

# POLICING PROSTITUTION IN THE EARLY UNITED STATES: SEXUAL EQUALITY AND DISCRETIONARY INEQUALITY

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## Abstract

*There were few clear rules governing the policing of prostitution in the early United States. Discretion was decisive. Prostitutes who were poor and black were the most vulnerable to arrest. State and local officials clearly had the authority to police all commercial sex but generally chose to tolerate it most of the time, and sometimes found themselves defending the property rights of commercial sex businesses. Although many reformers worked hard to make prostitution a high-priority public issue, neither the majority of citizens nor the average political official heeded them other than on a periodic basis. Two factors explain the vast gulf between legal authorization to police prostitution and extremely limited enforcement. One factor involved the male public's belief that prostitution was morally wrong but was in itself no urgent matter. That was because the ancient idea of male sex-right persisted into nineteenth-century America. The other factor was that the male officials who staffed the criminal justice systems of the nation and the states simply refused to police the men who patronized prostitution. Occasionally, they policed the women who worked in the commercial sex industry. The overall message of nineteenth-century American criminal justice systems was that women and men were equally responsible for licentiousness, prostitution, and brothels but male officials used their discretion to ensure that only women were vulnerable to the arrests, prosecution, and punishments for sex crimes.*

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People complained about “debauchery” in colonial Boston, Philadelphia, and New York City, but “there was relatively little commercial sex in the colonies and the early republic” (Gilfoyle, 1992, 26). Barbara Hobson argues that moral reformers “discovered” prostitution as a troublesome institution in the early nineteenth century (Hobson, 11). They portrayed it as a manifestation of widespread immorality among both men and women, and they urged public officials to prosecute it, punish it, and eradicate it—despite the fact that, historically, prostitution had been “resistant to nearly all efforts to suppress it” (Hobson, 3). Officials verbally agreed on the need to attack prostitution and then used their discretion to decide whether or not to police prostitution. Usually, they chose to tolerate it among male patrons but prosecute it among female sex-workers.

### **The Meaning of Prostitution**

What counted as prostitution was ambiguous. From the time young girls reached their teens, “sexual bartering” was a common element in relations between the sexes. Girls learned to trade sexual favors for male attention as well as for food, rent, clothes, and entertainment. Low-income working women sometimes supplemented meager earnings with casual prostitution (Stansell, 176, 179-80, 182; Hobson, 15). Many women quietly traded sex for favors. Others worked in small-scale brothels that rented rooms and conducted business amidst other tenants. Only a percentage of prostitutes worked in established parlor houses, brothels, and cribs, and they tended to be an itinerant population that moved from house to house and city to city. Most prostitutes were young women who temporarily practiced the profession between conventional jobs or while holding conventional jobs. Part-time prostitutes considered commercial sex as seasonal work or as something to fall back on during hard times (D’Emilio and Freedman, 132-33). Hobson’s overall assessment is that “Prostitution was an unstable and transitory situation for most women in it” (Hobson, 15, 87, 106-07, 109).

Public preconceptions and prejudices enlarged the perceived prostitute pool. Respectable citizens might view any woman “who was sexually active outside of marriage as a prostitute.” Promiscuous single women along with adulterous or bigamist wives were sometimes lumped together with prostitutes. Self-supporting single women and women “on the town” were commonly considered prostitutes. Women who entered taverns without proper male escorts might be seen as prostitutes (Salinger, 225). Any woman who seemed to be idle, dissolute, inebriated, or disorderly in public was apt to be counted as a prostitute (Stansell, 97-99; see also Cohen, 1993, 140-41).

As this discussion suggests, public discourse about prostitution focused primarily on women. Respectable citizens and political authorities identified prostitution with the female sex. Moralists defined commercial sex as a problem produced by fallen women. Carole Pateman observes, “The patriarchal assumption that prostitution is a problem about women ensures that the other participant in the prostitution contract escapes scrutiny” (Pateman, 193-94). Missing from most public discourse was recognition that prostitution was based on traditional, patriarchal notions of male sex-right (men’s right to access women’s bodies) or that prostitution was sustained by patrons “who must have been men who approved prostitution, at least for themselves” (Riegel, 439). Some moral reformers did discuss male culpability even

though public discourse mostly identified prostitution as a social problem created and perpetuated by women (Hobson, 34).

Moral reformers, civic leaders, and public officials regularly asserted that prostitution was a social problem that demanded moral policing. William Novak points out that the legality, ideology, and practice of moral policing was commonplace in nineteenth-century America. It was considered “one of the matter-of-fact obligations of government in a well-regulated society.” Although reformers were committed to the power of moral suasion, they regularly agitated for new laws, for example, to suppress intemperance or close down brothels. They applauded public officials who exercised discretion and employed state coercion to police people’s moral choices (Novak, 151, 153, 158, 169, 189). Those choices were seen as especially consequential for youths. Reformers concerned about juvenile delinquency located the first causes of youths’ antisocial behavior in the “bad example” set by “parents and guardians.” Adults who exhibited a lack of self-control, failed to transmit robust values, or provided inadequate support for their families often raised unruly children who became involved in vagrancy and begging, and then stealing, promiscuity, and prostitution, as well as related vices such as smoking, drinking, and gambling (Society for the Prevention of Pauperism, 1823, 17). Delinquent girls who practiced prostitution were thought to suffer an especially “deep depravity” (Freedman, 19). Although females committed fewer crimes than males and were arrested far less often, many females were charged with charged with drunkenness, larceny, and prostitution and spent significant time in local jails (Friedman, 223).

Despite Americans’ conviction that public authorities had a duty to police morality, much of their public talk about sex was reticent, truncated, and ambiguous. Citizens knew that promiscuity and prostitution existed; but few people talked openly about them; and those who did discuss them often apologized for their indelicacy but announced that they felt compelled to address the topic because of its serious consequences. When the Reverend John McDowall published an 1831 report on prostitution in New York City, critics immediately questioned the propriety of his publicizing the issue of commercial sex. McDowall disagreed but conceded apologetically, “We are not disposed to deny that there may be some foundation for such a censure; and yet it must be obvious to everyone that it is extremely difficult to speak of an offensive and disgusting subject, in chaste and pleasing language” (McDowall, v, 94).

Moral reformers who sought to focus public attention on commercial sex faced a daunting challenge. When health advocates tried to demonstrate the harm that youths suffered from chronic masturbation, they began with a ritual announcement that they were reluctant to air the subject in public but “the evil that I am trying to prevent is so enormous and the forces of society and culture arrayed against me are so great that I must speak out” (Horowitz, 2003, 100). McDowell’s exposé of prostitution elicited criticism that his report was “indelicate and deleterious to morals.” Critics claimed it exaggerated the number of prostitutes in New York City. His estimate of 10,000 women in the trade made it seem likely that any woman in public was a prostitute and could be treated as such (Horowitz, 149; Cohen, 1998, 71-72).

