

A Critical Race Feminist Perspective on Prostitution & Sex Trafficking in America

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ABSTRACT: This Article is one of the first to apply critical race feminism (CRF) to explore prostitution and sex trafficking in the United States. Several scholars have applied critical race feminism to explore several forms of sexual exploitation, including sexual harassment, domestic violence, and rape, but have yet to extend this discourse into the debate on prostitution and sex trafficking. Legal scholars have addressed prostitution and sex trafficking as gender oppression, while others have acknowledged the role of race in prostitution and trafficking in America. But few have considered prostitution from a critical race perspective, i.e., one that considers how race and gender intersect with other systems of oppression together to marginalize people of color in America.

This Article applies critical race feminist theory to argue that racism intersects with other forms of structural oppression to obscure choice for people of color in America's prostitution industry. America's commercial sex industry perpetuates structural race, gender, and class-based inequalities. Racism and structural oppression trap a disproportionate number of women of color and girls of color into prostitution. Racism coerces women of color to engage in prostitution and obscures their consent. A critical race feminist lens informs our understanding of how traditional feminist discourse about prostitution has not fully considered the role of race, structural racism, and intersectional oppression in both the scholarly and policy discourse on prostitution. In contrast to dominant feminist narratives about prostitution, a critical race feminist perspective calls upon scholars and policymakers to focus on the role

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of racism and structural state sanctioned factors that push marginalized people of color into prostitution.

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The caged bird sings with a fearful trill
of things unknown but longed for still
and his tune is heard on a distant hill
for the caged bird sings of freedom¹

INTRODUCTION

In the United States, one narrative about race, consent, and prostitution dominates cultural and legal discourse. Women of color are often stereotyped or featured as hyper-sexualized vixens who choose and enjoy prostitution.² Yet, women of color are rarely acknowledged as victims of sex trafficking.³ This skewed narrative stems from myths about race and sexuality that were used as tools of subordination during slavery and colonization and that continue to shape public policy. In today's legal battle against human trafficking, the myth that most women of color in prostitution freely choose to be there undermines efforts to identify and protect people of color from sexual exploitation. An alternative narrative about race and prostitution, one that is less often told, recognizes how intersecting forms of race, gender, and class subordination obscure choice and trap many people of color in prostitution.

Traditionally, the nexus between prostitution and racism has remained unaddressed within legal and policy debates about human trafficking in part due to broader misconceptions about prostitution in the United States. Traditionally, American society has romanticized prostitution as a "victimless crime," i.e., one with little harm to those who sell sex.⁴ Prostitution also is perceived by some as an empowering choice for women, one that evinces gender equality.⁵ For example, society's romantic view of prostitution is prominently on display in the \$463 million blockbuster movie *Pretty Woman*.

1. MAYA ANGELOU, *I KNOW WHY THE CAGED BIRD SINGS* (2001). Award-winning poet Maya Angelou was an African American survivor of rape and child sexual exploitation and an adult prostitute and wrote about triumphing over her past. She passed away in June 2014.

2. See Corey Kilgannon, *52, and Still Working the Streets*, N.Y. TIMES (Dec. 30, 2011), <http://www.nytimes.com/2012/01/01/nyregion/at-52-a-prostitute-still-working-the-streets.html> (profiling a Black female prostitute who presumably finds the prostitution lifestyle thrilling and financially rewarding).

3. See Karen Bravo, *Exploring the Analogy Between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade*, 25 B.U. INT'L L.J. 207, 249-50 (2007); Samuel V. Jones, *Human Trafficking Victim Identification: Should Consent Matter?*, 45 IND. L. REV. 483, 484 (2012) ("[N]eglect of ethnic minority victims has contributed to the proliferation of trafficking schemes.").

4. See Jane Wells & John-Keith Wasson, *Sex Workers Are Victims*, CNN (Dec. 27, 2013, 8:16 AM), <http://www.cnn.com/2013/12/27/opinion/wells-prostitution-victims> ("Efforts to legalize prostitution are based on the outdated assumption that prostitution is a victimless crime, a view that is effectively used by the pro-legalization lobby. That's simply not true. For the majority of commercial sex workers, the sex industry is a continuum of harm that feeds on vulnerabilities and spits out damaged victims.").

5. See *id.* (challenging this view based on interviews and research for their film).

In this iconic film, the confident, empowered vixen portrayed by Julia Roberts seems to freely choose to prostitute herself. Her chosen path is not really fraught with peril but instead leads to the American dream when she and her millionaire client fall in love.⁶ Granted, the movie points out that indeed, some people exercise their own agency and freely choose prostitution.

But the *Pretty Woman* script is not based upon the experience of many prostituted persons. Contemporary movies like *Tricked* offer an alternative to the *Pretty Woman* narrative by exposing the exploitation and abuse that is often characteristic of America's modern commercial sex industry.⁷ Indeed, over the past decade, American society's understanding of prostitution has changed. Domestic sex trafficking—sex trafficking of American citizens or residents within the United States⁸—has become a “hot” issue. Federal law now recognizes some prostitution as sex trafficking. To fight modern-day human trafficking, Congress enacted the Trafficking Victims Protection Act⁹ (“TVPA”) in 2000, and reauthorized this legislation as the Trafficking Victims Protection Reauthorization Act (“TVPRA”) in 2004,¹⁰ 2006,¹¹ 2008,¹² and most

6. For details on the plot and success of the famous movie, see Janet Maslin, *Pretty Woman (1990): Review/Film; High-Rolling Boy Meets Streetwalking Girl*, N.Y. TIMES (Mar. 23, 1990); *Pretty Woman*, BOX OFFICE MOJO, <http://www.boxofficemojo.com/movies/?page=weekend&id=prettywoman.htm> (last visited May 19, 2015). For scholarly analysis of how *Pretty Woman* perpetuates myths about prostitution, see Beverly Balos, *Teaching Prostitution Seriously*, 4 BUFF. CRIM. L. REV. 709, 753 (2001); Rochelle L. Dalla, *Exposing the “Pretty Woman” Myth: A Qualitative Examination of the Lives of Female Streetwalking Prostitutes*, 37 J. SEX RES. 344, 345 (Nov. 2000); Claude J. Smith, Jr., *Bodies and Minds for Sale: Prostitution in “Pretty Woman” and “Indecent Proposal,”* 19 STUD. IN POPULAR CULTURE, 91, 91-99 (Apr. 1997).

7. See Wells & Wasson, *supra* note 4 (“For 3 years, we embedded with vice cops, met with the johns, pimps, girls and boys entangled in the professional sex world. We went to the dungeon of a dominatrix, filmed the partially legal model in Sweden and met sex workers advocating for legalization. We followed abolitionists, lobbyists, hobbyists, survivors, the FBI, grandmothers, gay sex workers, transvestites, drug addicts, alcoholics, college kids and PhDs. All had stories to share and a unique perspective on this complex issue. By the end of our extensive investigation, focused on the United States, we shared a conclusion: the commercial sexual sale of someone's body is not empowering, does not offer gender equality and in most cases is a form of modern day slavery. The myths used by advocates of prostitution are universal.”).

8. See Matthew Johnson & Meredith Dank, *The Hustle: Economics of the Underground Commercial Sex Industry*, URBAN INST. 2 (March 2014), <http://datatools.urban.org/features/theHustle/index.html> (“Atlanta had the largest underground commercial sex economy in 2007 at \$290 million” as compared to Dallas, Denver, Miami, San Diego, Seattle, and Washington, D.C.); *Human Trafficking Trends in the United States: The National Human Trafficking Resource Center 2007-2012*, POLARIS PROJECT 4 (2013), <http://www.polarisproject.org/human-trafficking/overview/human-trafficking-trends> (“This report provides a revealing snapshot of human trafficking within the United States. . . . Pimp controlled sex trafficking was the most common form of sex trafficking occurring in places like hotels and motels, streets, and truck stops, and was often facilitated online.”); *Trafficking in Persons (TIP) Report*, U.S. DEP'T OF STATE 372 (2011), <http://www.state.gov/documents/organization/164458.pdf> (“U.S. citizen victims, both adults and children, are predominantly found in sex trafficking.”).

9. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in sections of 22 U.S.C.).

10. Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875 (2003) (codified as amended in sections of 8 and 22 U.S.C.).

11. Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (codified as amended in sections of 22 and 42 U.S.C.).

recently, in 2013¹³ (collectively, referred to herein as the “TVPRA”). Under the TVPRA, any minor prostituted or otherwise commercially exploited for sex is recognized as a victim of sex trafficking.¹⁴ Furthermore, any adult who is prostituted through force, fraud, or coercion is recognized as a victim of sex trafficking.¹⁵ The anti-trafficking movement has brought social awareness that sometimes prostitution is voluntary but, too often it is coerced or forced.¹⁶

Yet, while America has become more aware of the problem of sex trafficking, its assumptions about the experiences of people of color in prostitution have remained unchanged. Long-standing stereotypes about race and prostitution undermine effective legal and policy responses. Women of color face barriers to identification and recognition as victims of sex trafficking. Too often, the face of the iconic sex trafficking victim is that of a young and White female.¹⁷ The particular issue of how prostitution and sex trafficking policies harm and marginalize people of color has remained relatively absent from debates over emerging law and policy concerning prostitution and sex trafficking. A critical race feminist analysis of America’s commercial sex industry and anti-trafficking movement can build upon this analysis in order to propose solutions.

Similar to its erasure in public discourse, the issue of race has been marginalized in scholarly debates on prostitution and modern sex trafficking. Legal scholars have analyzed the legal system’s pervasive stereotyping of women of color as prostitutes¹⁸ and explored the impact of these stereotypes on

12. William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (codified as amended in sections of 8, 22, 28, and 42 U.S.C.).

13. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (codified as amended in sections of 8, 18, 22, 25, and 42 U.S.C.).

14. The TVPRA does not proscribe all forms of human trafficking; instead, the statute distinguishes between human trafficking and “severe forms of trafficking” and guarantees certain legal protections only to victims within the latter group. *See* 22 U.S.C. § 7102(8) (2012).

15. *See id.*

16. Under the TVPA, Sex trafficking as a severe form of trafficking is defined as commercial sex acts with an adult achieved through force, fraud, or coercion or with a minor under any circumstances. *See* 22 U.S.C. § 7102(8)(A).

17. *See, e.g.,* Cheryl Hanna, *Somebody’s Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1 (2010); Peter Landesman, *The Girls Next Door*, N.Y. TIMES MAG. (Jan. 25, 2004), <http://www.nytimes.com/2004/01/25/magazine/the-girls-next-door.html>.

18. *See* Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877 (1992); Mario L. Barnes, *Black Women’s Stories and the Criminal Law: Restating the Power of Narrative*, 39 U.C. DAVIS L. REV. 941 (2006); Tanya Kateri Hernandez, *Sexual Harassment and Racial Disparity: The Mutual Construction of Race and Gender*, 4 J. GENDER RACE & JUST. 183, 194-95 (2001); Theresa A. Martinez, *Embracing the Outlaws: Deviance at the Intersection of Race, Class, and Gender*, 1994 UTAH L. REV. 193 (2003-05); *see also* CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION 53 (1979) (arguing that the sexual stereotyping of Black women as prostitutes or like prostitutes makes them vulnerable to sexual harassment at work); Ateba Crocker, *Racism and Prostitution*, PROSTITUTION RES. & EDUC. (2012), http://www.prostitutionresearch.com/pre_blog/2012/05/09/racism_and_prostitution; *Black Women and Prostitution*, 7 GAUNTLET 1 (1992), <http://www.bayswan.org/Racism.html> (“There’s a belief that

legal outcomes in cases involving sexual harassment,¹⁹ juvenile justice,²⁰ and criminal law.²¹ Likewise, the issue of how structural racism shapes legal outcomes for women of color in the criminal justice system has been explored in a variety of contexts.²²

Moreover, by exploring the role of race, this Article also fills major gaps in the feminist discourse on prostitution and sex trafficking. Legal scholars have examined the role of race in prostitution and trafficking in America²³ but have

prostitution is accepted in the black community. This is wrong. Prostitution is not accepted. It's been imposed on African-Americans . . .").

19. MACKINNON, *supra* note 18, at 53 (arguing that the sexual stereotyping of Black women as prostitutes or like prostitutes makes them vulnerable to sexual harassment at work); Hernandez, *supra* note 18, at 194-95 (2001) (describing how stereotypes of women of color as prostitutes fuel and perpetuate sexual harassment).

20. See Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1385, 1387 (2013) ("Black clubwomen also fought the entrenchment of the Jezebel myth in juvenile court jurisprudence. Black women came to represent the modern Jezebel who, like her Biblical counterpart, was a symbol of, sexual immorality, 'innate wickedness' and even 'disobedience to God.' Clubwomen felt the sting as these stereotypes dominated the discourse on Black women and crime . . . [a]s girls were considered delinquent primarily for 'sexual immorality.' This standard arguably made Black girls especially vulnerable due to stereotypes about Black sexuality.").

21. See Barnes, *supra* note 18, at 969 (discussing how the sexualization of African American women as prostitutes undermines the legal outcomes of criminal cases unrelated to prostitution).

22. See Dorothy Roberts, *Prison, Foster Care, and the Systematic Punishment of Black Mothers*, 59 UCLA L. REV. 1474, 1474 (2012) [hereinafter Roberts, *Prison, Foster Care*] ("The simultaneous buildup and operation of the prison and foster care systems rely on the punishment of black mothers, who suffer greatly from the system's intersection. . . . The intersection of prison and foster care is only one example of many forms of overpolicing that overlap and converge in the lives of poor women of color."); Dorothy Roberts, *The Social and Moral Costs of Mass Incarceration in African American Communities*, 6 STAN. L. REV. 1271, 1282 (2004) [hereinafter Roberts, *Social and Moral Costs*] ("the enormous burdens [of the mass incarceration of Black men] fall primarily on the shoulders of women caregivers, who customarily shore up families experiencing extreme hardship."); Adrien K. Wing & Christine A. Willis, *Critical Race Feminism: Black Women and Gangs*, 1 J. GENDER RACE & JUST. 141, 144 n.13 (1997).

23. For legal scholarship addressing race and prostitution, see Beverly Balos & Mary Louise Fellows, *A Matter of Prostitution: Becoming Respectable*, 74 N.Y.U. L. REV. 1220, 1227 (1999); Katie Beran, *Revisiting the Prostitution Debate: Uniting Liberal and Radical Feminism in Pursuit of Policy Reform*, 30 LAW & INEQ. 19, 24-26 (2012); Bravo, *supra* note 3, at 277 ("Trans-Atlantic slavery and modern traffic in humans may be contrasted with respect to the roles of race and racial characteristics. . . . Is race therefore meaningless in modern trafficking?"); Karen E. Bravo *The Role of the Trans-Atlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. SOC. JUST. 555, 574 (2011) ("The viewpoints and perceptions expressed can be analyzed on a number of levels: modern slavery is said not to be based on race, unlike the slavery of yesteryear. Yet the racism which arose with and permitted yesteryear's trans-Atlantic slavery makes today's enslaved white women more valuable vis-à-vis enslaved blacks or Asians."); Butler, *supra* note 20, at 1387-88 (discussing how Black Progressive Era reformers fought to protect Black girls from coerced prostitution and sexual exploitation); Vednita Carter & Evelina Giobbe, *Duet: Prostitution, Racism and Feminist Discourse*, 10 HASTINGS WOMEN'S L.J. 37, 37-8 (1999); Emily Chalonder, *Anybody's Daughter? How Racial Stereotypes Prevent Domestic Child Prostitutes of Color from Being Recognized as Victims*, 30 CHILD LEGAL RTS. J. 48, 48-54 (2010); Sarah Deer, *Relocation Revisited: Sex Trafficking of Native Women in the United States*, 36 WM. MITCHELL L. REV. 621, 624 (2009-2010); Andrea L. Johnson, *A Perfect Storm: The U.S. Anti-Trafficking Regime's Failure to Stop the Sex Trafficking of American Indian Women and Girls*, 43 COLUM. HUM. RTS. L. REV. 617, 618-619 (2012) ("Since the arrival of the first colonizers in the United States, the sexual exploitation of women of minority races—often for commercial purposes—has been an integral part of colonial, expansionist, nationalist, and racist projects."); Ann Lucas, *Race, Class, Gender, and Deviancy: The Criminalization of Prostitution*, 10

not explored these issues in depth through a critical race feminist lens. Scholars have often analyzed prostitution as an issue primarily of gender, as opposed to racial, subordination.²⁴ Furthermore, liberal feminist perspectives on prostitution have focused the policy and scholarly debates on the need to protect the rights of women to choose prostitution.²⁵ Yet, alternative perspectives, which explore how racism and other factors obscure choice for women of color in the United States, are less prominent. Thus, the discourse on American prostitution and sex trafficking has not focused on the unique experiences of women of color.

