ten women said that characteristics associated with prostitution were negative. Many mentioned that they associate things like drugs, poverty, and desperation with prostitution. When I asked if they thought any women ever choose to be prostitutes, all of the women were fairly uncertain. Only one woman definitively answered no, that no one would choose such work. Others said that some women may choose to be prostitutes, but many said that it was usually under false pretenses, a consequence of "bad pasts," or "falling victim to circumstance." One woman said that society cannot understand what would motivate women to engage in prostitution. She said, "People wonder what's going on in their heads that's leading them to do something so vile." Then when I asked if they felt any prostitute could be proud of her work, only two of the women answered definitively no, that they could not be proud. Again, the others were uncertain and said that they supposed it would be possible. One woman articulated her confusion when she said, "I guess it's possible that they could be proud. But it's hard to wrap your head around – since it's so looked down upon, it would be hard to have confidence." Most of the women were attempting to reserve harsh judgments or blanket statements about *all* prostitutes, but still found it illogical or counter-intuitive that a woman would choose or be proud of such work.

Because characteristics associated with prostitution are so negatively stigmatized, activities employing the same characteristics are also viewed unfavorably. In this way, even when not engaged in prostitution, its criminalization has an effect on what is considered acceptable sexual expression through the solidification and propagation of norms that then function to govern behavior. Exotic dancing, for example, is not illegal, but Rebecca Hayes-

Smith and Zahra Shekarkhar explain, "…simply legalizing prostitution does not erase the stigma or labels that are associated with this type of work. Exotic dancing… is a legal enterprise but it still carries an extreme social stigma" (2010, p. 51). An exotic dancer does not perform sexual services, but she nevertheless uses her body, her dancing, to satisfy a client. This type of activity, while not illegal, employs a major characteristic of prostitution: the commodification of the sexualized body.[13] As such, exotic dancing is viewed negatively in society. In this example, negative norms governing sexual expression that are solidified in the criminalization of prostitution function to stigmatize exotic dancing. The norms that arise from prostitution law, that commodification of the sexualized body is deviant, permeate other businesses and sexual expressions like exotic dancing. The negative norms associated with this kind of sexual expression are solidified in law and propagated throughout society. This is an important characteristic of a regulatory mechanism: the ability to regulate behavior even when not imposing concrete punishments (Foucault 1978, Hunt 1993, Frug 1992, Alexander 1994).

The negative norms that stigmatize the commodification of the sexualized body may not necessarily arise from anti-prostitution law. Again, the origin of such norms is outside of the scope of this thesis. It is my intention to demonstrate that anti-prostitution law does function to solidify and propagate norms in a unique way, through its use of state resources and its position in society as "neutral." Considering the former, the access to state resources, it is understood that the law has the ability to forcefully punish those who do not adhere to its norms. Julia Sudbury describes this process in her book, *Global Lockdown*, when she says, "Lockdown is a term commonly used by prison movement activists to refer to the repressive confinement of human

[13] It is important to note here that the hiring of a body is not what is so stigmatized through prostitution law. If that were the case, hiring any kind of dancer, singer, or entertainer would be viewed negatively. Instead, it is the commodification of a body specifically for *sexual* purposes. This is the distinction between actors, who enjoy a relatively positive position in society, and porn stars, who are much less valued.

beings as punishment for deviating from normative behaviors" (2005, p. xii). She goes on to explain that prisons and jails are the "most visible" locations for lockdown to occur, while institutions like immigrant detention centers, refugee campus, psychiatric hospitals, and the like also function to lockdown deviants (Sudbury 2005). With this understanding of "lockdown," anti-prostitution laws can be seen as functioning to punish those who do not abide the legal norms governing sexual expression. Those who engage in the illegal kind of sexual expression are physically punished through fines and detention.

The state, then, occupies a unique position in its ability to punish those who deviate from the norms that it solidifies (Sudbury 2005, Merry 1988, Hunt 1993). In its punishment, however, it is able to create norms because that punishment is made possible by the criminalization of the punished activity. That criminalization then functions ideologically to solidify norms about illegal, deviant activities. So, deviations from normative orders governing sexual expression, like those of sex work, are punished by the law. But that punishment, that criminalization, also functions ideologically to solidify negative norms that construct an idea of the undesirable sexual expression. Those norms, that constructed image, frame a truth about sexual expression in which members of society operate (Foucault 1978, Frug 1992, Alexander 1994). So even though exotic dancing is not illegal, it is still negatively stigmatized because it shares a characteristic with prostitution (that of the commodification of the sexualized body) and prostitution is illegal. This is the ideological function of the law; the ability of the law to solidify and propagate norms that encourage or discourage certain behavior (Foucault 1978, Hunt 1993).

This ideological function of anti-prostitution law extends beyond the business of sex or the commodification of sexualized bodies. Valuations of characteristics associated with prostitution reach the "common" woman who is not associated with prostitution, exotic dancing,

or any forms of the sex industry. It is common in society to label a woman who is *not* a sex worker a "whore," "slut," or "loose" woman as a derogatory term indicating her promiscuity. When I asked my interviewees if they had ever heard a woman described this way, almost all of them laughed at the ridiculously obvious answer to that question: of course they had. All ten of the women said that promiscuity, "sleeping around," was a characteristic of women who were defined with the terms "whore," or "slut." All of them identified characteristics associated with these terms to be negative.

According to the legal scholar Mary Joe Frug, even sex workers themselves feel a pressure to avoid being named a "whore" despite the fact that their work is the reference that the word makes. She says that many sex workers fear that, "in their work as whores, they are acting like whores" (p. 204). This is an important observation to make: that sex workers, even while engaged in prostitution, want to possess a sexual expression that is in opposition to that of a "whore." This illustrates the power of the law to solidify and propagate norms throughout a society. It is not only "common," law-abiding women who are influenced by legal norms, but it is also those who, in their work, actively evade the law. While there are other norm-creating (or norm-solidifying) institutions, like a subculture that attempts to exist "outside" of the law for example, the law occupies a unique, powerful place in its ability to punish with the force of the state and in its stance as "neutral" (Merry 1988, Hunt 1993, Frug 1992).

As the terms "whore" and "slut" are negative, women do not want to be defined this way. Thus it is only logical that women would then not want to adopt characteristics that are associated with these terms. Five of the women I interviewed said that wearing revealing clothing can result in the stigmatization as "whore" or "slut." Four women said that women called these words are not necessarily promiscuous, though that is what the words indicate.

Instead, it is possible that they simply have the image of promiscuity for whatever reason. One woman remarked, "They have been labeled something that almost anyone can be labeled but once you *are* labeled that way, it sticks."