Women's voices were absent or devalued in public discussions about sex. Consider court cases in which female victims charged white males with rape. "Almost invariably," Cornelia Hughes Dayton reports, the female victims "saw their accusations discounted or eventually dismissed." The American legal system reproduced the traditional Western assumption that men have a right to women's bodies, and American jurors reproduced the English tendency to cast suspicion on female accusations of rape. When a white male was charged with rape, "male jurors . . . found it difficult to believe that an unmarried woman had truly withheld her consent and had not in some fashion invited the man's advance" (Dayton, 232, 247, 261, 263). Moreover, men's fear that scorned women would use rape charges as means of vengeance against former lovers was repeated decade after decade. And when a known prostitute charged a man with rape, "more often than not the general consensus was that she got what she deserved since she was a 'whore'" (Rutter, ix). Women's voices were devalued and their rights were denied.

Prostitutes themselves were in no position to voice their views or defend their rights. Consider their marketing dilemma. Prostitutes could not advertise their services too blatantly lest they drew public officials' attention to themselves. Streetwalkers were the more noticeable prostitutes, the ones most vulnerable to arrest and summary judgment. In Philadelphia, Billy Smith notes, "The nightwatchmen often picked up streetwalkers . . . as they plied their trade in this neighborhood, charging a dollar or two to each of their customers. When apprehended, they faced thirty days in the city's workhouse" (Smith, 22-23). Women who worked in taverns and brothels where the races mixed for dancing, drinking, and sex were inviting targets for policing. Mary Ryan writes, "It was this audacious publicness of urban sexual commerce that was most likely to inspire public outrage and provoke civic actions" (Ryan, 1990, 89; White, 772). Still, prostitutes had to make their services and locations known to potential customers, develop and maintain customer bases, and make money. They had to be seen and heard but remain inconspicuous. Joshua Rothman concludes, "A peculiar mixture of visibility and camouflage thus characterized prostitution" (Rothman, 104).

The very few writers who defended prostitution had to camouflage their words in the language of moral reform. In the early 1840s, a number of inexpensive "flash" papers appeared in New York City. These tabloids explored "the attractions of prostitutes, provide tour guides to the city's brothels, and give voice to an otherwise hidden community in the city." By publicizing brothel locales and familiarizing readers with the participants, the flash papers normalized commercial sex and made it seem like a legitimate assertion of male sexual prerogative. To avoid censorship and prosecution, however, the editors had to assume the guise, language, and rhetoric of moral reformers. They had to claim that their immediate goal was to expose sexual sin to attack it (Cohen, Gilfoyle, and Horowitz, 2, 9, 13, 74).

Significant numbers of private citizens and public officials did not want prostitution to be policed too consistently or severely. The tradition of male sex-right must have been fairly robust in the early republic (Pateman, 189). Male officials did little to prosecute rapes and male jurors regularly acquitted rapists. Although most Americans condemned rape and the laws provided harsh penalties for it, most men did not think rape was a sufficiently serious

charge to warrant capital punishment. Jurors felt free to acquit perpetrators regardless of the evidence arrayed against them. Not surprisingly, then, many people did not see commercial sex as a particularly pressing problem. It did not necessarily involve coercion or violence. It was comprised mostly of free-market transactions (Hobson, 4). Meanwhile, citizens and public officials often agreed that other moral challenges, such as policing public drunkenness, should take priority. In 1834, the New York Female Moral Reform Society announced that it had made little progress in combating prostitution the previous year because “the excited state of public feeling on other subjects rendered it difficult to accomplish much in the cause of Moral Reform” (New-York Moral Female Reform Society, 1835). The common view was that prostitution was a problem that should be addressed but it was a problem that was neither particularly weighty nor urgent (D’Emilio and Freedman, 132-33; Pateman, 190; Horowitz, 2003, 149). Most Americans learned to tolerate licentiousness. Patricia Cline Cohen notes in her study of murdered prostitute Helen Jewett, “While the existence of widespread prostitution was no secret to urbanites, until the Jewett murder polite society largely ignored the moral reformers’ entreaties and sometimes condemned them for raising indelicate topics” (Cohen, 1998, 21-22).

### **Condemning Prostitution**

Why did critics continue to condemn prostitution despite the indelicacy of speaking about it and despite their fatalistic sense of its inevitability? The list of reasons was extensive. They claimed that prostitution broke God’s law, disrupted families, set a bad example for youths, produced illegitimate births, created social and economic problems, eroded property values, and functioned as a magnet for undesirables and criminal behavior (Riegel, 438-39). Some prostitutes committed infanticide and most prostitutes corrupted their own children. Many seduced innocent young men. Others robbed their clients. Prostitutes usually escaped punishment if only because their victims rarely charged them. McDowall went so far as to assert that just a few prostitutes “suffice to corrupt whole cities” (See Ryan, 1839, 221, 228-29, 235, 241-42). Beneath the specific charges, moralists were concerned that commercial sex was sabotaging the traditional gendered way of life by “destroying families, spreading disease, and corrupting youth.” They contrasted the “‘fallen,’ ‘immoral,’ and ‘disorderly’ women” who were today’s prostitutes “to the holy trinity of femininity, moral virtue, and national welfare” associated with yesterday’s pious wives and mothers. *Moral and religious critics* portrayed prostitution as “as the most obvious manifestation of a more permissive and less family-oriented sexual culture” that emerged in the nineteenth century. By contrast, *public officials* were more interested in mundane law and order matters. They condemned prostitutes mostly for being “nuisances and disorderly persons” and brothels for attracting thugs and criminals. Sex was merely the medium through which public disorder and crime flourished (Godbeer, 321, 323; Hobson, 117).

Some moral critics went further, portraying prostitution as a manifestation of both women’s licentiousness and men’s licentiousness, “the most dangerous and destructive vice incident to the human race.” McDowall wrote,

Licentiousness . . . not only makes the guilty idle, consumes their earnings, deranges their business, blasts their credit, loads them with debts, impoverishes their families, transforms them into paupers, mendicants, vagabonds, and thieves; but it impairs their health, weakens their intellect, vitiates their moral feelings, destroys their self respect, and shortens their lives. Every person intimately acquainted with the administration of justice, and the lives of convicts, knows that most of the murders, manslaughters, riots, tumults, and breaches of the peace, besides a large portion of other offences, for which criminals are convicted and punished, are occasioned by prostitution (McDowell, 12).