This Article applies critical race feminist theory to argue that racism intersects with other forms of structural oppression to obscure choice for people of color in America's prostitution industry. America's commercial sex industry perpetuates structural race, gender, and class-based inequalities. Racism and structural oppression trap a disproportionate number of women and girls of color into prostitution. Racism coerces women of color to engage in prostitution and obscures their consent. A critical race feminist lens informs our understanding of how traditional feminist discourse about prostitution has not fully considered the role of race, structural racism, and intersectional

BERKELEY WOMEN'S L.J. 47, 49 (1995) ("Although women of color represent forty percent of street prostitutes, they account for fifty-five percent of those arrested for prostitution, and eighty-five percent of those sentenced to jail."); Catherine A. MacKinnon, *Prostitution and Civil Rights*, 1 MICH. J. GENDER & L. 13 (1993); Catherine A. MacKinnon, *Trafficking, Prostitution and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 277 (2011) [hereinafter *Trafficking*] ("Disproportionately, people in prostitution are members of socially disadvantaged racial groups or lower castes."); Vednita Nelson, *Prostitution: Where Racism and Sexism Intersect*, MICH. J. GENDER & L. 81, 81 (1993) ("Racism makes Black women and girls especially vulnerable to sexual exploitation and keeps them trapped in the sex industry."); Sherene Razack, *Race, Space, and Prostitution: The Making of the Bourgeois Subject*, 10 CAN. J. WOMEN & L. 338, 375-76 (1998); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 202 (2007) ("The iconic victim concept is thus consistent with stereotypes of foreign women and women of color as meek, helpless, and belonging to repressive male dominant cultures."); Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 607 (2009); Karin S. Portlock, Note, *Status on Trial: The Racial Ramifications of Admitting Prostitution Evidence under State Rape Shield Legislation*, 107 COLUM. L. REV. 1404, 1420-25 (2007); Crystal Faye Sheets, *State Injustice: Trapping Black Women as Sex Offenders for Prostitution*, (unpublished thesis, Colorado State University) (on file with author).

24. See Vednita Carter, *Prostitution and the New Slavery*, in NOT FOR SALE: FEMINISTS RESISTING PROSTITUTION AND PORNOGRAPHY 85, 87 (Rebecca Whisnant & Christine Stark eds., 2004) ("Although feminist analyses of pornography address the ways in which it sexualizes racism, no one body of work presents an in-depth analysis of Black women's vulnerability"); Professor Beverly Balos has argued that gender inequality deprives women of the ability to fully consent to prostitution just as, by analogy, housing discrimination deprives Black women of the ability to fully consent to living in redlined housing districts. Beverly Balos, *The Wrong Way to Equality: Privileging Consent in the Trafficking of Women for Sexual Exploitation*, 27 HARV. WOMEN'S L.J. 137, 171-72 (2004).

25. Aziza Ahmed, *Feminism, Power, and Sex Work in the Context of HIV/AIDS: Consequences for Women's Health*, 34 HARV. J.L. & GENDER 225 (2011); Michele Alexandre, *Sex, Drugs, Rock & Roll and Moral Dirigisme: Toward a Reformation of Drug and Prostitution Regulations*, 78 UMKC L. REV. 101, 110 (2009) ("I define prostitution here as the process by which a person is allowed to freely transact for personal services without duress or pressure either from the government of other individuals"); Samuel Vincent Jones, *The Invisible Women: Have Conceptions About Femininity Led to the Global Dominance of the Female Human Trafficker?*, 7 ALB. GOV'T L. REV. 143 (2014).

oppression in both the scholarly and policy discourse on prostitution. Narratives about women of color who choose prostitution dominate discourse. Yet, the privileging of this one type of narrative as an essentialist experience undermines the fight against sexual exploitation. Understanding how prostitution operates as a form of structural oppression against people of color can help advocates and policymakers intervene in ways that protect vulnerable minorities from sexual exploitation and prevent future exploitation.

By acknowledging that some women of color do not freely choose prostitution, a critical race perspective can “demarginalize,” i.e., bring out of the margins²⁶ of feminist discourse, the critical issue of race and structural oppression as a central component of America’s commercial sex industry. Part I suggests the need for a critical race feminist perspective on prostitution and trafficking. Part I explores how critical race feminism has provided an important framework for challenging the marginalization of people of color in law and public policy concerning other forms of sexual abuse and exploitation. This Part then summarizes the tools used for a critical race feminist analysis of the role of race and intersectional oppression in structuring prostitution in America.

Part II reviews traditional liberal feminist perspectives on prostitution and choice and considers how this discourse informs the experiences of women of color in prostitution. Part II applies critical race feminist analysis to argue that feminist discourse about women of color in prostitution has been dominated by liberal feminism narratives, and that those narratives have influenced cultural perceptions of how women of color experience prostitution.

In contrast, Part III considers abolitionist feminist and dominance feminist perspectives on prostitution and choice as well as the implications of these perspectives on women of color in prostitution. This Part also explores how some scholars perceive commonalities between abolitionist feminism, dominance feminism and critical race feminism. Thus, this Part considers whether a critical race feminist perspective on prostitution can build upon dominance feminist perspectives set forth in the work of Catherine MacKinnon and other scholars.

Part IV argues that a history of racialized sexual exploitation in the United States plays a role in coercing people of color into prostitution. This Part considers how a history of racialized sexual oppression and cultural stereotyping became a systemic strategy for slavery, colonization, and racial apartheid in the United States. That legacy has created a culture of sexual

26. The terms and concepts of “demarginalizing” are borrowed and inspired from the seminal critical race feminist articles. See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989) [hereinafter Crenshaw, *Demarginalizing*]; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) [hereinafter Crenshaw, *Mapping the Margins*].

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exploitation of people of color in the United States. Part IV then explores how the myths about race and sexuality that emerged in Europe and the United States during the enslavement and colonization of people of color continue to justify and fuel the modern day commercial sex industry. This Part applies critical race feminist theory to explore how myths about women of color and sexuality have shaped the dominant narrative that women of color choose prostitution and created racialized demand for commercial sex. Part IV scrutinizes these trends with respect to people of African and Native American descent.

Part V then examines the ways in which racism intersects with other forms of structural oppression to target people of color for prostitution and sexual exploitation and obscure choice for most people of color who are prostituted in the United States. Race, gender, age, and class biases systematically push people of color into prostitution and close shut the escape paths. This article concludes by calling upon scholars and policymakers to consider further the nexus between racism, structural oppression and the coercive experience of people of color in America's prostitution industry.

I. TOWARD A CRITICAL RACE FEMINIST PERSPECTIVE

A. *The Goals of Critical Race Feminism*

Critical race feminism ("CRF")²⁷ is a strand of critical race theory ("CRT").²⁸ Scholars and activists developed CRT as an intellectual framework to address this persistent marginalization of people of color within the Academy²⁹ as well as the society at large.³⁰ CRT embraces several main tenets,

27. Seminal works discussing and applying critical race feminism include Kimberlé Crenshaw, *Demarginalizing*, *supra* note 26; Kimberlé Crenshaw, *Mapping the Margins*, *supra* note 26 (sexual harassment); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, in ADRIEN K. WING, *CRITICAL RACE FEMINISM: A READER* 3 (Adrien K. Wing ed., 1997); Roberts, *Prison, Foster Care*, *supra* note 22 (applying intersectionality analysis to consider the race, gender and class discrimination imposed on women of color by the prison and foster care systems); Wing & Willis, *supra* note 22. For more recent works, see Geneva Brown, *Ain't I a Victim? The Intersectionality of Race, Class, and Gender in Domestic Violence and the Courtroom*, 19 *CARDOZO J.L. & GENDER* 147 (2012) (domestic violence); Tanya K. Hernandez, *The Value of Intersectional Comparative Analysis to the "Post-Racial" Future of Critical Race Theory: a Brazil-U.S. Comparative Case Study*, 43 *CONN. L. REV.* 1407 (2011) (sexual harassment); Adele M. Morrison, *Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor*, 39 *U.C. DAVIS L. REV.* 1061.