The apprehension expressed by the interviewees about being called a "whore" or "slut," indicates how the stigmatization of characteristics associated with prostitution functions to govern the decisions that women make. Trying to stay away from looking "slutty," women are constantly worried if an outfit or a look perceives that of a whore too closely. Frug explains this preoccupation when she describes, "…an insistent concern that this outfit, this pose, this gesture may send the wrong signal – a fear of looking like a whore" (1992, p. 132). In this way, their decisions are confined by a value system produced in part by the negative sexual norms solidified by prostitution law. This is the construction of truth that Foucault discusses. The law, in deeming certain behavior legal or illegal, is able to frame a reality within which society operates (Foucault 1978). The women who are worrying about what to wear are not afraid that they may be arrested for prostitution based on their outfit (they are not interacting with the concrete function of law), they are concerned that they will receive an undesirable stereotype about their sexual expression (and thus are interacting with the ideological function of law) (Foucault 1978, Hunt 1993, Frug 1992).

Prostitution stands as the image of the illegal kind of sex. Characteristics associated with prostitution are viewed as unnatural, negative forms of sexual expression. Such characteristics include sex for money, outside of the context of love, with multiple partners, and without the intention of procreation. Again, I do not attempt to argue that these norms originate in law. Rather I contend that these norms are solidified in law and propagated, strengthened, and

promoted throughout society. The illegality of prostitution serves to solidify norms associated with prostitution as unnatural, deviant, and undesirable.

Analyzing the Image of Sexual Expression

Anti-prostitution law criminalizes a type of sexual expression that is in opposition to the positive characteristics of sex that I examined in the previous chapter in my analysis of the legal promotion of monogamy, fidelity, and procreation in sexual relationships through marital law. In contrast to these characteristics, prostitution is a kind of sex that involves multiple sexual partners which is at odds with both monogamy and fidelity. It is also a type of sexual expression that is non-procreative and instead focused on pleasure (for the client) and economics (for the prostitute). This section analyzes the way that prostitution opposes the positive characteristics that marital law promotes. First I examine the way that sex with multiple partners, characteristic of prostitution, is in opposition to monogamy and fidelity. Then I look to the focus of prostitution on economics rather than procreation. In order to examine these characteristics, I use the results of my interviews to illustrate the way that societal sentiment supports the positive image of monogamy, fidelity, and procreation and negatively views multiple sexual partners and sex for non-procreative reasons.

In Opposition to Monogamy and Fidelity

My interviews demonstrated the view that prostitution is in opposition to a faithful, monogamous relationship. One woman, when asked if she thought sex workers typically had long term, monogamous relationships, responded, “Well, it depends on what you call ‘monogamy’ because they *are* having sex with lots of other people.” She is absolutely right; one

characteristic of prostitution is *not* having one sexual partner, but rather having multiple partners. Such a characteristic immediately disqualifies sex workers from the ability to have the type of traditional, monogamous relationship that is advocated by marital law.

Nevertheless, two of the women I interviewed indicated that they felt sex workers could have monogamous relationships separate from their job. Two more said that is was possible, but not typical. Two also said that it would be difficult because many partners would probably "not be okay" with work in prostitution. Three women said that they felt it would be impossible to have a monogamous relationship while engaged in sex work. When asked to explain her reasoning, one woman said, "If you're sleeping with other people, that just really changes the dynamic." Another said, "No one is okay with someone who's like that," meaning someone who works as a prostitute and thus has numerous sexual partners. The sentiment that a sex worker's partner may not approve of her work, expressed by five of the women I interviewed, speaks to the idea that sex should be occurring in a committed, faithful relationship and that problems arise when one partner is not faithful. This kind of long term relationship is encouraged by marriage law, as marital contracts are monogamous, polygamy is illegal, and marital contracts last indefinitely, as I explored in the previous chapter. Prostitution is opposed to such characteristics because sex *is* the work, and therefore occurs in a setting that is not monogamous or faithful, but instead professional.

These interview responses indicate the perception that prostitution poses a problem for monogamy and fidelity. Simply the definition of sex work itself is in immediate opposition to traditional concepts of monogamy and fidelity that are encouraged through marriage law. It was evident from my interviews that the characteristics of monogamy and fidelity embodied in marital law are positive, desirable characteristics. Therefore, it is not surprising that my

interviews also indicated that sexual expression opposed to the characteristics of monogamy and fidelity, namely that of sex work which involved multiple sexual partners, is negatively stigmatized. Not only does this stigmatization arise from the opposition of characteristics of sex work to those of marriage, but it also arises from the illegality of prostitution. Anti-prostitution laws function ideologically to solidify and propagate norms dictating that such a sexual expression is illegal and therefore undesirable, unnatural, and deviant.

In Opposition to Procreation

In the previous chapter, I explored the way that the legal institutions of marriage and family are intertwined. Many times a married couple constitutes a family and the legal construction of the family is centered on a marriage. This mutually constitutive relationship between marriage and family enforces the concept that sex, which should be happening in marital relationships, should have the purpose of procreation.

The practice of sex work is diametrically opposed to procreation. When considering the characteristics associated with prostitution, it is obvious that prostitution is *not* focused on procreation, but instead on economics (for the sex worker) and pleasure (for the client). Here the norm that permeates female sexual expression is the focus on sex for money because it is typically women who are the prostitutes and men who are the clients. Having sex for money violates the linkages between sex and procreation that are reinforced by legally sanctioned marriages.

Alexander explores the notion of procreation as the legally sanctioned requirement for sexual relationships as it applies to Trinidad and Tobago and the Bahamas. Though she speaks about the illegality of homosexuality, she also discusses that of prostitution. Her analysis of the

importance of procreative sex applies to the United States in its criminalization of prostitution. She explains,

> Although policing the sexual (stigmatizing and outlawing several kinds of non-procreative sex, particularly lesbian and gay sex and prostitution) has something to do with sex, it is also more than sex. Embedded here are powerful signifiers about appropriate sexuality, about the kind of sexuality that presumable imperils the nation and about the kind of sexuality that promotes citizenship. Not just (any) *body* can be a citizen any more, for *some* bodies have been marked by the state as non-procreative, in pursuit of sex only for pleasure, a sex that is non-productive of babies and of no economic gain (Alexander 1994, p. 6).

Alexander argues that the state sanctions procreative sex and criminalizes non-procreative sex in order to grow its population, and therefore for economic purposes. She also describes the way that the law functions as "powerful signifiers about appropriate sexuality." That is to say that even when an individual is not interacting with the law, they are still impacted by the notion of a right and wrong kind of sexual expression. Those sexual expressions that are non-procreative, that are focused on pleasure, are the wrong kinds of sexual expression. She uses prostitution to illustrate the state's focus on procreation as it is willing to outlaw *certain* kinds of heterosexual relationships that are not focused on reproduction. She says, "And still, not all heterosexualities are permissible: not the prostitute with an irresponsible, 'non-productive' sexuality…" (Alexander 1994, p. 10). The criminalization of prostitution illustrates that the state does not simply seek to privilege heterosexuality over other sexual expressions, but that it seeks to encourage *procreation* as the motive for sexual expression above all others (Alexander 1994).