The Constitution of the New York Female Moral Reform Society specified the organization's main goal as "the prevention of licentiousness, by diffusing light in regard to the existence and great extent of this sin, by showing its fearfully immoral and soul-destroying influence; by pointing out the numberless lures and arts practiced by the unprincipled destroyer, to seduce and ruin the unsuspecting; by excluding from social intercourse with us, all persons of both sexes who are known to be of licentious habits." The Constitution of the Worcester Moral Reform Society began: "WHEREAS, we are convinced that licentiousness prevails to an alarming extent in our cities and throughout the country, making fearful inroads among our youth, and leading them to crime and infamy, poisoning the fountains of domestic enjoyment, and sundering the ties of kindred, love and humanity, hurrying thousands to a premature grave, and drowning their souls in perdition, threatening to destroy our civil liberties and our religious institutions, by corrupting the morals of the people on which they are based, and by drawing down upon us the just judgments of God. . . ." (New-York Moral Female Reform Society, 1836). Members viewed licentiousness as more than the cause of vices practiced by women and men. It was the root of evil.

Other critics portrayed prostitution as a manifestation especially of women's excessive passions. The passions were not new. However, the appearance of commercial sex in the cities of the early Republic symbolized the disappearance of traditional restraints that had once tied women's sexuality to family reproduction (D'Emilio and Freedman, 51). Prostitutes epitomized lust without limits, or sex without redeeming value. Worse yet, critics claimed, women used sexuality as "a female weapon" for manipulating men and stealing their money. Girls learned to wield this weapon at a young age. A thirteen year-old girl's rape allegations could be challenged by a defense attorney's argument that "carnality comprised the essence of even a female child's character." The attorneys recast the child as a seductress rather than as the victim portrayed by the prosecution (Stansell, 25, 29). Overall, prostitutes became targets for Americans upset by the nature of emerging urban life. Karen Halttunen observes, "Men who killed chaste women were typically found guilty of their crimes. Men who killed the victims of their seduction were frequently convicted. But men who killed prostitutes were acquitted" (Halttunen, 184). Prostitutes were not seen as worthy of compassion, mercy, or justice. They were evil and therefore expendable.

Both religious and secular critics emphasized that prostitutes were a particular threat to young males. Prostitutes used sex as a means to manipulate, control, exploit, and corrupt the unsupervised youths who migrated to urban centers (Cohen, 1998, 404). Health reformers portrayed young males as vulnerable youths who were easily corrupted by the loose women

roaming the nation's cities and by sexual temptations such as the masturbation commonly practiced in boarding schools. Alas, "innocent young men could easily be lead astray by bad women" (Cohen, 1998, 230; Hessinger, 2005, 158). Hopefully, young men avoided corruption by following the guidance of sober, paternalistic mentors and by committing themselves to manly chastity (Hessinger, 2005, 175-76). Equally important, young men could avoid corruption if prostitutes, and therefore temptation, were removed from public venues. England's Patrick Colquhoun recommended to New York reformer Thomas Eddy that summary justice was necessary to get prostitutes off the streets: "Female prostitution, particularly in the cities in America, requires appropriate laws . . . administered in a summary way by the magistrates, by *imprisonment*, or *mild pecuniary fines*. In like manner, brothels ought not to be prosecuted by the tedious and circuitous process of indictment and trial by jury" (Colquhoun cited in Knapp, 186). With boys' souls and fates at stake, perhaps it was best to circumvent due process and get wicked women off the streets as quickly as possible.

This was at best a temporary solution because, it seemed, the supply of prostitutes always rose to meet the demand of customers. Where did they come from? Reformers reported:

There are annually brought into the larger cities from the country, a large number of young women under various pretences, but really for the purpose of supplying the market of sin. Some are brought in under the promise of marriage; and here, friendless and destitute, their seducers abandon them to infamy to hide their own guilt. Others, in coming to the city, are committed by their anxious mothers, to some gentleman for protection, but who gives them the protection the vulture does the dove. And others on visits to their friends are drawn into her doors, whose "house is the way to hell, going down to the chambers of death" (New-York Moral Female Reform Society, 1835).

The transition from "good girl" to prostitute "was not as great as it might seem." A girl who had sex with her betrothed only to be deserted by him suffered the humiliation of a fallen woman. Conditioned by her culture to believe that she was already lost, her foray into casual prostitution merely confirmed her status as a lost soul (Rutter, 5).

Who was ultimately responsible for transforming good girls into prostitutes? The most common answer was the girls themselves. As early as the 1750s or 1760s, suggests Cornelia Hughes Dayton, "the calculus of accountability for sexual transgressions had shifted to suggest that women bore almost the entire responsibility for guarding female chastity." This had several implications. First, it was girls, not boys, who were deemed guilty of fornication. Girls were liable to suffer the humiliation of publicly having to confess their actions and suffering their punishment. When parents of middling and elite status shielded their daughters from publicity, officials targeted their enforcement efforts at poor, marginal, or black women. The result was the "embourgeoisement" of sexual privilege, with privatization of sex for wealthier women and public sanctions for lower-class women (Dayton, 12, 161, 186, 215). Second, neither citizens nor public officials devoted much attention to the male partners of sexually active women. The general assumption was that women bore most of the responsibility, male lust was barely controllable, and women more than men "had a greater

capacity for moral resilience” (Godbeer, 266). Richard Godbeer writes, “Officials treated these women as disorderly, degenerate, and mostly incorrigible. They witnessed and recorded the downward spiral of disease, debility, and destitution into which prostitutes often fell. But they saw that suffering was the price of immorality and lawlessness” (Godbeer, 326).

That price was inordinately extracted from lower-class women. In one rape trial, the defense attorney described an “etiquette of debauchery” that characterized the relationship between sex and class. When a rich man showed interest in a poor girl, the lawyer argued, it was clearly understood that “he intends to make use of her sexually” (Stansell, 24). The upper-class or middle-class lady in public was considered an asexual being whereas women from the poor and laboring classes along with women of color were associated with innate promiscuity and likely prostitution. The journey from promiscuity to prostitution may have been hurried by economic need but the primary cause was generally seen as lower-class women’s moral failure to guard their own chastity (Ryan, 1990, 73; Lyons, 312, 318; Horowitz, 2003, 106, 121).

Most prostitutes were said to come from working-class neighborhoods. They were the daughters of “the ignorant, depraved, and vicious part of our population, trained up without culture of any kind, amidst the contagion of evil example.” Many poor girls became prostitutes “for the gratification of their unbridled passions” (McDowall quoted in Masur, 2001). The emerging ideology of passionlessness deepened reformers’ assessment of working-class prostitutes’ wickedness. If normal women were supposed to have no sexual desires, those women who were “harlots by choice” were sexual deviants, candidates for placement in public institutions such as mental asylums and prisons (Masur, 78; Hobson, 58).