28. Devon Carbado, *Critical What What?* 43 *CONN. L. REV.* 1593, 1596 (2011).

29. Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 12 *CONN. L. REV.* 1253, 1258, 1264 (2011) (Reflecting on the early symposium which spearheaded the development of CRT, Professor Crenshaw recalls: "We were all veterans, in one way or another, of particular institutional conflicts over the nature of colorblind space in American law schools.")

30. *Id.* at 1258, 1260 ("I want to explore these questions though various angles, taking up the possibility that a unique confluence of temporal, institutional, and political factors set the stage out of which CRT emerged. . . . CRT was not, however, simply a product of a philosophical critique of the

several of which influence CRF. First, CRT presumes that racism is an ordinary and entrenched feature in American society.³¹ Second, CRT scholarship often adopts the interest convergence thesis,³² formulated by the preeminent CRT scholar Derrick Bell.³³ Bell's thesis posits that "white elites tolerate or encourage racial progress for minorities as long as it also promotes white interests."³⁴ Third, CRT challenges those dominant legal theories that promote hierarchy or neutrality or are based on claims of color blindness within American society.³⁵ Fourth, CRT builds upon legal theories such as liberalism, feminism, and law and society.³⁶ Fifth, CRT asserts a unique perspective by recognizing storytelling and narrative as vital to legal discourse about people of color.³⁷ Sixth, CRT has influence across racial groups³⁸ and influenced the development of additional legal frameworks aimed at exposing inequality.³⁹ According to CRT scholar Devon Carbado, LatCrit theory grew out of CRT when Latino scholars critiqued the "perceived black-centered and heterosexist nature" of some CRT scholarship⁴⁰ and the overreliance by CRT of a

dominant frames on racial power. It was also a product of activists' engagement with the material manifestations of liberal reform.").

31. Carbado, *supra* note 28, at 1596.

32. *Id.* But see Justin Driver, *Rethinking the Interest-Convergence Thesis*, 10 NW. U. L. REV. 149, 149 (2011) (critiquing the interest convergence thesis).

33. Professor Bell, along with Professor Crenshaw and others, is one of the founders of the CRT movement. See Crenshaw, *supra* note 29, at 1253, 1264. On Professor Bell's CRT scholarship, see THE DERRICK BELL READER 3 (Richard Delgado & Jean Stefancic eds., 2005). Professor Bell, who passed away in 2011, continues to influence discourse on critical race theory and race relations in America. See, e.g., Cheryl Nelson Butler et al., *The Story Behind a Letter in Support of Professor Derrick Bell*, 75 U. PITT. L. REV. 1 (forthcoming 2014) (chronicling the drafting of a letter, signed by 300 law professors and attorneys, supporting Professor Bell's legacy in the face of recent political attacks); andré douglas pond cummings, *Derrick Bell: Godfather Provocateur*, 28 HARV. J. ON RACIAL & ETHNIC JUST. 51 (2012); Stacey Marlies Gahagan & Alfred L. Brophy, *Reading Professor Obama: Race and the American Constitutional Tradition*, 75 U. PITT. L. REV. 1, 39 (discussing the role of CRT scholarship in then-President Barack Obama's Constitutional Law syllabus) ("Just as Freeman's work served as a cornerstone for Lawrence's classes, Derrick Bell's work provided a starting point for Obama's course—though as we suggested in Part II, much of the assigned reading—went in different directions from Bell.").

34. See Wing & Willis, *supra* note 22, at 144 n.13.

35. Carbado, *supra* note 28, at 1596.

36. *Id.*

37. *Id.*; see Barnes, *supra* note 18, at 952 ("Moreover, this belief in the contingent nature of the precision of law stories is reflected in the work of a number of scholars and has been of special concern to those working in the area of CRT. It is for these reasons, among others, that using narrative methodology has been a helpful tool for addressing the mostly unacknowledged harms of 'objective' legal discourse and 'neutral' representations of identity within criminal cases.") (citations omitted).

38. Carbado, *supra* note 28, at 1609.

39. See Mario Barnes, *LatCrit Theory, Narrative Tradition and Listening Intently for a "Still Small Voice"*, 1 U. MIAMI RACE & SOC. JUST. L. REV. 1 (2011) ("And also like CRT, LatCrit theory expresses this commitment to the production of both knowledge and community specifically as a means toward an end—the attainment social justice . . . LatCrit theory thus seeks to combine elements of CRT's early and formal self-conception with lessons drawn from CRT's actual experience and practice to employ and develop its insights.") (quoting LATCRIT founder Francisco Valdes, *Afterword-Theorizing "OutCrit" Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits*, 53 U. MIAMI L. REV. 1265, 1301 (1999)) (internal citations omitted).

40. Carbado, *supra* note 28, at 1603.

“black/white” paradigm of racial oppression.⁴¹ Thus, today CRT has influence across racial groups.⁴²

Just as CRT scholars argued that their voices were not heard within the Academy, women of color expressed their similar feelings of marginalization within both the CRT and feminist movements.⁴³ CRT provided an incomplete framework upon which to analyze how the law treats women of color. First, scholars recognized that exploring discrimination exclusively through a race lens fails to explain harms faced by women of color.⁴⁴ Second, women of color felt the sting of exclusion and marginalization within traditional feminist discourse.⁴⁵ Scholars have long argued that feminist scholarship has marginalized the concerns of women of color with respect to a variety of legal and policy issues.⁴⁶

Critical race feminism has been a particularly useful legal framework for exploring how various types of sexual stereotyping, exploitation, and violence, including sexual harassment, domestic violence, and rape, impact people of color.⁴⁷ CRF scholarship has addressed criminal justice issues, including the plight of people of color as criminals and victims of crime.⁴⁸ Scholars have argued that the future direction of critical race feminist discourse should

41. *Id.* at 1603, 1626-32.

42. *Id.* at 1614.

43. *Id.*

44. *Id.*

45. Adrien Katherine Wing, *Introduction to CRITICAL RACE FEMINISM*, *supra* note 27, at 1-7 (arguing that one of the goals of critical race feminist scholarship is to address the marginalization and exclusion of the perspectives and experiences of women of color from traditional feminist jurisprudence).

46. *See id.*; Mary Ann Franks, *I AM/ I AM NOT: On Angela Harris's Race and Essentialism in Feminist Legal Theory*, 102 CALIF. L. REV. 1053, 1054 (2014) (arguing that feminist discourse on Twitter marginalizes the perspectives of women of color); Bernie D. Jones, *Southern Free Women of Color in the Antebellum North: Race, Class and a "New Women's History"*, 41 AKRON L. REV. 763, 769 (2008) (“Critical race feminists have long cautioned against tendencies in feminist legal theory and women’s history to focus exclusively upon women of majority race groups.”); Jennifer C. Nash, *From Lavender to Purple: Privacy, Black Women, and Feminist Legal Theory*, 11 CARDOZO WOMEN’S L.J. 303, 316 (2005) (discussing “the complex ways in which women of color experience violence, which have not been adequately included within the feminist architecture of domestic violence law reform efforts”); Adrien Katherine Wing, *A Critical Race Feminist Conceptualization of Violence: South African and Palestinian Women*, 60 ALB. L. REV. 943, 947 (1997); Jessie Daniels, *The Trouble with White Feminism: Whiteness, Digital Feminism and the Intersectional Internet* 2 (2015), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569369 (“Yet, what remains unquestioned in these journalistic accounts and in the scholarship to date, is the dominance of white women as architects and defenders of a framework of white feminism—not just in the second wave but today in the digital era. In this chapter, I offer a critique of white feminism as it plays out in the intersectional internet?”).