The women I interviewed indicated the negative stigma associated with having sex for personal economic reasons.[14] One woman said, "People just see sex for money as very wrong – because of our societal morals." Many mentioned that selling your body is "disrespectful" and

[14] I write "personal economic reasons" to differentiate the motivation of sex workers (their own economic gain) from the economic motivations of the state associated with procreative sexual expressions that Alexander (1994) discusses.

"degrading." Their responses exemplify the negative stigma attached to having sex for non-procreative reasons, especially for economic reasons.

When asked about the kind of women they perceived to be prostitutes, one woman said, "These women don't value themselves – a woman who respects herself and her body would not be willing to sell herself." Another responded, "I don't really think anyone *wants* to be a prostitute. It's usually people who really need the money." In all of these responses, it is clear that there is a negative stigma attached to having sex for economic, not procreative, reasons.

Conclusion

The criminalization of prostitution functions both concretely and ideologically to govern behavior of members of a society. Concretely, because prostitution is criminalized, members of society are discouraged from engaging in such work for fear of legal repercussions, like the imposition of fines and incarceration, and of a denial of the protection of the law (Hayes-Smith & Shekarkhar, 2010, Simon-Kerr 2008).

But anti-prostitution laws also function ideologically to solidify certain norms about what is *un*acceptable in female sexual expression. The criminalization of prostitution defines characteristics of sexual expression associated with prostitution as *illegal* characteristics and consequently wrong, deviant, and undesirable characteristics (Frug 1992). This is the ideological function of the law as it is the ability of the law to solidify and propagate valuations that frame a truth about sexual expression for members of society (Hunt 1993, Foucault 1978, Frug 1992, Alexander 1994).

The characteristics of sex work that are negatively stigmatized are in complete opposition to the positive characteristics associated with marriage and promoted by marital law: monogamy,

fidelity, and procreation. Instead, sex work is centered on sex for money (for the sex worker) and pleasure (for the client). Neither of these motives is focused on procreation. Furthermore, sex work necessitates multiple partners, shattering the requirement for monogamy and fidelity. Because sex work has characteristics that are opposed to those of marriage, the sexual alignment endorsed by law, prostitution is illegal and sanctioned by the law (Frug 1992, Alexander 1994, Warner 2002). In this way, the law functions to impose a "lockdown" on those who violate the positive norms about sexual expression that are encouraged by marital law (as I explored in the previous chapter). The law has the privilege of being able to use state resources to impose "lockdown" in order to enforce its norms (Sudbury 2005).

The illegality of prostitution and subsequent legal repercussions for engaging in the practice serve to solidify the negative stigma surrounding a kind of sexual expression that is opposed to marriage. These negative norms then contribute to a framework of truth within which women make decisions, working to construct the kind of sexual expression that they must avoid (Frug 1992). In this way, the law functions ideologically to govern the decisions of women even when they are not interacting directly with prostitution law. As Frug contends, even women who are far removed from sex work still interrogate themselves; making sure that their outfit or their make-up does not make them look like a "whore" (Frug 1992). My interviews demonstrated this same fear as the women expressed the ability of a society to deem certain women the negative terms of "whores" or "sluts" simply because of the way that they dressed or perceived sexual promiscuity. These fears illustrate the ability of the law to regulate behavior even when people are not interacting with it directly. Even though these "common" (non-sex working) women are in no contact with anti-prostitution law at all, they are impacted by the norms that are solidified by that law (Frug 1992, Alexander 1994).

Chapter Four

Conclusion

Introduction

While I separated my analyses of marriage law and anti-prostitution law, it is important to acknowledge the fact that these laws, and all law, do not exist apart from each other. In fact, marital law and anti-prostitution laws serve to compose an image of sexual expression (with both the legal and illegal characteristics) that then functions to frame a societal truth about sexual expression.

Beyond sexual expression, I have argued that all law functions to frame reality through its negative power, its ability to dictate what *not* to do, and its positive power, its ability to dictate what *to* do (Foucault 1978). I have agreed with law and society theorists that while there are other locations where norms are solidified and propagated (such as religious and cultural institutions) law occupies a unique, powerful place as it has the power of the state resources, the myth of "neutrality" to enforce and legitimize its normative orders, and the backing of state sanctioned violence/force (Hunt 1993, Merry 1988, Frug 1992).

An understanding of the mutually constitutive relationship between law and society allows us to acknowledge the complex and intertwined relationship that functions to frame reality. Members of society create and interpret law and are therefore constitutive of law. As such, the dominant norms that exist within a democratic society are (usually) solidified in law. The law then has the power to operate both concretely and ideologically to impact society. Concretely, laws are able to encourage or discourage certain behavior by offering benefits and imposing punishments (Hunt 1993, Merry 1988). Those who violate the norms that are promoted in law are susceptible to "lockdown" by the state (Sudbury 2005). Ideologically, laws are able to solidify and propagate norms about legal activity (that is then justified as "natural") and illegal (consequently "unnatural") activity (Hunt 1993, Merry 1988, Frug 1992).

By offering benefits for certain sexual expressions, the law is able to encourage and endorse a sexual expression with marriage-like characteristics, as I explored in chapter two. Marriage law creates positive norms that encourage members of society to engage in sexual expression in a specific manner, that of a marital relationship (Warner 2002, Agathangelou et al. 2008, Alexander 1994). Specifically, characteristics of marital relationships like that of monogamy, fidelity, and procreation are viewed favorably by members of society and compose the positive, desirable image of sexual expression. The women who I interviewed clearly identified marital characteristics as positive and desirable. While these norms may not have originated in law, or may in fact be natural, the law functions to solidify and propagate these characteristics through its endorsement and encouragement of marital relationships (Warner 2002, Agathangelou et al. 2008).

Conversely, by imposing punishments for sexual expressions that do not possess the endorsed characteristics of marital relationships, the law functions to discourage other kinds of sexual expression, as I explored in chapter three. The criminalization of prostitution serves as a locus for an illegal, deviant kind of sexual expression. Sex work is punished by fines or incarceration, a "lockdown" for those who engage in work with characteristics that are opposed to the positive characteristics of sexual expression (monogamy, fidelity, and procreation) (Frug 1992, Sudbury 2005). Sex work involves multiple partners and is motivated by economic interests (for the sex worker) and by pleasure (for the client). The criminalization of this activity creates negative norms that discourage the reproduction of these characteristics of sexual expression in society. Again, my interviews are examples of the power that law has in creating negative norms. The women described the negative stigmatization not only of sex work and those involved in the business, but also of the characteristics that are associated with sex work

(the characteristics of "whores"). The fact that the term "whore" is so negatively stigmatized and that the women I interviewed made their apprehension of being called a "whore" obvious. The norms solidified and propagated by anti-prostitution law function to frame the negative side of the truth of sexual expression, to dictate what *not* to do (Foucault 1978, Alexander 1994, Frug 1992). Together, a "truth" about sexual expression is created that functions to constrain female sexual expression.