Still, the differences between the good girl from the middle classes and the “hardened veteran harlot” from the working classes were not always great or obvious. Many proper young ladies refused to have sex with interested young men. However, according to one attorney, “Any woman who is not an abandoned prostitute will appear to be averse to what she inwardly desires; a virtuous girl on the point of yielding will not appear to give a willing consent, though her manner sufficiently evinces her wishes.” Sometimes, the case was made that a young man who forced himself on a girl did so only to save her “delicacy and feelings.” Inwardly she consented to having sex with the young man. Meanwhile, a poor but virtuous girl might become a prostitute from participating in “the vice-ridden life of the lower classes” (Arnold, 40; Hessinger, 2005, 46). She associated with the female hobos, vagrants, and tramps who sometimes turned to crime, usually theft, and often prostitution, as means of self-support (Friedman, 212). Men’s general understanding that women were sexual predators persisted alongside of the equally common notion that many fallen women were victims of “man’s passion and trickery” (Riegel, 442).

Many moral reformers considered males equally culpable for prostitution. The New York Female Moral Reform Society announced that it intended to “place the licentious man on a level with the licentious woman.” Members felt that licentious men should face the same disgrace as fallen women. When males who consorted with prostitutes were considered “fallen men” by good society, the practice of prostitution would end. The moral reformers

recognized, however, that licentious men were often more admired than scorned by other men and even by some women. Well-raised boys would “shrink from the thought of theft, drunkenness, or profanity,” but they did not give a second thought to indulging in licentiousness and illicit sex. That explained why modest, boyish disobedience was sometimes followed by visits to the theatre and the brothel. “The transition is easy and natural” (New-York Moral Female Reform Society, 1835; McDowall, 11, 44; New-York Moral Female Reform Society, 1836).

Occasionally, moral reformers blamed men more than women for public licentiousness. It was male villainy and deceit that led girls as young as thirteen or fourteen years old into vice and then “deeper in the slough of wickedness” where they entered into “houses of assignation.” Moreover, it was “the treachery and shame of man” that filled workhouses and asylums with fallen women and poor and diseased prostitutes (McDowall, 45, 53, 56). Moral reformers wanted to strip these men of respectability and ostracize them from decent society. They pledged to “shun association with the profligate of either sex” and especially “not to countenance the man who is licentious” (New-York Moral Female Reform Society, 1835; New-York Moral Female Reform Society, 1836).

It was a cultural commonplace in the early nineteenth century to consider men as immoral and predatory. They were seen as unable to restrain their sexual desires and control their behavior. Male lust fueled the widely held belief that “prostitution originates in men's natural sexual urge” (Hessinger, 1998, 263, 267; Lyons, 293; Pateman, 198). The young men who populated the nation's urban centers created a “sporting male” culture that promoted sexual aggressiveness and promiscuity along with the normalized practice of patronizing prostitutes (Gilfoyle, 99, 103; Mandell, 336; Stansell, 23). The flash press indirectly justified this male subculture. It claimed that men's sexual passion was natural; the elimination of male passion was impossible; and the repression of men's sex drive was injurious. Prostitution was merely a necessary evil, an outlet for men's natural desires (Cohen, Gilfoyle, and Horowitz, 57, 60, 134).

Reformers often portrayed prostitutes as young women who were robbed of their innocence by lust-driven men skilled in “male dominance, aggressiveness, and sexual coercion.” The men gained access to women's bodies through promises and lies, and they sometimes entrapped girls and young women in brothels where they were forced to make the best of a bad situation. Reformers focused primarily on “cruel seducers and evil agents” as the catalysts for prostitution, but they also recognized a class dimension to the procurement process (Hobson, 49, 62-63, 65, 75; Godbeer, 329-30). Wealthy men were the greatest threat to female chastity.

If males were predators of women, then it was fairly easy to portray prostitutes as “the victims of male licentiousness” (Cohen, 1998, 310). Moral reformers claimed that male deceit and seduction led otherwise innocent girls into prostitution. Flash press profiles of prostitutes told of innocent young girls victimized by male lust, then abandoned, and finally lured to a brothel. Rather than blaming women for falling away from virtue and into prostitution, reformers treated them as victims of male aggression and exploitation (D'Emilio and

Freedman, 143; Cohen, Gilfoyle, and Horowitz, 147; Hessinger, 2005, 35). John McDowall produced a demand-side analysis of prostitution:

. . . the supply of unfortunates being equal to the demand for them, it is evident that a diminution of the demand must diminish the supply in the same proportion, and that when the demand shall cease the supply will cease. But, supposing the demand for loose women shall never cease, a supposition utterly inadmissible, still much misery may be relieved, and more prevented, by means of a society combining, concentrating, and directing its influence against this single vice (McDowall, 12).

While health reformers claimed that promiscuous young men were endangering their own health, moral reformers emphasized the injustice of the double standard that treated licentious males as innocents but castigated licentious women as social pariahs (D'Emilio and Freedman, 144). Regardless of whether predatory men or fallen women were the ones most responsible for the flourishing of prostitution, the presence and openness of commercial sex produced a cultural backlash aimed at reasserting the virtue of chastity prior to marriage and reinforcing the virtue of fidelity within marriage—for both males and females (Hessinger, 2005, 179).

This cultural backlash was also manifested around the issue of interracial sex. Taverns, gambling dens, and brothels were places where blacks and whites, males and females, mixed freely. White and black prostitutes catered to white and black customers. “To some contemporaries,” writes Timothy Gilfoyle, “interracial sex, or ‘amalgamation,’ was ‘worse, by far, than sodomy’” (Gilfoyle 1992, 41-42; Rothman, 95; Stansell, 28). Interracial venues for recreational sex and prostitution also breached conventional class boundaries. They were places where men from all classes—entrepreneurs, clerks, and laborers—could spend their money and enjoy the reputedly “greater licentiousness of lower-class women” (Lyons, 334-35). The hallmark of interracial sex was disregard for conventional respectability and willingness to spread public disorder and even social rebellion (Salinger, 134; Godbeer, 321). Countercultural critics called for chastity, fidelity, and racial separation to end licentiousness and secure respectable society.

Licentious men, like fallen women, were often considered incorrigible. Commentators complained that the “reformed rake” was inconceivable. “When it came to pleasures of the flesh,” they argued, “men were constitutionally incapable of either self-restraint or fidelity” (Godbeer, 285; Hessinger, 2005, 42). Here then was a portrait of both women and men that emphasized their similarities. Both sexes were guilty of harboring uncontrolled passions and unrestrained lust. Both sexes suffered incorrigibility. When it came to sex, men and women were equal in their sinfulness, their misdeeds, and their social destructiveness. Both sexes were responsible for the problem of prostitution and both complicit in the creation and perpetuation of commercial sex. Indeed, commercial sex turned out to be the great neutralizer of gender differences. It robbed men of their so-called rational capacities and deprived women of their allegedly natural virtues.