47. For seminal writings in critical race feminism scholarship addressing sexual exploitation of women of color, see Crenshaw, *Demarginalizing*, *supra* note 26 (anti-essentialism and CRF); Crenshaw, *Mapping the Margins*, *supra* note 26 (sexual harassment); *see also* Harris, *supra* note 27, at 3 (rape); Hernandez, *supra* note 18, at 184-194 (sexual harassment).

48. Annette Ruth Appell & Adrienne D. Davis, *Access to Justice: Mass Incarceration and Maculinity Through a Black Feminist Lens*, 37 WASH. U. J.L. & POL’Y 1, 3-4 (2011) (“For this intellectual inquiry, we chose black feminism as our lens. We decided to approach this phenomenon through a gendered lens for several reasons. First, mass incarceration has deeply gendered effects that cannot be understood as purely racial products.”).

include additional inquiry into the ways in which the criminal justice system subordinates women of color.⁴⁹ As Professors Adrienne Davis and Annette Appell have noted, the racial and gendered implications of criminal justice policies, including but not limited to mass incarceration, are of particular importance to Black feminist thought.⁵⁰ “Black feminism has proven particularly adept at theorizing how the State uses gender and sexuality instrumentally to manipulate, manage, and discipline targeted populations.”⁵¹ A critical race feminist analysis of prostitution and sex trafficking, including the role of the State in maintaining sexual exploitation, is a step in that direction. Indeed, critical race feminism has offered an alternative framework to consider how race and other factors intersect to make women vulnerable to sexually exploited women of color.

B. The Critical Race Feminist Toolbox

To provide an additional framework in which to consider the commercial sexual exploitation of people of color, critical race feminism offers four main tools for analysis. First, critical race feminism encourages the use of interdisciplinary study, such as legal history, to examine issues of concern to women of color and other marginalized groups.⁵² Like CRT, CRF draws upon the works of scholars in a variety of fields including international law, education, history, economics, sociology, and women’s studies.⁵³ Recently, several critical race scholars have re-emphasized the importance of addressing the application of critical race theory to the social sciences.⁵⁴

Second, CRF recognizes narrative and storytelling as important components of protest, advocacy, and critical legal scholarship.⁵⁵ Such

49. Barnes, *supra* note 18, at 945-46 (“At least a part of the future work of Critical Race Feminism (“CRF”) should involve continuing to deconstruct the ways identity affects legal contest. Locating and giving voice to the counter-narratives of disenfranchised women, and advancing methods to challenge the systems of power that are partially responsible for instantiating and misrepresenting black female lives within the criminal law and society will remain critical to this undertaking.”).

50. Appell & Davis, *supra* note 48, at 4 (arguing that mass incarceration is an issue of importance for Black feminist theorizing because, as a form of both race and gender discrimination, this policy affects men of color *as men* and undermines Black families).

51. *Id.*

52. Carbado, *supra* note 28, at 1620-21.

53. *See id.* at 1621 (citing Gloria Ladson-Billings & William F. Tate, IV, *Towards A Critical Race Theory in Education*, 97 TEACHERS C. REC. 47 (1995)).

54. *See* Crenshaw, *supra* note 29, at 1253; Tukufu Zuberi, *Critical Race Theory of Society*, 43 CONN. L. REV. 1575, 1577-80 (2011).

55. *See* Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2412-14 (1989); Kristin B. Kalsem, *Looking for Law in All The “Wrong” Places: Outlaw Texts and Early Women’s Advocacy*, 13 REV. L. & WOMEN’S ISSUES 273, 278, 282-83 (2003) (discussing the importance of narrative generally, and novels in particular, as forms of “outsider scholarship” that help with understanding women’s legal history and gender oppression); George A. Martinez, *Philosophical Considerations and the Use of Narrative in Law*, 30 RUTGERS L.J. 683, 683 (1999); Carmen G. Gonzales & Angela P. Harris, *Introduction* to PRESUMED INCOMPETENT: THE

“counter-stories” are particularly central to Black feminist thought because the views of women of color, particularly their views of dissent, are often suppressed.⁵⁶ “Counter-stories” that challenge structural oppression “can show us the way out of the trap of unjustified exclusion,” since they expose an alternate reality, different from the dominant narrative.⁵⁷ Narrative has served as an essential tool in CRF discourse, particularly in countering narratives with respect to Black criminality. Mario Barnes has argued that “[l]ocating and giving voice to the counter-narratives of disenfranchised women, and advancing methods to challenge the systems of power that are partially responsible for instantiating and misrepresenting black female lives within the criminal law and society” should be a major goal of critical race feminist studies.⁵⁸ Indeed, a critical race feminist perspective on prostitution answers this call.

Third, critical race feminism critiques “essentialism,” i.e., the idea that there is one monolithic or authentic female perspective.⁵⁹ Critical race feminists have argued that, “feminist legal theory, as in the dominant culture, is mostly white, straight, and socio-economically privileged people who claim to speak for all of us [women].”⁶⁰ For example, in her seminal article *Race and Essentialism in Feminist Legal Theory*,⁶¹ Angela P. Harris critiqued the tendency of feminist legal scholars to portray the experiences of women of color and White women who are raped or sexually abused as non-distinct.⁶²

INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA 1, 3 (Gabriella Gutierrez y Muhs et al. eds., 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569369 (“As feminist scholars and those in the critical race theory tradition have established, personal stories may bridge the epistemological gap that frequently appears between the lives of people with a particular privilege and those who lack that privilege.”) (internal citations omitted).

56. See PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 3 (2d. 2000) (“Suppressing the knowledge produced by any oppressed group makes it easier for dominant groups to rule because the seeming absence of dissent suggests that subordinate groups willingly collaborate in their own victimization.”); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 *WOMEN’S RTS. L. REP.* 297, 298 (1992) (“Outsider scholars have recognized that their specific experiences and histories are relevant to jurisprudential inquiry. . . . Their anger, their pain, their daily lives, and the histories of their people are relevant to the definition of justice.”).

57. Delgado, *supra* note 55, at 2415.

58. Barnes, *supra* note 18, at 945.

59. See Angela P. Harris, *Race & Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 587-88 (1990); Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory, and Anti-Racist Politics*, 47 *BUFF. L. REV.* 1, 3 (1999); Morrison, *supra* note 27, at 1061.

60. Harris, *supra* note 59, at 588; see Franks, *supra* note 46, at 1054 (“Harris argued that feminist legal theory is controlled and dominated by ‘white, straight, and socio-economically privileged people.’” (quoting Harris, *supra* note 59, at 588)).

61. Appell & Davis, *supra* note 48, at 5 (Harris’s “path-making article, *Race and Essentialism in Feminist Legal Theory*, was one of the earliest and most influential interrogation of essentialism in feminist thought.”).

62. See Franks, *supra* note 46, at 1054 (“Harris’s central claim is that their writing [that of Catherine MacKinnon and other legal scholars] relies on gender essentialism which she defines as ‘the notion that a unitary, ‘essential’ women’s experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience.’”).

This early critique posited that essentialism marginalized women of color—rendering them and their experiences invisible and inconsequential.⁶³ In Harris’s words, “issues of race are bracketed as belonging to a separate and distinct discourse—a process that leaves black women’s selves fragmented beyond recognition.”⁶⁴ Thus, “white women now stand as the epitome of Woman”—Black women are removed.⁶⁵ Catherine MacKinnon disputed Harris’s thesis, challenging the notion that using the general term “women” erased race.⁶⁶

Nevertheless, Harris’s concern with essentialism resonates with feminist activists⁶⁷ and scholars.⁶⁸ Sensing that “white feminists still continue to ‘erase’ them, Black women have taken to Twitter to suggest that “feminist legal theory would benefit from listening to the stories of women of color.”⁶⁹ Indeed, there is still concern that traditional feminist discourse may essentialize Black women’s voices, if not silence them altogether.⁷⁰

Fourth, intersectionality provides a theoretical framework for exploring how people of color experience discrimination through multiple and combined identity characteristics.⁷¹ As Professor Kimberlé Crenshaw explains, women of color:

[E]xperience double-discrimination—the combined effects of practices which discriminate on the basis of race, and on the basis of sex. And sometimes, they experience discrimination as Black women—not the sum of race and sex discrimination, but as Black women.⁷²

Indeed, intersectionality provides a unique perspective and framework for analyzing how double or multiple forms of discrimination act in tandem.⁷³

63. Harris, *supra* note 27, at 13.

64. *Id.*

65. *Id.*

66. See Catherine MacKinnon, *From Practice to Theory or What is the White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991).