Jezebels and Welfare Queens: Racialized and classed images of sexual expression

I have argued that the law has a role in the construction of a societal "truth," specifically a truth about sexual expression. Written law is able to solidify and propagate norms about sexual expression that then operate to frame a reality within which women form beliefs and make choices. Marriage and prostitution law, I purport, function to define acceptable and unacceptable characteristics of female sexual expression that compose a framework of truth within which women form beliefs and make decisions. Consequently, female sexual expression is constrained by norms solidified in marital and anti-prostitution law.

However, it is also important to recognize the way that the law functions not just through its written word (as it does to create an image of "right" and "wrong" sexual expression), but also through its actions. That is, the particular characteristics of those whom it chooses to punish functions to solidify and propagate norms as well. A further exploration into the way that the law functions, into whom it serves and whom it punishes, reveals that norms about sexual expression are both solidified and constitutive of legal practices. In the case of sexual expression, the image of the "whore" not only functions to marginalize and demonize certain kinds of sexual expression, as I have argued in this thesis, but it is also a highly racialized and classed image that

marginalizes, punishes, and facilitates violence against non-white, poor women (Hayes-Smith & Shekarkhar, 2010, Valenti 2009). The image of the "Jezebel" is the black, promiscuous woman constantly seducing white men has two important implications. First, this image functions to justify violence against black women through its portrayal of black women as promiscuous. Second, this image is then reinforced in the courts, through law, as offenders of black women are punished less severely than those of white women (Crenshaw 1995, West 1995). As the image of the "whore" is highly racialized and classed, the image of the deviant mother is similarly racialized and classed through law. The "Welfare Queen" is an image that emerged in the 1980's as single, non-widowed, black women were portrayed as lazy, immoral, promiscuous women who would bear children simply to collect more Welfare benefits (Neubeck & Cazenave 2001). This image was used to justify economic violence against black women. Black women were (and are) more often denied aid from government institutions and Welfare policies have been eroding due to the evocation of this image by politicians (Abramovitz 1988, Neubeck & Cazenave 2001). The racialized and classed images of the "Jezebel" and "Welfare Queen" that hinge on sexual expression facilitate sexual and economic violence against women of color, particularly black women, in the United States.

The Whore [Jezebel]

The "truth" about sexual expression, largely solidified in law, is extremely *racialized*. The image of the "virgin" is characterized by whiteness while the image of the "whore" is represented by women of color, primarily black women (Valenti 2009). Our societal vision of "purity" as the right kind of sexual expression is the monogamous, faithful, and procreative sexual expression that I explored in my analysis of marital law. This image, however, is also

white. Conversely, the image of the whore, characterized by multiple partners and sex for pleasure/money, as I explored in my analysis of anti-prostitution law, is also characterized by women of color, especially black women.

Kimberlé Crenshaw explains the history of the sexualization of women of color when she writes, "Sexualized images of African-Americans go all the way back to Europeans' first engagement with Africans. Blacks have long been portrayed as more sexual, more earthy, more gratification-oriented; these sexualized images of race intersect with norms of women's sexuality, norms that are used to distinguish good women from bad, madonnas from whores" (1995, p. 369). Black women, sexualized as black people have been sexualized, are unable to ever reach the image of "purity" that is the valued form of sexual expression in our society. This cultural ideal is exclusive to white women (Valenti 2009).[15] Angela Davis contends that this hyper-sexualization of African Americans creates an image of black women as "chronically promiscuous" and of black men as "rapists" (1998, p. 133). The Combahee River Collective, in their *A Black Feminist Statement,* list "whore" as one of the many stereotypes given to black women (1981). The stereotype of the black woman is "promiscuous" or as the "whore" has serious implications for black women in our society.

I have argued in this thesis that the characteristic of promiscuity is negatively stigmatized in our society. My analyses of marriage and anti-prostitution laws have demonstrated that certain kinds of sex, those that are monogamous, faithful, and focused on procreation, are valued while others, those that are multiple-partnered and focused on economics/pleasure, are not valued.

[15] This is a cultural ideal that is valued in society. Its exclusion of non-white people thus marginalizes those people. However, the standard that this ideal holds white women to is also unhealthy and oppressive, as it contributes to a sex-negative culture in which women are distanced from their bodies and their sexualities as "virginity" is upheld as the ultimate good. See Valenti, Jessica (2009). *The Purity Myth: How America's Obsession with Virginity is Hurting Young Women*.

Women of color, regardless of their sexual expression, have historically been lumped into the "promiscuous" category (Crenshaw 1995, Davis 1998, Combahee 1981, West 1995).

In chapter three, I presented results from my interviews that contended that the terms "whore," "slut," and "loose woman" are negative and refer to a woman's promiscuity. My interviewees said that they would never willingly identify with these terms and that women were often identified this way even when they were not, in reality, promiscuous largely due to their clothing, demeanor, or without cause at all. Most of the women who I interviewed (eight of the ten) were white women and I think that this is perhaps a limit of my interviews because if I had interviewed more women of color, they may have different opinions about how one comes to be identified as a "whore" because this image is so often connected with women of color. But even with this limitation, my results demonstrated that promiscuity is a negatively stigmatized characteristic of sexual expression. If women of color, especially black women, are stereotyped as promiscuous and if the image of the "whore" is that of a black woman, then those women, regardless of their sexual expression, suffer from this negative stereotype in society.

When I refer to the "image" of the whore, it is necessary to recognize that this image, like all of our cultural images, has great power in society. These stereotypical images can be defined as "controlling images," to use Patricia Hill Collins' term (1993). One such image is that of the "Jezebel." The Jezebel is a hyper-sexual black woman who possesses many "desirable," "white" features like thin lips and lighter skin. She is constantly seducing men, especially white men. The Jezebel image originated in slavery, when slave masters used this image to justify raping their slaves in order to increase their wealth (West 1995). Carolyn West analyzes the way that the image of the Jezebel is internalized by society. She cites surveys that have shown that participants tend to think it is more acceptable to date rape black women and that conviction

rates are lower for black-on-black rape than for white survivors of rape. West writes, "The perpetuation of the Jezebel image reinforces and justifies sexual exploitation…it affirms the myth that Black women cannot be victimized due to their wanton sexual nature" (1995, p. 463).

The image of the Jezebel, the promiscuous woman of color, the black whore, is solidified by *and* is a cause of the way that the law is enforced in sexual assault and rape cases. The racialized image of the "whore" legitimizes sexual violence against women of color. In her essay, *Naked Without Shame,* bell hooks writes that, "[I]t was impossible to ruin that which was received as inherently unworthy, tainted, and soiled" in reference to the way that the stereotype of promiscuity legitimizes violence against women of color (1998, p. 69). Davis agrees with hooks as she contends that in the post-Civil War United States, rape of black women was legitimized by the representation of black women as "promiscuous and immoral" (1998, p. 131). The image of the promiscuous black woman justifies violence against women of color. This justification is mirrored in the courts. Crenshaw contends that, "These narratives may explain why rapes of black women are less likely to result in convictions and long prison terms than are rapes of white women" (1995, p. 369). She argues that narratives like that of the Jezebel and the promiscuous woman of color function to position women of color as bodies that *can* be violated. The fact that people who rape black women, in comparison with those who rape white women, are less likely to be charged with rape and when charged and convicted, are less likely to receive significant jail time illustrates the way that these narratives are solidified in law. The acceptance of the image of the promiscuous black woman *facilitates* the imposition of less severe punishments for rapists of black women (as the image indicates that non-white bodies are seen as inherently impure and the violation, therefore, is less of an offence) and is simultaneously *solidified* by the less severe punishments of perpetrators of black women (sending the message

that a violation of a non-white body is less of an offence because those bodies are inherently impure) (Crenshaw 1995).