Reformers who sought to rescue prostitutes from their immoral lives were blocked by three factors. First, reformer efforts to portray prostitutes as more or less innocent victims who deserved public sympathy and support were undercut by reformers' equally strong belief that prostitutes—victims or not—were menaces to male youths and society. They needed to be policed. Like most reformers, the Reverend McDowall portrayed prostitutes as women robbed of innocence by wicked men. However, he also expressed fears that promiscuous women and prostitutes robbed young men of their innocence. He wrote, “It is clearly ascertained that bad women multiply the seduction of heedless youth more rapidly than bad men seduce modest women” (McDowall quoted in Horowitz, 2006, 129; and in Horowitz, 2003, 146). Given the severity of the threat, policing rather than rescuing prostitutes would seem to be the highest priority. Second, McDowall and other reformers faced the widespread social belief that prostitutes were irredeemable. They were “steeped in criminality to the bone; vice was their way of life” (Friedman, 141). If promiscuous girls were fated to become prostitutes and if prostitutes were incorrigible, then efforts to redeem or reform them were a waste of time and resources. The same held true for sporting males. Americans' common view was that prostitution was inevitable as long as male lust and female immorality persisted. Third, even though reformers saw prostitution as a byproduct of people's licentiousness, they recognized that for many women, the journey from virtue to prostitution was hurried along by economic want and for many men, the perpetuation of prostitution was driven by the profits of sexual commerce (Hessinger, 2005, 48). Prostitution was more than a matter of morality.

### **Perpetuating Prostitution**

Moral reformers were vocal critics of prostitution but quieter interests wanted to ensure the profitability of prostitutes and brothels. In Richmond, Virginia, despite moralists' objections to prostitution and interracial sex, “There were no sweeps of brothels and no ferreting out of tippling shops, and there appears to have been little real effort to keep blacks and whites apart at all. . . . no one was ever actually arrested for prostitution or even for fornication. Instead, women in the sex trade only appeared before the mayor for crimes incidental to their occupation — vagrancy, public drunkenness, fighting, verbal abuse, and the vague but inclusive charges of ‘disorderly behavior’ or keeping a ‘disorderly house’” (Rothman, 111). Public officials clearly had the authority to arrest prostitutes and shut down brothels but they rarely exercised it. Their inaction suited men who had a stake in perpetuating prostitution, women who saw prostitution as an avenue for economic support, and business entities that profited from prostitution. Few people openly defended prostitution as a byproduct of male sex-right, or a legitimate career path for women, or a boon to local commerce. However, most citizens ignored moral reformers who wanted to eradicate the vice, imprison prostitutes, and shut down brothels.

Traditional patriarchy provided men access to women's bodies. In the early nineteenth century, men's access rights included the exchange of money for sex in the capitalist marketplace (Pateman, 198). Did American men see this exchange as legitimate? In a letter to the editor, “Justitia” offered a sarcastic answer. Referring to recent mob attacks on brothels, she wrote that the attacks were “a matter of great grief for many of our *male* citizens, considering what comfortable hours they passed in these peaceful abodes far from the

complaints of a neglected wife.” The writer added that the brothels might have been better policed were it not for the fact that magistrates themselves were patrons (Justitia quoted in Stansell, 25-26). Ultimately, men’s continuous demand for access to women’s bodies sustained commercial sex. One commentator noted, “The supply always keeps pace with the demand. . . . If there are more whores than formerly, it is only because there are more whoremasters” (Cohen, Gilfoyle, and Horowitz, 133). Clare Lyons adds that prostitution in the early national period “had become an important symbol of male virility and male sexual prerogatives, and many men of middle and elite economic standing had a personal interest in it” (Lyons, 345). Despite words and laws to the contrary, many American men implicitly supported the institution of prostitution as a means of satisfying their sexual desires and fantasies.

For women seeking to support themselves and their children, prostitution was one of the few available options in the male-dominated marketplace. For servant girls who ran away from masters, prostitution promised a degree of anonymity along with income (Lyons, 110). For working women, prostitution was a means to supplement meager wages. For poor women facing hard times, prostitution was a temporary source of income (Freedman, 14). For some women, prostitution promised an unprecedented degree of individual and economic independence. Furthermore, in large cities where nonmarital sexual behavior had become common, prostitution was less stigmatized than previously (Lyons, 277-78). High-end prostitutes like Helen Jewett could become well known and be celebrated for being “bold, eccentric, beautiful” (Cohen, 1998, 210). Finally, women with entrepreneurial aspirations could become madams who owned and operated their own brothels. These businesswomen had the potential to accumulate great wealth and property while providing “housing and employment for hundreds of women who otherwise would have been on the streets” (Seagraves, xix). One reason that moral reformers did not receive a warm welcome from the very prostitutes they hoped to redeem was that many women had a strong interest and desire to continue their participation in what was the closest thing to a female-centered economic sector in nineteenth-century America.

Of course, lower-end prostitutes did not achieve economic independence. They spent their time in “almost a perpetual round” between the jails, workhouses, hospitals, and prisons, suffering a “downward spiral of disease, debility, and destitution.” Public officials treated them as “disorderly, degenerate, and mostly incorrigible.” Desperate or diseased prostitutes often looked to the local prison as a refuge, a home in harsh weather, or a medical clinic of last resort (Godbeer, 326, 328; Zedner, 314). Prostitution opened up new economic opportunities to some women but promised misery and dependence to most women engaged in commercial sex.

Female reformers achieved a degree of independence by establishing and managing their own organizations and by planning and executing public actions against prostitution and brothels. To the extent that reformers were able to reduce prostitution and shut down brothels, they denied “to men any sexual outlet other than their wives.” This denial enhanced the leverage that married women could exercise over their husbands (Degler, 294). In a sense, then, both female reformers and married women were beneficiaries of prostitution because their struggle

against the commercial sex industry expanded their personal independence, marital leverage, and social influence.

The single most important factor explaining the persistence of prostitution may have been its integration into local economies. Many local businesses profited from prostitution and many powerful economic interests would have been harmed by systematic, successful efforts to eradicate commercial sex. Consider the challenge faced by early theater owners. Ordinarily, the third tier of theater seating was a designated place where prostitutes met clients, socialized, made deals, and even had sex. Public pressure urged theater owners to shut down the third tier. However, owners who actually did so discovered that their profits diminished or disappeared. Claudia Johnson explains, "The managers were caught in an almost impossible situation. They could, by continuing to keep the third tier open, find themselves condemned in the press and avoided by many 'respectable' patrons, or they could close the tier and face sudden financial ruin" (Johnson, 584). Most theater owners endured condemnation, kept the third tier open, and kept the resulting profits.