67. See Franks, *supra* note 46 at 1056 (“Almost twenty-five years after Harris’s article was published, the issues her piece raised clearly still resonate, and they do so far beyond the legal academy.”).

68. See, e.g., Franks, *supra* note 46, at 1056; Frank Rudy Cooper, *Race & Essentialism in Gloria Steinem*, 11 BERKELEY J. AFR.-AM. L. & POL’Y 101 (2009) (reflecting on Harris’s article on anti-essentialism).

69. Franks, *supra* note 46, at 1058 (discussing Black Twitter’s use of the hashtag #solidarityforwhitewomen to express concerns that White feminists still continue to erase race issues from feminist discourse).

70. *Id.*

71. See Crenshaw, *Demarginalizing*, *supra* note 26, at 149; Gonzales & Harris, *supra* note 55, at 2-3.

72. Crenshaw, *Demarginalizing*, *supra* note 26, at 149.

73. Sumi Cho, Kimberlé Williams Crenshaw & Leslie McCall, *Toward a Field of Intersectionality Studies: Theory, Applications, and Praxis*, 38 SIGNS 785, 787 (2013) (“Intersectionality . . . expose[s] how single-axis thinking undermines legal thinking, disciplinary knowledge production, and struggles for social justice.”); Catherine A. MacKinnon, *Intersectionality as Method: A Note*, 38 SIGNS 1019, 1019

As scholars Dorothy Roberts and Angela Onwuachi-Willig have explained further, “an intersectional perspective reveals that Black women suffer the combined effects of racism and sexism and therefore have experiences that are different from those of both white women and black men.”⁷⁴ Incorporating these tools, critical race feminism has emerged as a major theoretical framework used by scholars to analyze a variety of social issues affecting women and other marginalized groups.⁷⁵

These tools of analysis are particularly useful for offering an alternative perspective on how race and other systems of oppression intersect in American prostitution. A critical race feminist perspective on prostitution could both conform and collide with traditional feminist perspectives. Traditional feminist discourse on prostitution has centered on the debate over consent and choice

(2013) (“Intersectionality both notices and contends with the realities of multiple inequalities as it thinks about the interaction of those inequalities that captures the distinctive dynamics at their multidimensional interface.”); Hutchinson, *supra* note 59, at 1 (“This Article extends the intersectionality scholarship conceptually because it treats the issue of multidimensional subordination as a “universal” concept, not one limited to a particular class of oppressed individuals who are currently excluded from equality discourse. Much of the intersectionality scholarship, by contrast, suggests that the phenomenon of complex subordination is experienced by certain discrete groups, particularly “women of color.”). The intersectionality framework has been applied to measure discrimination against groups other than women of color. See, e.g., Darren Lenard Hutchinson, *Identity Crisis: “Intersectionality,” “Multidimensionality” and the Development of an Adequate Theory of Subordination Law*, 6 MICH. J. RACE & L. 285, 294 (2001) (“When antiracist and pro-gay activists challenge incidents of homophobic racism, their responses are singular: they focus solely on the racial *or* homophobic dimensions of the acts of domination and fail to unveil the multidimensional nature of oppression.”).

74. Roberts, *Prison, Foster Care*, *supra* note 22, at 1491 (exploring intersectional discrimination faced by Black women by the foster care and criminal justice systems). See generally Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079, 1104-05 (2010) (exploring the failure of anti-discrimination law to address intersectional race and gender discrimination against Black women through hair based grooming policies) (applying Professor Crenshaw’s intersectionality framework to highlight “the unique way in which black women are discriminated against at the intersection of race and sex through employers’ bans on natural black hairstyles such as braids, locks, and twists.”).

75. See, e.g., PRESUMED INCOMPETENT, *supra* note 55, at 4 (Applying CRF theory to frame the patterns of race, gender, and class hierarchy and barriers that women of color faculty members face in the legal academy: “As feminist scholars and those in the critical race theory tradition have established, personal stories may bridge the epistemological gap that frequently appears between the lives of people with a particular privilege and those who lack that privilege.”); Hutchinson, *supra* note 59, at 3 (1999) (exploring the use of intersectionality to understand sexual orientation discrimination); Kristin Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN’S L.J. 131, 146-47 (2010) (discussing the history of women of color in the feminist movement: “Women of color thus sought to broaden the meaning of ‘woman’ and ‘feminism,’ building upon efforts in the previous century, and foreshadowing the development of feminist legal theories that would place issues such as essentialism and intersectionality at the forefront of the movement (citations omitted)); Beverly I. Moran, *Keynote Address Delivered for the Journal of Contemporary Legal Issues Conference on The Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 691, 693-94 (2001); Athena D. Mutua, *Multidimensionality is to Masculinities What Intersectionality is to Feminism*, 13 NEV. L. J. 341, 342-43 (2012) (conceding that “multidimensionality employs intersectionality as part of its methodology and is, in part, based on it,” but arguing nevertheless “that early interpretations of intersectionality theory, its groundings in the analyses of women’s lives, and the way in which women’s lives were both understood and examined, limited intersectionality’s intuitive power in analyzing men as gendered beings for some legal scholars.”); Onwuachi-Willig, *supra* note 74, at 1104-05; Roberts, *Prison, Foster Care*, *supra* note 22, at 1491; Wing & Willis, *supra* note 22, at 141.

with great concern over how gender affects societal views as to when and whether women consent. Liberal feminists and abolitionist feminists hold seemingly polar views on whether women in prostitution exercise free agency or suffer through coercion.⁷⁶ These traditional feminist perspectives have not completely explored the ways in which race and intersectional oppression impact the experiences of women of color in prostitution or society's cultural and legal responses.

II. LIBERAL FEMINIST PERSPECTIVES & RACE

A. Liberal Feminism

Liberal feminists argue that for many women, prostitution is a free choice, and, therefore, the law should protect, rather than punish, those who exercise their agency to trade money for sex.⁷⁷ “Liberal feminist” perspectives posit that women can and often do freely choose prostitution.⁷⁸ Liberal feminists challenge the stereotyping of all prostitutes as coerced “victims,” and, in contrast, recognize prostitution as “sex work.”⁷⁹ Likewise, this new breed of feminists, also referred to as “radical feminists,” regard sex as a place of potential agency for women rather than inevitably subordinate such that “sex workers were no longer exploited slaves, instead there was the potential for power and agency.”⁸⁰ Accordingly, radical and liberal feminists advocate that women who consent to prostitution be respected as “sex workers.”⁸¹

76. See Barbara Havelková, *Using Gender Equality Analysis to Improve the Wellbeing of Prostitutes*, 18 CARDOZO J.L. & GENDER 53, 104 (2012) (discussing the debate).

77. See Janie Chuang, *Rescuing Trafficking From Ideological Capture: Prostitution Reform & Anti-Trafficking Law & Policy*, 158 U. PA. L. REV. 1655, 1710-12 (2010); Marisa Silenzi Cianciarulo, *What Is Choice? Examining Sex Trafficking Legislation Through the Lenses of Rape Law and Prostitution*, 6 U. ST. THOMAS L.J. 54, 72-75 (2008-09); Anne McClintock, *Screwing the System: Sexwork, Race and the Law*, 19 BOUNDARY 2, 70 (1992). *But see* Janet Halley et al., *From the International to the Local in Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GENDER 335, 396-98 (2006).