The image of the "whore," with the complicity of the law, is not only racialized, but it is also highly *classed*. Lower-class prostitutes are punished much more frequently and severely than their high-class counterparts. In their work, Rebecca Hayes-Smith and Zahra Shekarkhar cite studies by Roby, P.A. who, in 1975, "found that call girls were less likely to be arrested than street prostitutes" (2010, p. 52). Hayes-Smith and Shekarkhar postulate that this result could be due to the fact that street prostitution is more visible than escort services (2010). Nevertheless, the fact that lower-class prostitutes are more often punished than their higher-class counterparts serves to solidify a *classed* image of the "whore." The "whore" is not the high class call girl being driven around in her clients' limos, but rather the destitute, promiscuous black woman, servicing her clients in a motel room after shooting up with heroine. This image was reflected in the interviews that I conducted. All of the ten women I interviewed said that characteristics associated with prostitution were negative. They associated drugs, poverty, and desperation with the profession. Though they did not mention anything about race, they did say that they typically viewed prostitution as a profession of last resort. Two of the women brought up the movie *Pretty Woman* when discussing their image of prostitution. This movie depicts a typical societal view of prostitution. The character played by Julia Roberts is a poor, crude woman who is in desperate need for money. A rich business man, played by Richard Gere, then picks her up and "makes her a woman" by buying her expensive clothes and the like. The women used a reference to this movie to describe their image of prostitution – that it is a job for poor, uneducated (Roberts' character's aspiration is to go back to school and get her GED), un-lady-like women who have no other options. So these two references to *Pretty Woman* indicate that there is certainly a

pervading classist aspect of prostitution in society. Apart from these two, all of the ten women said that they viewed prostitution as a profession for women who are in desperate need of money.

The Welfare Queen

The parallel maternal image to the Jezebel is that of the "Welfare Queen." The Welfare Queen is an unmarried mother who is seen as dishonest, irresponsible, immoral, promiscuous, and who has children just to get more welfare benefits (Neubeck & Cazenave 2001). It is important to note that much of the negativity associated with this image is premised on deviant sexual expression, as was the similar case for the Jezebel. That the Welfare Queen is seen as "immoral" and especially "promiscuous" reflects my argument: that the law is able to solidify valuations of certain forms of sexual expression. The criminalization of prostitution, as I have argued, especially in chapter three, solidifies and propagates negative norms about sexual expression and about promiscuity in particular. Understood to function with marriage law, we see that sex outside of the context of marriage is highly stigmatized in our society. As such, the Welfare Queen is a *deviant* kind of mother. This image is highly racialized (she is typically black and certainly never white) and classed. As another controlling image, the Welfare Queen is used to justify economic violence against people, especially women, of color just as the image of the Jezebel was used to justify sexual violence.

In their book, *Welfare Racism*, Kenneth J. Neubeck and Noel A. Cazenave contend that the Welfare Queen is "one of the most powerful racialized cultural icons in contemporary U.S. society" (2001, p. 3). This is due to the linkage politicians have successfully made between "welfare" and "black." Welfare is seen as a "black problem" in the United States even though the

amount of white recipients of welfare has been consistently equal to the amount of black recipients. Neubeck and Cazenave report that the percentage of families receiving welfare in 1996 was 37% African American and 36% white. Nevertheless, survey research showed that in the same year, many European Americans viewed welfare as a "black problem" and that they believed African Americans "preferred to live off welfare instead of working" (2001, p. 5).

Black mothers are transformed into Welfare Queens through this stereotype as they are depicted as preferring to have children to rip off the government rather than working. Such an image has real, material consequences as it facilitates economic violence against women of color. While the image of the Welfare Queen was largely popularized and demonized in the 1980's, the idea that black women are lazy, immoral, and promiscuous has long been around (without the "face" of the Welfare Queen to it). When Mothers' Pension Programs were first established in 1911 to provide aid to mother-headed families, states had the ability to decide which women were "deserving" of aid and which were not. Much of the time, "deserving" and black were incongruent. Mimi Abramovitz explains, "In most states, 'fit and deserving' mothers turned out to be widowed and white, that is, those most able to comply with the prevailing family ethic, leading many states to call the program 'widows' pensions.'…Such eligibility rules distinguished among women according to their marital status and denied aid to other husbandless women viewed as departing from prescribed wife and mother roles" (1988, p. 200-201). Not only was *color* a characteristic that was penalized by the law, but non-traditional sexual alignments, specifically those that did not (or had never) involved a man were seen as negative and "undeserving" of aid. "Deserving" was characterized by a previous marriage that ended only because the man died and by white skin (Abramovitz 1988). The practice of denying aid to those who did not possess these characteristics was a consequence of the image of the Welfare Queen

and simultaneously solidified and propagated that image. Consistently denying women of color aid from the government solidified their lower-class position (though the aid provided was so miniscule that many women still had to work while receiving Mothers' Pension just to make ends meet). While the aid was so low, *not* receiving the aid disadvantaged poor black women more than their white counterparts (Neubeck & Cazenave 2001). In order to receive aid from the Mothers' Pension Programs, a woman had to prove that she provided a "suitable home" for her children. Neubeck and Cazenave contend that controlling images facilitated the denial of aid to black women as they write, "Hostile sentiments were strongest in the southern states, where they reflected the strength of racist culture and the negative controlling images of lazy, immoral African-American women that whites had constructed to help justify slavery. However, such sentiments existed across the nation" (2001, p. 43). These images, previously used to justify slavery, were now used to justify economic violence against women of color (Neubeck & Cazenave 2001).

These Mothers' Pension Program policies also encouraged nuclear families and punished those organizations that had not been aligned with the "traditional" family. The programs sought to keep women in the house. Though the low amount of aid provided rarely succeeded in doing so, it is important to recognize that the motivation behind these programs was to make it possible for the woman to stay in the house as a homemaker, caring for children. These programs, along with Welfare policies that encouraged the man to enter the labor force, encouraged a nuclear family organization. When a man was not available to support the woman (and only because he died), then the government filled the role of "bread winner." This is simply a realignment of the same patriarchal structure as women move from subordination to a man to subordination to the government (Abramovitz 1988). This domestication of the woman reinforces the maternalization

and subordination of the woman. Abramovitz says that "…compliance with the family ethic became the basis for distinguishing between deserving and undeserving women" (1988, p. 3). Non-widowed women were seen as deviant as they had children either out of wedlock or with someone with whom they subsequently ended a marriage. Such an image of deviancy prevails today. In my interviews, all of the women mentioned that a main reason to get married is to have children. I explored the linkage between marriage and families in chapter two, where I examined the focus on procreation that marital relationships have. Breaking away from the traditional family, one that involves a marital relationship as its core, is punished in many ways, including by denial of government aid (Fineman 1995).