Frontier towns were often deeply dependent on money generated from prostitution. Where prostitution was legalized, a town might license and tax it. Where it was illegal, prostitutes and brothel owners paid fines that filled city treasuries. Michael Rutter writes, "Many city fathers didn't like prostitution in their towns, but they relished the money brought into city coffers from fines and licenses." Local officials did not defend prostitution but they did not want it to disappear because it provided funds to support "the local police force, fire department, and school system." Further, it would have been politically foolish for political authorities to attack prostitution. Often, wealthy businessmen were both local powerbrokers and the silent partners of madams. Any politician who attacked their interests would be committing political suicide. Meanwhile, small businessmen profited by selling fancy clothing, expensive wines, and ornamental jewelry to prostitutes and brothels, often local businesses' best customers. Finally, the ranks of local entrepreneurs included madams who owned and operated brothels. They not only paid fees and fines to the city; they often fostered good will by contributing to churches and charities (Rutter, 11, 13, 60, 79; Seagraves, xviii, 26). Usually, they also cultivated cordial relations with local law enforcement personnel.

Prostitution could be sufficiently integrated into local economies that efforts to suppress it threatened economic ruin to towns. For example, Western cattle towns had to decide how to handle cowboys who rode into town for alcohol and women. The cowboys would not patronize a town where saloons and brothels had been shut down. They simply would go elsewhere. Their absence would have destroyed the local entertainment industry and had a secondary devastating effect on local dry-goods stores and banks that profited from their presence. The result was that cattle towns usually welcomed cowboys, kept open saloons and brothels, and tried to keep a lid on the disorderly conduct of their drunken visitors. "Cattle-town justice" ultimately meant "profiting from cowboy vice sprees, not discouraging them" (Courtwright, 98).

The situation was similar in eastern cities. Landlords who rented property to brothels and influential merchants who catered to brothels did not want them shut down. Although most working-class neighborhoods did not want brothels, they occasionally welcomed them with the expectation that they would shoulder the local tax burden (Hobson, 25; Hessinger, 2005, 128). The bottom line was that prostitution bolstered the “legitimate” economy. Joshua Rothman explains, “Money spent at brothels on alcohol, food, and prostitutes by local residents or by sailors and other visitors remained in circulation in Richmond, and nighttime illegalities boosted profits that kept businesses open during the day” (Rothman, 111).

The fact was that many Americans had little or no interest in policing prostitution. Patricia Cline Cohen argues that tolerant neighborhoods in New York City “gave their tacit approval to commercial sex.” Residents ignored the pleas of moral reformers, supported a policy of leniency toward prostitution, and expressed irritation with moralists who harped on the subject (Cohen, 1998, 82). Timothy Gilfoyle suggests that widespread toleration of prostitution and sex-related businesses marked the beginning of a “reorganized sexuality” that was “male centered, if not misogynist.” More than ever, men perceived women “as objects and images to purchase, judged by their sexual talents, and measured in terms of monetary exchange and value” (Gilfoyle, 1992, 141). Carole Pateman claims that such a willingness to tolerate prostitution was business as usual. She writes, “Prostitution is an integral part of patriarchal capitalism. . . . men can buy sexual access to women's bodies in the capitalist marketplace.” For most citizens, “prostitution is seen as private enterprise, and the contract between client and prostitute is seen as a private arrangement between a buyer and a seller. (Pateman, 189-90). The idea that prostitution was immoral and illegal was generally accepted and proudly promoted by moral reformers but it conflicted with the preferences of ordinary citizens willing to tolerate it and the business interests wanting to perpetuate it. This conflict was reflected in the ambiguity of the laws that governed the policing of prostitution. Women’s and men’s equal culpability notwithstanding, nineteenth-century laws gave male criminal justice officials the discretionary authority to ignore the male contribution to prostitution, protect male business interests in prostitution, and decide whether or not to prosecute the women who worked as prostitutes or madams.

### **Prostitution and the Law**

Although people’s sexual relations increasingly were treated as private matters at the onset of nationhood, it would be a mistake to conclude that American citizens and their representatives believed that sexual behavior was a private matter, that prostitution and brothels were acceptable, or that the state lacked the authority and mandate to regulate morality. The emerging consensus was that the conflict between proscribed sexual behavior and economic interests was to be resolved by the discretionary legal authority of male public officials. This meant that prostitution might have been a problem created by both men and women but men, in their political and legal capacity as public officials, would be the ones responsible for resolving it.

Christopher Tomlins observes that nineteenth-century “state court decisions . . . emphasized the virtually unlimited extent of police powers, their roots in a long history of state necessity, and the absence of restraint on their exercise.” Those virtually unlimited police powers

justified “discretionary authority” in the service of good governance, including good governance of people’s moral choices (Tomlins, 37; Dubber, 93). Although prosecutions for fornication nearly disappeared, officials occasionally did press charges against unmarried men and women reported to have had sex with each other. The legitimacy of longstanding laws against fornication was challenged in Tennessee in 1831. But the state courts held, “The common law is the guardian of the morals of the people, and their protection against offences notoriously against public decency and good manners.” Officials had the discretionary authority to prosecute and punish individuals for fornication, especially if the individuals lived together “openly, notoriously, and publicly” (Grisham and Ligan v. The State 10 Tenn. 589, 1831). Relatedly, few states had explicit laws against producing or disseminating obscene materials but officials employed common law precedents to prosecute purveyors of obscenity (Horowitz, 2003, 37). And although New York City did not explicitly outlaw prostitution, public officials used vagrancy charges or disorderly conduct charges as the legal basis for arresting prostitutes (Cohen, 1998, 73-74). Officials also arrested prostitutes on the basis of prohibitions against indecent exposure, lewdness, public nuisance, nightwalking, and public indecency. Individuals who owned or managed brothels were subjected to prohibitions against keeping disorderly houses (Riegel, 445; Hobson, 4, 30, 33; Godbeer, 325; see also Jennings v the Commonwealth 34 Mass. 80, 1835). The vagueness of these charges increased male officials’ discretion to be selective in choosing their targets.

Barbara Hobson writes, “Class, ethnicity, and race were the spokes in the wheel of discretionary justice” (Hobson, 35). High-class prostitutes and expensive brothels that catered to affluent white men were rarely targets for police action. Women who scoured the streets for customers and lower-class brothels that catered to mixed race sex were more likely targets for raids and arrests. One must add gender to the wheel of discretionary justice. It was common for reformers and attorneys to define prostitution and brothels as institutions “for the resort and commerce of lewd people of both sexes” (United States v. Jourdine et al. 26 F. Cas. 666 U.S. Court of Appeals, 1833). However, male officials rarely detained, arrested, or punished other males for patronizing prostitutes. Even if some men were swept up in police raids of brothels, they were likely to be released or fined, whereas women were apt to be prosecuted and sentenced to spend time in jail (Hobson, 34; Cohen, 1998, 74). Clearly, enforcement activity focused on women. Police used vagrancy laws to harass prostitutes and make preventive arrests of them (Friedman, 104; Rockman, 166; Ryan, 1990, 97).