78. See Chuang, *supra* note 77, at 1710-12; Cianciarulo, *supra* note 77, at 72-75; Halley, *supra* note 77, at 396-98. See generally Beran, *supra* note 23.

79. Kimberly D. Krawiec, *A Woman's Worth*, 88 N.C. L. REV. 1739, 1747 (2010); Juhu Thukral et al., *Urban Justice Center, Behind Closed Doors: An Analysis of Indoor Sex Work in New York City*, SEX WORKERS PROJECT, URBAN JUSTICE CTR. 9 (2005), <http://swp.ujcprd.vshift.net/sites/default/files/BehindClosedDoors.pdf> (“Sex work is a term used to refer to all aspects of the lawful and unlawful sex industry.”); see Corey Silverberg, *Illuminating the Sex Industry: An Interview with Spread Magazine Editors Rachel Aimee and Audacia Ray*, SPREAD MAGAZINE, http://sexuality.about.com/od/eroticentertainment/a/spread_magazine.htm (last visited May 26, 2015) (“[W]e define sex work as the explicit exchange of erotic labor for a mutually agreed upon amount of money, goods or services. We interpret the phrase pretty broadly—erotic labor—can be anything from prostitution . . . to phone sex, erotic wrestling, sensual massage and domination.”).

80. Ahmed, *supra* note 25, at 212.

81. Havelková, *supra* note 76, at 108.

The debate over whether prostitution is more about consent or coercion has influenced the emerging jurisprudence of modern anti-trafficking law.⁸² Liberal feminists successfully advocated for federal legislation that preserves the legal distinction between adult prostitution (a commercial sex act involving presumed consent) and sex trafficking (a commercial sex achieved through certain forms of force, fraud, or coercion).⁸³ In contrast, abolitionists have opposed all legal distinctions between prostitution and trafficking.⁸⁴ For example, abolitionist feminists lobbied against legislation that posited that prostitution only amounts to sex trafficking when there is proof of force, fraud, or coercion.⁸⁵ Such legal distinctions between sex trafficking and prostitution are inappropriate because, in their view, all prostitution involves gender violence or discrimination.⁸⁶

Liberal feminists support the enactment of legislation that recognizes and validates the view that many women consent to prostitution. They challenge the use of moralistic laws to justify prostitution.⁸⁷ As Professor Michele Alexandre has argued, moralistic laws are inefficient because they fail to deter both prostitutes and clients from exercising this free agency to sell and purchase sex.⁸⁸ Along these lines, liberal feminists support legislation providing strong legal protections and better working conditions for prostitutes in the commercial sex industry.⁸⁹

Liberal feminism also sparked a sex workers rights movement in which prostitutes created support networks and advocated for sex worker rights.⁹⁰ For example, Scott Peppet argues that the commercial sex industry should be

82. See Chuang, *supra* note 77, at 1710-12; Cheryl Nelson Butler, *Kids For Sale: Does America Recognize Its Own Sexually Exploited Minor as Victims of Human Trafficking?*, 44 SETON HALL L. REV. 833, 848 (2014) (“Certain feminist models of anti-trafficking laws aim to protect notions of personal autonomy, agency, and gender equality by advancing the view that women can freely choose prostitution and other sex work.”).

83. See Jones, *supra* note 3, at 486 (2012) (“Indeed human trafficking legislation, to some degree, reflects this position, the underlying rationale being that a person becomes a victim once force, fraud, or coercion vitiates the individual’s consent or interrupts his or her autonomy.”); Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Field(s)*, 3 STAN. J. C.R. & C.L. 317, 318-20 (2007).

84. Butler, *supra* note 82, at 849-51; Cianciarulo, *supra* note 77, at 66.

85. Butler, *supra* note 82, at 849-51.

86. *Id.* at 849 (“Feminist abolitionists have argued that all prostitution is gender violence and thus, women never fully consent to prostitution.”); Chuang, *supra* note 77, at 1664-65 (2010).

87. Krawiec, *supra* note 79, at 1741-42 (arguing that “the constraints [against taboo trades such as prostitution] are . . . often the product of unexamined instincts that fail to withstand more careful scrutiny, and frequently embed class and gender stereotypes.”); Alexandre, *supra* note 25, at 102.

88. Alexandre, *supra* note 25, at 102.

89. See Sex Workers Project, URBAN JUSTICE CTR., <http://swp.urbanjustice.org> (last visited May 19, 2015) (“The Sex Workers Project provides client-centered legal and social services to individual who engage in sex work, regardless of whether they do so by choice.”). See generally Beran, *supra* note 23; Stephanie Berger, *No End in Sight: Why the “End Demand” Movement is the Wrong Focus for Efforts to Eliminate Human Trafficking*, 35 HARV. J.L. & GENDER 523 (2012); Valerie Jenness, *From Sex as Sin to Sex as Work: COYOTE and the Reorganization of Prostitution as a Social Problem*, 37 SOC. PROBS. 403 (1990).

90. Ahmed, *supra* note 25, at 229-30.

reformed, not outlawed.⁹¹ In particular, Peppet contends that technology can be used to protect prostitutes and their clients from abuse, coercion, threats to health, or other harms.⁹²

While liberal feminist perspectives emphasize that women can choose prostitution, some liberal feminists acknowledge that some prostitution is coercive.⁹³ Peppet for example, argues that prostitution becomes coerced where “the initial conditions of the market are marred by gross inequalities that undermine the legitimacy of transaction in that market, such that even if transactions create value for its participants and do not create externalities, we doubt the fairness of participation in that market.”⁹⁴ In other words, where structural inequality drives the female to “choose” to sell sex, that choice is still coercive. Indeed, other scholars have argued that prostitution is coercive when induced or perpetuated through discriminatory forces such as poverty and where “bad circumstances have forced that choice.”⁹⁵ Furthermore, Peppet’s analysis also suggests that, as applied to prostitution, coercion can drive the market *even* where the female prostitute believes that commercial sex act benefits her in some way.⁹⁶ Thus, coercion can obscure choice.

Yet, the liberal feminist perspective on prostitution has also influenced cultural narratives about prostitution that obscure the presence of coercion. American society often romanticizes prostitution, celebrating those narratives that portray women in prostitution as willing agents who like and choose prostitution. America’s romanticized view of prostitution is at the heart of the \$463 million blockbuster movie *Pretty Woman*.⁹⁷ In this iconic film, the White vixen, portrayed by Julia Roberts, freely chooses to prostitute herself. Julia’s character is confident and empowered in her role as a prostitute. She does not experience racial discrimination. Her path is not dominated by any gendered violence, psychological abuse, or similar perils. Instead, her life of prostitution is a Cinderella story that leads to the American dream when she and her millionaire client fall in love.⁹⁸ She has chosen prostitution and, in more ways than one, her choice pays off.

91. See Scott R. Peppet, *Prostitution 3.0?*, 98 IOWA L. REV. 1, 3-4 (2013).

92. See *id.* at 2-4 (“Such a technology-enabled sex market—‘Prostitution 3.0’—could keep buyers and sellers of sex safer and healthier . . . by screening prostitutes for age and legal status, and by using biometric identification to confirm that the prostitute and client hired online was in fact the same individual that appeared in person.”).

93. See *id.* at 11.

94. *Id.*

95. Alison Jaggar, *Prostitution*, in *THE PHILOSOPHY OF SEX: CONTEMPORARY READINGS* 348, 360 (Alan Soble ed., 1980) (“It is the economic coercion underlying prostitution . . . that provides the basic feminist objection to prostitution”); see Norma Hotaling, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider’s Perspective*, 18 YALE J.L. & FEMINISM 181, 182 (2006).

96. Peppet, *supra* note 91, at 16.

97. For scholarly analysis of how *Pretty Woman* perpetuates myths about prostitution, see generally Balos, *supra* note 6; Dalla, *supra* note 6; Smith, *supra* note 6.