The economic violence that government laws and policies have historically inflicted on women of color through their denial of services to these women continues today. Even though Welfare programs are not serving black women or women of color more than white women, there is a societal perception that they are. Characteristics attributed to black women during slavery like those of laziness and promiscuity continue to hold weight today. These characteristics have not only been used to deny aid to women of color but they have also been invoked to cut back the discriminatory programs themselves. Welfare reform has been mobilized and promoted by the invocation of these controlling images in order to halt these programs. Mothers' Pension Programs were replaced in 1935 by the Aid to Dependent Children program (later the Aid to Families with Dependent Children (AFDC)), which was actually more comprehensive but nevertheless extremely biased toward white mothers and families. This program was abolished in 1996 with President Clinton's Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). The abolition of this program was largely premised on the idea that this program was producing "Welfare Queens." The racialized and classed image

of the Welfare Queen reached a level of national hysteria in the 1980's. Neubeck and Cazenave describe this phenomenon: "Black mothers receiving welfare have been cast not simply as prototypical villains, but as a collective internal enemy that threatens the very foundation of U.S. society" (2001, p. 3). This controlling image of the threatening, immoral, promiscuous, selfish enemy was used to abolish Welfare programs that were serving the nation's poor families, albeit in a discriminatory manner (Neubeck & Cazenave 2001).

The controlling image of the Welfare Queen, even before it was ever given this term, has been used to inflict economic violence on poor communities of color throughout history, and continues to do so today. This image has been used to deny aid to black women and their families, thus further disadvantaging them (as they are already members of the lower class in their economic status). The inherent promiscuity of black women, used to justify sexual violence, is also invoked to justify this economic violence (Neubeck & Cazenave 2001). "Gendered racism, and the controlling images it fostered, invoked stereotypes of African-American women that harkened back to slavery, including their supposed laziness, immorality, and sexual promiscuity. Such stereotypes rendered black mothers' homes 'unsuitable' by definition, even if they were widows" (Abramovitz 1988, p. 45). These stereotypes were used to deny aid to black women, as Abramovitz explains, and are continually used today to justify revoking government aid programs like Welfare. The existence and functioning of government programs like Welfare are driven by racialized images of deviant mothers (as "black" and "welfare" are inextricably linked) while they are simultaneously constitutive of this image (as a "Welfare Queen" cannot exist without Welfare).

Both of these controlling images, the Jezebel and the Welfare Queen, are racialized and classed images premised on sexual expression that function to justify sexual and economic

violence against women of color. This justification, this violence, is the real, material effect of images of sexual expression that are solidified in law. Solidifying and propagating a specific kind of sexual expression functions to marginalize and demonize those who do not comply, resulting in violence.

The Limit of the Law

Occasionally there are efforts to incorporate more kinds of individuals or lifestyles into a society. There is sometimes a movement to address the sexual and economic violence that is waged by the state and by members of society against those bodies fitting the racialized and classed "Jezebel" and "Welfare Queen" images. In order to maintain its dominance, the state will gradually accept and incorporate some bodies, giving the impress of "progress." In reality, though, this incorporation only further marginalizes those bodies which will never be considered subjects to the state. This latter category of bodies serves as the "human surplus" in a society (Davis 2003, Agathangelou et al. 2008).

The state accepts the existence of the *right* kind of deviant bodies in order to give the perception that "progress" toward acceptance and "multiculturalism" is occurring. However, this acceptance can only occur with the *right* kinds of bodies that are only partly removed from the dominant norm. In order to maintain state dominance, two kinds of bodies are created. The first are those deviant bodies to whom acceptance and inclusion is consistently promised. The second category include those (non)subjects to whom the state promises nothing, but rather exploits for power (Agathangelou et al. 2008).

Applying this frame to sexual expression, the first category of individuals, those to whom inclusion and acceptance is perpetually promised, includes homosexuals. There has been mass

movement in support of same-sex marriage and "gains" have been made. As I cited in chapter two, same-sex marriages are legal in Connecticut, Washington D.C., Indiana, Massachusetts, Vermont, and New Hampshire. Civil unions exist in Illinois, Hawaii, and New Jersey. Domestic partnerships are available in Oregon, Washington, Nevada, and California. For many same-sex couples and activists, the inclusion of homosexuals into the legal institution of marriage is seen as "progress." However, if a broader understanding of the state system is employed, it is obvious that the inclusion of homosexuals into the institution of marriage does not challenge the exclusionary structure upon which the institution of marriage is based that functions to marginalize those sexualities that will *never* be sanctioned by marriage, like, for example, sex work (Warner 2002, Agathangelou et al. 2008). It could be argued, as Agathangelou does, that the gradual inclusion of same-sex couples into the institution of marriage functions to create a new kind of normativity, a homonormativity. This functions to frame the *good* queer citizen who is male, white, upper class, patriotic, and who has a long-term, loving relationship that mirrors that of a heterosexual marriage. This subject is only once removed from the dominant norm in that he is homosexual. But his homosexuality is not *that* deviant of a sexual expression, as he is in a normative relationship that possesses all of the characteristics promoted by marital law including monogamy, fidelity, and family-oriented. This image functions to create a "new" kind of normativity that is really only different in one way from the dominant normative image of sexual expression and therefore can be accepted by the state (Agathangelou et al. 2008).

This new homonormative image is lauded by activists and members of society in general as evidence of "progress" toward a more egalitarian society. However, this image really functions only to further marginalize those individuals and those sexualities that are not promised inclusion and are never even considered subjects by the state (Agathangelou et al.

2008, Warner 2002). This image, for example, does not work toward including the Jezebel. She will never be included into society or into the institution of marriage. She is hyper-sexual, in contradiction with the principles of monogamy and fidelity on which both marriage and homonormatization are based. She seeks sex for pleasure, she is a seductress. She does not wish to raise a family behind a white picket fence. The increasing normalcy of two father families only furthers the subjugation of the Jezebel and the deviant sexuality that she possesses. This homonormatization solidifies the image of the nuclear family, one that is no longer premised on a heterosexual, romantic relationship, but is nevertheless premised on a romantic relationship that is monogamous, faithful, and focused on procreation. The strengthening of this "alternative" image further solidifies the deviancy of those images that will never fit such a mold (Fineman 1995, Agathangelou et al. 2008, Warner 2002). The Welfare Queen, husbandless and promiscuous, could never be the moral, faithful subject who cares for her children. She has children just to cheat the government out of money; she does not seek to provide a loving household for her children (Neubeck & Cazenave 2001). Her way of life, rather than benefiting from the "progress" of incorporating "more" kinds of "alternative" living structures into our society, actually suffers from her further marginalization and demonization that ensues.