One advantage of employing vagrancy statutes was that the prostitute was charged with “being a vagrant and posing a *potential* threat to the community.” No proof was needed to show that she actually offered, sold, or performed sexual services (Hobson, 31, 33). Another advantage of vagrancy statutes was that authorities were free to decide when and where to punish prostitution. A woman could be arrested for being unescorted in public or simply for looking like a streetwalker. Meanwhile, known prostitutes might practice their profession free from police harassment as long as they did not “scandalize or disturb their neighbors.” Apparently Sarah Evans did disturb her neighbors. Billy Smith reports, “Between 1791 and 1795 [officials] arrested her at least fifteen times for vagrancy, disorderly conduct, keeping bad company, and being a drunk and ‘Lewd Girl.’” A combination of common law and statutory law provided police and prosecutors with extraordinarily “wide latitude” to monitor,

regulate, and attack female prostitutes and madams in their jurisdictions (Hobson, 33; Cohen, 1998, 74; Ryan, 1990, 98; Smith, 23).

This wide latitude was enhanced by men's periodic efforts to speed up the processing and punishment of accused prostitutes. In 1822, for example, Boston created a special police court that authorized magistrates to summarily sentence women charged with "lewdness" to between three and six months in jail. In Philadelphia, women were arrested on vagrancy charges and could be held without trial for up to thirty days (Hobson, 17-18; Manion, 13). Support for summary justice sometimes was based on a perceived need to process quickly as many prostitutes as possible, lest the local courts be overwhelmed by their cases. More often, however, support for summary justice for prostitutes was part of a larger effort aimed at containing "excesses rather than eradicating the vice itself" (Rothman, 111). Male officials knew they had the authority to arrest, prosecute, and punish prostitutes but they preferred not to devote significant attention, time, or resources to policing commercial sex. Summary justice was an efficient way to prevent it from becoming too visible a public nuisance.

The degree of "publicness" of prostitution might make it an indictable nuisance. In Indiana, for example, a prostitute "wandering in public and behaving in a riotous and indecent manner" was subject to prosecution, along with anyone living in "open and notorious" adultery, fornication, or lewdness, or anyone whose behavior was "grossly scandalous" and marked by "public indecency." Similarly, brothel owners who were "open and notorious" in conducting their business were liable to indictment (Dukes v. Clark, 2 Blackf. 20, IN, 1826). States such as Massachusetts did not explicitly outlaw prostitution but they did draw on common law to make "the act of keeping a brothel" illegal. The Massachusetts courts also declared that a landlord who rented a house to a woman of ill fame, who intended to use that house for purposes of prostitution, was subject to indictment (Jennings v Commonwealth, 34 Mass. 80, 1835; Commonwealth v Harrington, 20 Mass. 26, 1825). Including landlords as responsible parties appeared to have been part of an effort to make it more difficult for prostitutes and brothel owners to operate. Similarly, legal efforts to void contracts involving prostitution sought to make it risky for potential customers, landlords, suppliers, and others on the fringes of the commercial sex industry to do business with prostitutes or brothels. In the 1807 case of De Sobry v. Terrier de Laistre, Maryland courts declared that any contract that was "contra bonos mores" (against good morals), such as a contract for prostitution, was legally unenforceable (De Sobry v Terrier de Laistre, 2 H. & J. 191 MD, 1807; see also Mackbee v. Griffith 15 F. Cas. 1215, U.S. Appeals Court, 1822). In the 1823 Ohio case of Key v. Vattier, the court refused to enforce a contract that required one party "to do an act against which the moral sense of society revolts, as degrading and disgraceful." This covered "contracts for prostitution or for the establishment of brothels" (Key v. Vattier, 1 Ohio 132, 1823; see also Roll v Raguet, 4 Ohio 400, 1831). Prostitutes who were cheated by clients and brothel owners who were cheated by prostitutes could not legally recover profits or wages from prostitution (Greenwood v. Curtis 6 Mass 358, 1810). New York courts maintained that merchants doing business with prostitutes or brothels should expect that they would be paid out of the profits from prostitution and, therefore, they should not expect that public officials or courts would enforce their agreements (Brockway v. the People, 2 Hill 558 NY, 1842). Finally, in Massachusetts, it was illegal for men to act as procurers of prostitutes, to force or

seduce a girl from her father's house and lead her into prostitution or bring her into a brothel (Commonwealth vs. John Cook, 53 Mass. 93, 1846; see also Livingston, 418).

The legal vulnerability of landlords, suppliers, procurers, and other men who did business with brothels was matched by the legal vulnerability of male patrons of prostitutes and brothels. In 1834, the U.S. Circuit Court for the District of Columbia declared, "The public morals are under the protection of the common law; and every open and public attempt to corrupt them is an offence against that law. It is upon this principle that the publication of obscene writings or prints, gross and public blasphemy and scoffing at religion, public lewdness, indecent exposure of the person, common houses of prostitution, and even the frequenting of such houses, have been adjudged to be offences against the common law" (United States v. Brooks, 24 F. Cas. 1244, U.S. Circuit Court, D.C., 1834). Tennessee courts declared that a man accused of "frequenting and haunting houses of ill-fame" could be indicted as long as he actually knew that the houses he visited were houses of ill fame. Furthermore, such an indictment was contingent on his "publicly and notoriously" frequenting brothel, outraging public decency and injuring public morals (Brooks v. Tennessee, 10 Tenn. 482, 1831; Hutchison v. The State. 24 Tenn. 142, 1844). Connecticut courts authorized local justices of the peace to require men who frequented bawdy houses to post a bond and even to imprison them for up to thirty days (Darling v. Hubbell 9 Conn. 350 (1832). Unquestionably, male patrons of prostitutes were subject to indictment, prosecution, and punishment.

However, the male police, male magistrates, male jurors, and male judges were mostly uninterested in charging male patrons. Officials put more emphasis on policing other aspects of public life or on shutting down brothels as magnets for vice and crime. The U.S. Circuit Court for the District of Columbia in 1830 focused on the fact that a brothel was a meeting place for "idle and evil disposed persons" rather than on any acts of prostitution. It was patrons' disorderly behavior rather than their purchase of sexual services that transformed a tolerable brothel into one indictable as a "common nuisance." States relied on both common law and statute law to make the operation of brothels illegal and indictable (United States v. Dixon, 25 F. Cas. 872. U.S. Circuit Court. D.C., 1830; see also Martin v. Stillwell, 13 Johns. 275, NY, 1816; Commonwealth vs. Jane Lewis 42 Mass. 151, 1840; Commonwealth v. Willard. 39 Mass. 476, 1839). Most of the time, public officials did not go out of their way to shut down brothels. They had the legal authority to do so but they were largely unconcerned when young men traded money for sex.