The Jezebel and the Welfare Queen are members of the second category, the (non)subjects to which the state promises nothing. As two father families are "incorporated" (and told that they will, if they just wait, eventually achieve the privilege that the dominant norm has), the Jezebel and the Welfare Queen are "quarantined" (as discussed in chapter two). The incorporated individuals solidify the hold that the state has over its citizenry, a hold that retains power through its exploitation of the quarantined. This is understood as a "dual process" in that it is, "allowing white, middle-class lesbian, and gay sexualities to enter citizenship while

simultaneously participating in the policing and criminalizing of racially pathologized sexualities seen as threatening to the nation: the terrorist, the inmate, the 'welfare queen,' the illegal alien" (Agathangelou et al. 2008, p. 127). Certain bodies are able to be accepted: the white ones, the chaste (and therefore white) ones, the family-oriented ones. Other bodies are (and will always be) relegated to (non)subjects: the black ones, the promiscuous (and therefore black) ones, the pleasure-oriented ones. An image of sexual expression cannot be understood without the racialized and classed elements that help define it. This racialized and classed image, then, cannot be understood without a view of the violence that it justifies and inflicts (Agathangelou et al. 2008, Warner 2002, Alexander 1994).

The constant promise of the state to include certain deviancy, the right kind of deviancy, functions to obscure the real stagnancy and lack of progress in society (Agathangelou et al. 2008). As certain sexualities are incorporated and given more value, others are simultaneously further oppressed (Agathangelou et al. 2008, Warner 2002). Like Warner contends, endowing certain subjects with value necessarily means that others are being denied such value. If there were no subjects lacking the value, then the value would not exist (Warner 2002). This process of "incorporation and quarantining" functions to constantly consolidate the power of the state (Agatangelou et al. 2008).

Simply including more subjects into the state's citizenry (by endowing them with rights and their lives with value) is not "progress." Instead, it just obscures how faulty and oppressive the structure of the state is. But this is part of the state's "divide and conquer" function. Grouped into "identities," like race, class, and gender, oppressed people are divided. When these groups try to struggle for inclusion, they only validate the flawed structure of the state that oppresses

them. bell hooks cites a Brazilian scholar, Heleith Saffioti, who emphasizes the ignorance of class oppression in the women's movement. She writes,

> "…they sought merely to expand the existing social structures, and never went so far as to challenge the state quo. Thus, while petty-bourgeois feminism may always have aimed at establishing social equality between the sexes, the consciousness it represented has remained utopian in its desire for and struggle to bring about a partial transformation of society; this it believed could be done without disturbing the foundations on which it rested…In this sense, petty-bourgeois feminism is not feminism at all; indeed it has helped to consolidate class society by giving camouflage to its internal contradictions…" (hooks 2000, p. 20).

Instead of seeking to change the structure of society, Saffioti contends that the women's movement in Brazil has only sought to include more and more people (women in this case) and thus ignored the further class oppression that ensued. None of this activist work is "progress," "reform," or "growth," but instead it only functions to validate the current, oppressive, state system (hooks 2000, Agathangelou et al. 2008). These small "gains" placate those subjects who would otherwise be revolutionaries, seeking to change the structure of the state (Agathangelou et al. 2008). Segregated movements do not recognize the way that their oppressions are linked, and thus fight only for their own inclusion (hooks 2000). Audree-Nicola McLaughlin, in the film *Feminism: Controversies, Challenges, and Actions*, purports that feminism is not about equality. The question to ask now, she says, is, "equal to what? Equal to oppressor?" This question gets at the crux of the issue: that a movement for equality, for inclusion obscures a critique of the structure into which entrance is being sought (McLaughlin 2005, hooks 2000). Thus, a movement focusing on inclusion, on reform, on gaining more right for more groups, is not progress. Changing laws is not progress because the oppressive state structure remains (hooks 2000, McLaughlin 2005, Agathangelou et al. 2008, Warner 2002).

Conclusion

Sexual expression is an extremely influential factor in many of the stereotypes associated with certain women. West writes, "Throughout history female sexuality has been dichotomized, with traditional sex role stereotypes depicting 'good' women as moral, nonsexual, passive, and more romance oriented. In contrast, sexually 'loose' women were not virginal, but rather desired and initiated sex, often outside the confines of marriage" (1995, p. 462). The characteristics of marriage-like relationships are solidified in society as normal, right, and natural while those opposed, like those associated with prostitution, are stigmatized as weird, wrong, and unnatural. The law has a role in solidifying these normative values, in both its ability to concretely reward and punish behavior and its ideological solidification and propagation of norms (Hunt 1993, Merry 1988, Fineman 1995, Foucault 1978, Frug 1992, Sarat & Kearns 1992).

Apart from written law, it is important to recognize that the way law has a role in the solidification of norms and the construction of controlling images (Alexander 1994, Frug 1992, Warner 2002). Images like the Jezebel and the Welfare Queen are racialized and classed images of sexual expression that function to justify sexual and economic violence against those subjects who are not privileged by the law. The continued promise of equality to certain subjects, those that are only partially removed from the dominant norm, is premised on the lack of a promise, perpetual denial of value to another set of individuals, the (non)subjects like the Jezebel and the Welfare Queen. This illustrates the limit of the law as even when certain subjects are incorporated into society, others are only further marginalized (Agathangelou et al. 2008, hooks 2000).

In order to attempt to make any kind of positive progress toward a more egalitarian, less violent society, it will be necessary to analyze the structures that produce our reality, to analyze

and critique our truths. The law, as it occupies a significant and powerful place in society, is one locus in which this analysis must take place. In this thesis, I have worked to contribute to the body of literature critiquing the place of law in our society through my analysis of marital and anti-prostitution law and of sexual expression. There is more work to be done, as there will always be more work to be done. The kind of deconstruction that is necessary in order to critique the law is an ongoing process of questioning and it does not lend itself to proof, objectivity, and causal relationships. Though this process is not easy, it is necessary if we are to achieve an elimination of oppression in our society.

Works Cited

Abramovitz, M. (1988). *Regulating the lives of women: Social welfare policy from colonial times to the present*. Boston, MA: South End Press.

Agathangelou, A. M., Bassichis, D. M. & Spira, T. M. (2008). "Intimate Investments: Homonormativity, Global Lockdown and the Seductions of Empire. *Radical History Review. 100,* 120-143.

Alexander, J. M. (1994). Not Just (Any) Body Can Be a Citizen: The Politics of Law, Sexuality, and Postcoloniality in Trinidad and Tobago and the Bahamas. *Feminist Review 48*: 5-23.