There was some ambiguity about whether jurisdictions could legalize and license brothels. This issue was particularly relevant on the Western frontier where towns sometimes sought to legalize, regulate, and tax prostitution rather than outlaw it and shut it down. In the 1829 case of *St. Louis v. Smith*, Missouri judges made two rulings. First, they declared that townships could not license brothels because the common law made them illegal. Second, however, they suggested that officials might try to suppress brothels but if they chose not to do so, then they might "restrain them within such limits as [they] might see fit" (*St. Louis v. Smith*. 2 Mo. 113, 1829). Male public officials claimed the authority to regulate sexual commerce and state courts supported the legality of their claims to regulatory authority and their broad discretion in dealing with sexual misconduct. The more challenging question, in jurisdiction

after jurisdiction, was whether public officials were sufficiently concerned about commercial sex to use that authority and, if so, how systematically and how often. Mary Ryan provides a clue to the answer when she reports that “Before mid-century . . . sexual offenses clearly caused less public concern than other species of disorderly conduct such as gambling and drunkenness” (Ryan, 1990, 97).

### **Tolerance and Prostitution**

Most Americans did not see prostitution as a problem that deserved particular attention. It was one of many vices that needed to be monitored. Civic leaders and public officials perceived prostitution as one of many public nuisances and showed little interest in devoting significant resources to attacking it. States’ legal establishments were not particularly upset by the presence of prostitutes and brothels that catered to middling and affluent white men. They usually tolerated prostitution as a “necessary evil” (D’Emilio and Freedman, 138; Salinger, 130; Rothman, 113). Their common view was that a young man who visited a brothel engaged in reasonable behavior. By contrast, male officials believed that a young woman who engaged in prostitution was a degraded human being. People and police mainly took notice of commercial sex when it was associated with disorderly women, neighbors’ complaints, or other crimes (Lyons, 105, 108). While no prominent person dared argue “illicit sex was anything other than sinful and dangerous,” prostitution openly flourished in American cities. New Orleans was reputedly to be the most vice-ridden city in the nation with New York City holding the number two position. State laws against prostitution were pliant and male authorities used their discretion to police other kinds of behavior (Godbeer, 326; Cohen, 1998, 69, 75).

When public pressure forced officials to police prostitution, they mainly sought “to keep the trade beyond the view of respectable folk.” In Eastern cities and Western frontier towns, politicians and police tried to restrict prostitution to specific areas, usually neighborhoods of poor people or ethnic minorities, or neighborhoods on the fringes of town (Hobson, 25, 27). Even in cities such as Richmond, Virginia, where brothels catered to sex between whites and blacks, public authorities made no significant efforts to stop interracial, commercial sex. Richmond’s legal authorities sought to contain commercial sex, not shut it down (Rothman, 111). Brothels that were free of violence, theft, and rowdiness could expect to carry on business with little interference from police. Sometimes, brothel owners paid for police protection. Where there was actual policing of prostitution, it tended to be restricted to “the lower levels of the trade” where streetwalkers and lower-class brothels sought out customers, and where immoral, disorderly women were considered the main problem (Hobson, 29; Lyons, 345). The immediate goal was containment of prostitutes and prostitution (Friedman, 226).

Why did public officials show great tolerance for prostitution and limited interest in policing it? It may have had something to do with the public’s view that most patrons were young men merely sowing their wild oats—exercising their male sex-right. It may have had something to do with the traditional belief that exhibiting male virility and claiming sexual prerogative included patronizing prostitutes. It surely had something to do with the degree to which the commercial sex industry was integrated into local economies. Perhaps brothel

owners and landlords who directly profited from prostitution were effective in building supportive networks among business leaders, public officials, and police (Riegel, 439; Lyons, 101, 345). It was highly unusual when, in 1823, Boston Mayor Josiah Quincy initiated a methodical attack on prostitution. Quincy's initiative proved to be a temporary aberration (Hobson, 11). In early national America, most efforts to police prostitution were haphazard and inconsistent. Why? Police had the law and courts on their side. They knew most of the prostitutes. They located the brothels. But, typically, they assumed that prostitution was ineradicable. At best, they could prevent it from "getting completely out of hand" or becoming "too blatant" by arresting some of the women involved in it (Riegel, 445).

Occasionally, groups of citizens were outraged by officials' lackadaisical attitude toward prostitution and took direct action against commercial sex. They formed into rioting mobs that attempted to shut down brothels. A bawdy house that catered to interracial sex might invite a riot. Male customers' claims to having been mistreated or robbed by prostitutes might invite a riot. The presence of slaves serving as prostitutes could invite a riot. Sometimes, mobs of drunken young men asserting male prerogative staged a brothel riot. Timothy Gilfoyle writes, "Clearly, these males believed they had the right to control, if not physically coerce, prostitutes and other public women" (D'Emilio and Freedman, 140; Stansell, 61; Gilfoyle, 1992, 77, 81, 90). Rioters sometimes portrayed themselves as "public servants acting against immoral and criminal conduct." They were seeking justice in light of the "the law's delay and failure to prosecute prostitutes and brothelkeepers" (Hobson, 24). Rioters' antipathy toward prostitutes and madams might have been exacerbated by their antipathy toward the mostly poor immigrants and urban poor who patronized commercial sex or worked in the industry. Mob anger may have been stoked by societal changes in the meaning of sex and sexuality as it moved outside of the family and away from its reproductive moorings (Hobson, 30; D'Emilio and Freedman, 51). Some rioters appeared to have been "gentlemen of property and standing" who joined the ranks of religious zealots in trying to shut down bawdy houses (Ryan, 1990, 98). But at times, public officials deployed police to protect the property rights of brothel landlords and owners against the rioters. Gilfoyle suggests that moral opposition to prostitution could be neutralized by the commercial sex industry's claim to property rights. "In the end," he concludes, "the state chose to defend property and thus prostitution" (Gilfoyle, 1997, 38-41).

There were few clear rules governing the policing of prostitution. Discretion was decisive. Prostitutes who were poor and black were the most vulnerable to arrest (Lyons, 336-39; Salinger, 131). However, state and local officials clearly had the authority to police all commercial sex, generally chose to tolerate it most of the time, and sometimes found themselves defending the property rights of commercial sex businesses. Although reformers worked hard to make prostitution a high-priority public issue, neither the majority of citizens nor the average political official heeded them other than on a periodic basis. Two factors explain the vast gulf between legal authorization to police prostitution and extremely limited enforcement. One factor involved the male public's belief that prostitution was morally wrong but was in itself no urgent matter. That was because the idea of male sex-right persisted into nineteenth-century America and beyond. The other factor was that the male officials who staffed all positions in the criminal justice systems of the nation and the states

simply refused to police the men who patronized prostitution. Occasionally, they policed the women who worked in the commercial sex industry. The overall message of nineteenth-century American criminal justice was that women and men were equally responsible for licentiousness, prostitution, and brothels, but male officials used their discretion to ensure that only women were vulnerable to arrests, prosecution, and punishments for sex crimes.

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