Bartlett, K. T., & Kennedy, R. (1991). *Feminist legal theory: Readings in law and gender*. Boulder: Westview Press.

Bedrick, B. (2004). Same Sex Marriages. In Perkins, J. (Ed.), *Defense of Marriage: Does it Need Defending?* New York: Novinka Books.

Brownmiller, S. (1975). *Against our will: Men, women and rape*. New York: Simon and Schuster.

Combahee River Collective (1981). A Black Feminist Statement. In Moraga, C. & Anzaldúa, G. (Eds.), *This Bridge Called My Back: Writings by Radical Women of Color*. Berkeley, CA: 3rd Woman Press. 234-244.

Crenshaw, K. (1995). Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color. In Crenshaw, K., Gotanda, N., Peller, G., & Thomas, K. (Eds.), *Critical Race Theory: The Key Writing That Formed the Movement*. (357-383). New York, NY: The New Press.

Davis, A. Y. (1998). "Rape, Racism, and the Capitalist Setting." *The Angela Y. Davis Reader.* 129-137. Ed. James, J. Malden: Blackwell.

Davis, A. Y. (2003). *Are prisons obsolete?*. New York: Seven Stories Press.

Hill Collins, P. (2000). *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. New York, NY: Routledge.

Engels, F., & In Leacock, E. B. (1972). *The origin of the family, private property, and the state, in the light of the researches of Lewis H. Morgan*. New York: International Publishers.

Fineman, M. A. (2006). The Meaning of Marriage. In Bernstein, A. (Ed.), *Marriage proposals: Questioning a legal status*. New York: New York University Press.

Fineman, M. A. (1995). *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies.* New York, NY: Routledge.

Flanagan, Caitlin. (July 13, 2009). Why Marriage Matters. *Time Magazine*, 174 (1), 46.

Foucault, M. (1971). *The order of things: An archaeology of the human sciences*. New York: Pantheon Books.

Foucault, M. (1977). *Discipline and punish: The birth of the prison*. New York: Pantheon Books.

Foucault, M. (1978). Translated by Hurley, Robert. *The History of Sexuality. Volume I: An Introduction*. New York, NY: Pantheon Books.

Frankenberg, R. (1993). *White women, race matters: The social construction of whiteness*. Minneapolis: University of Minnesota Press.

Frug, M.J. (1992). A Postmodern Legal Manifesto. *Postmodern Legal Feminism*. (pp. 125-207). New York, NY: Routledge.

Hayes-Smith, R., & Shekarkhar, Z. (January 01, 2010). Why is prostitution criminalized? An alternative viewpoint on the construction of sex work. *Contemporary Justice Review, 13,* 1, 43-55.

hooks, bell (1998). "Naked Without Shame: A counter-hegemonic body politic." In Shohat, E. (Ed.), *Talking Visions: Multicultural Feminism in a Transnational Age*. Cambridge, MA: MIT Press.

hooks, b. (2000). *Feminist theory: From margin to center*. Cambridge, MA: South End Press.

Hunt, A., & Wickham, G. (1994). *Foucault and Law: Towards a Sociology of Law as Governance*. Boulder, CO: Pluto Press.

Hunt, A. (1993). *Explorations in law and society: Towards a constitutive theory of law*. After the law. New York: Routledge.

Jaggar, A. M. (1980). Prostitution. In A. Soble (Ed.), *The Philosophy of Sex: Contemporary Readings* (pp. 348-368). Totowa, NJ: Rowman and Littlefield.

Klein, B. & Redman, D. (2009). From Separate to Equal: Litigating Marriage Equality in a Civil Union State. *Connecticut Law Review*, 41, 1381.

Lacayo, Richard. (June 8, 2009). A Justice Like No Other. *Time Magazine*, 173 (22), 25.

Lemoncheck, L. (1997) *Loose Women, Lecherous Men: A Feminist Philosophy of Sex.* New York, NY: Oxford University Press.

Lonsway, K. A. and Fitzgerald, L. F. (1994), RAPE MYTHS. In Review. *Psychology of Women Quarterly*, 18: 133–164.

MacKinnon, C. A. (1989). *Toward a feminist theory of the state*. Cambridge, Mass: Harvard University Press.

Marriage Rights and Benefits. Retrieved on October 20, 2009 from Nolo.com http://www.nolo.com/legal-encyclopedia/article-30190.html.

Marx, K., & Engels, F. (1998). *The Communist manifesto*. New York, NY: Signic Classic.

McCaul, K. D., Veltum, L. G., Boyechko, V. and Crawford, J. J. (1990). Understanding Attributions of Victim Blame for Rape: Sex, Violence, and Foreseeability. *Journal of Applied Social Psychology*, 20: 1–26.

McLaughlin, A. N. *Feminism: Controversies, Challenges, and Actions.* Retrieved from http://vimeo.com/6738108.

Merry, S. E. (January 01, 1988). Legal Pluralism. *Law and Society Review, 22,* 5, 869-896.

Neubeck, K. J., & Cazenave, N. A. (2001). *Welfare racism: Playing the race card against America's poor*. New York: Routledge.

Rubin, H. J., & Rubin, I. (1995). *Qualitative interviewing: The art of hearing data*. Thousand Oaks: Sage Publications.

Sarat, A., & Kearns, T.R. (1992). *Law's Violence*. Ann Arbor, MI: University of Michigan Press.

Sears, L.R. (2001). Punishing the Saints for Their "Peculiar Institution": Congress on the Constitutional Dilemma. *Utah Law Review*, 3. 581-654.

Silverman, D. (2000). *Doing qualitative research: A practical handbook*. London: Sage Publications.

Simon-Kerr, J. (June 01, 2008). Unchaste and incredible: The use of gendered conceptions of honor in impeachment. *Yale Law Journal, 117,* 8, 1854-1898.

Smith, A. (2004). Same Sex Adoptions. In Perkins, J. (Ed.), *Defense of Marriage: Does it Need Defending?* New York, NY: Novinka Books.

Smith, P. (1993). *Feminist jurisprudence*. New York: Oxford University Press.

Suarez, E., & Gadalla, T. (January 01, 2010). Stop Blaming the Victim: A Meta-Analysis on Rape Myths. *Journal of Interpersonal Violence, 25,* 11, 2010-2035.

Sudbury, J. C. (2005). *Global lockdown: Race, gender, and the prison-industrial complex*. New York, NY: Routledge.

Valenti, J. (2009). *The purity myth: How America's obsession with virginity is hurting young women*. Berkeley, CA: Seal Press.

Warner, M. (2002). Beyond Gay Marriage. In W. Brown, & J. Halley (Eds.), *Left Legalism / Left Critique*. (pp. 259-289). Durham, NC: Duke University Press.

Weisberg, D. K. (1993). *Feminist legal theory: Foundations*. Philadelphia: Temple University Press.

West, C. M. "Mammy, Sapphire, and Jezebel: Historical Images for Black Women and Their Implication for Psychotherapy." *Psychotherapy* Vol. 32 (fall 1995).