98. See Maslin, *supra* note 6.

B. Liberal Feminism, Prostitution & Women of Color

While the liberal feminist perspective is an authentic narrative for some women in prostitution, it is problematic to the extent that it functions as an essentialist narrative for women of color. The image of the prostitute as the willing participant has dominated media accounts about women of color and prostitution. For example, the stereotype that Black women choose and enjoy prostitution remains a permanent fixture in American news and culture. A controversial *New York Times* article struck a nerve in part because it raised the age-old debate about whether women choose prostitution.⁹⁹ Yet, the article was also controversial because it highlighted how the media perpetuates certain narratives about people of color who choose prostitution while simultaneously erasing the ways in which race and racism obscure choice in prostitution. The article featured the notorious story of Barbara Terry, a fifty-two-year-old Black woman who has been selling herself for sex on the streets of the Hunts Point neighborhood of the Bronx for thirty years.¹⁰⁰

In the news article, Terry suggests that she freely chose prostitution. Terry explains that she was twenty-one years old and two years into college when her husband left her with two small children to support.¹⁰¹ In response, she “decided to try [prostitution], quickly forming an addiction to the lifestyle.”¹⁰² According to the story, Terry seemingly remained in prostitution by choice, even rejecting her children’s pleas to leave the lifestyle.¹⁰³ Terry was never exploited by a pimp; she kept all of her money and having been raised with several brothers, she learned how to protect herself with her fists alone.¹⁰⁴

Terry normalizes her apparent choice to work as a prostitute. From the onset, Terry is described as just “like many single mothers” who “scrounged for baby sitters” while “working the night shift.”¹⁰⁵ Her mother and grandmother also provided childcare while Terry worked and prayed for her each Sunday.¹⁰⁶ She explained to her kids that prostitution was “a regular job.”¹⁰⁷ Terry explains that prostitution has its benefits; Terry discusses how she made plenty of money, enough to support her kids, even putting two of them through college and to purchase a home in upstate New York where she will move when she retires.¹⁰⁸

99. See Killgannon, *supra* note 2.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

The *New York Times* article downplays the gendered discrimination that led Terry into prostitution, the structural oppression that keeps her there, and the law's persistent failure to protect her. Terry's story exposes how liberal feminist stories of women who consent to sex often reveal how gender discrimination and structural oppression strain or obscure these choices. As Terry's testimonial suggests, some women chose prostitution when confronted with the strains of being a single parent with limited financial resources after being abandoned by men.¹⁰⁹ The story highlights not only personal circumstances but gendered structural inequalities perpetuated when men abandon their children. Indeed, the Urban Justice Center report affirms that society's perception of prostitution is based in part on the *Pretty Woman* paradigm, i.e., "the stereotypes of indoor sex workers encompass only extremes of either wealth and glamour or coercion and violence."¹¹⁰ However, "the true picture reveals a more nuanced reality—the majority of indoor sex workers . . . live surprisingly precarious lives, and encounter a high level of exactly the same problems faced by street-based sex workers, including violence, constant fear of police interference, and a lack of substantive support services."¹¹¹

Likewise, as Professor Bridget Crawford noted, Terry experienced serious violence at the hands of her customers.¹¹² The article mentions but downplays the adverse effects of prostitution on Terry's health and safety. All of the prostitutes in the area "had friends attacked or cut or dumped dead somewhere."¹¹³ In addition to escaping dangerous customers, Terry and others learned to jump into dumpsters to hide from police.¹¹⁴ Terry nevertheless spent weeks incarcerated at Riker's Island following hundreds of arrests.¹¹⁵

Notwithstanding these horrors, Terry's account conforms incredibly to a romanticized notion of prostitution. In her words, "I love the excitement of coming out here and seeing all these beautiful people I know. . . . Even my dates are a comfort. The place has made me strong. It keeps you young."¹¹⁶ Here, Terry is simultaneously portrayed as the twin prototypes of prostitution found in modern criminal law textbooks: "[T]he autonomous entrepreneur in the marketplace who assumes the risk of her 'business' [and] the immoral woman who is a source of disease and corruption."¹¹⁷ As Professor Beverly

109. See Thukral et al., *supra* note 79, at 9.

110. *See id.*

111. *See id.*

112. See Bridget Crawford, *NYT Profile of Bronx Prostitute: A Survivor*, FEMINIST LAW PROFESSORS (Jan. 1, 2012), <http://www.feministlawprofessors.com/2012/01/nyt-profile>.

113. See Killgannon, *supra* note 2.

114. *Id.*

115. *Id.*

116. *Id.*

117. Balos, *supra* note 6, at 729.

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Balos has warned, “in either construction, she is unworthy of the protection of the law.”¹¹⁸

A less romanticized version of Terry’s personal story is graphically depicted in *Hookers at the Point*, the infamous HBO documentary series about Terry and other prostitutes in Hunts Point.¹¹⁹ The documentary, like the *New York Times* story, suggests that some women, including women of color, choose prostitution. While some of the prostitutes in the documentary appear, like Terry, “genuinely happy in what they do,” others hate selling their bodies “but don’t know what else to do,” while “others are indifferent to their situation.”¹²⁰

Yet, even though the *New York Times* article and the documentary portray the fact that women of color do choose prostitution, both also exploit stereotypes and myths about race and prostitution. HBO continued to broadcast *Hookers at the Point* until 2010, when community leaders expressed outrage over what they perceived as HBO’s desire to exploit the stereotyping of their urban neighborhood.¹²¹ The community argued that, while prostitution had been epidemic in their neighborhood twenty years, economic development and community organizing had thwarted vice.¹²² Yet, Terry’s narrative remains the most dominant and persuasive story about prostitution and race in the United States. While Terry testifies that she chose and even enjoyed the prostitution lifestyle,¹²³ arguably her story also raises concerns about the ways in which structural race and gender discrimination shape the commercial sex industry.

Liberal feminist accounts such as Terry’s have dominated the scholarly discourse on race, class, and prostitution. Narratives of women who choose prostitution have drawn the attention of legal scholars. In her article, *A Woman’s Worth*, Professor Kimberly Krawiec analyzes one of the widely reported stories of young women who choose to sell sex.¹²⁴ In a case that sparked a particular amount of public outrage, Natalie Dylan, a twenty-two-year-old woman auctioned her virginity on the website of a brothel in Nevada (where prostitution is legal)¹²⁵ and secured 10,000 bids, including an ultimate

118. Balos adds that “the failure to question these stereotypes is, in part, the result of the failure of the casebooks to include material that presents specific information about the impact of prostitution on persons in prostitution.” *Id.*

119. *See id.*

120. Landesman, *supra* note 17.

121. Reviews of the movie perpetuate stereotypes about the community. *See, e.g.,* Buzz McClain, *Review, Hookers at the Point*, ALL MOVIE, <http://www.allmovie.com/movie/hookers-at-the-point-v267451/review> (last visited May 19, 2015) (“The documentary is riveting, but only because most of us wouldn’t be brave enough to drive down some of the Point’s streets, much less stop, have conversations and photograph the people who reside in this rough part of the world.”).

122. *See* David Gonzalez, *HBO Gets the Point*, N.Y. TIMES (Feb. 12, 2010, 11:50 AM), <http://cityroom.blogs.nytimes.com/2010/02/12/hbo-gets-the-point/comment-page-1/>.

123. *See* Killgannon, *supra* note 2.

124. Krawiec, *supra* note 79, at 1740.

125. *Id.* at 1745.

offer of \$3.8 million.¹²⁶ Dylan's case indicates how prostitution is not always based on coercion. Professor Krawiec argues that "coercion objections are an especially ill fit in the Dylan case" because one may question whether it is "reasonable to assume that Dylan—an educated young woman who managed to garner an offer for a single sexual encounter that exceeds what most people (much less most sex workers) earn in an entire lifetime—is more coerced than other sex workers."¹²⁷

Narratives of women of color who view prostitution as a form of empowerment (as opposed to a system of oppression) have dominated the scholarly discourse on race and prostitution.¹²⁸ For example, in *I've Got to Make My Livin': Black Women's Sex Work in the Turn-of-the-Century Chicago*, historian Cynthia Blair challenges the reluctance of scholars "to view prostitution as anything other than a forced choice for black women."¹²⁹ Blair offers a narrative of Black prostitutes as "sex workers [who] emerge as conscious actors and historical agents—victims in some cases but very often savvy strategists who daily navigated the economic, racial, and spatial terrain that defined turn-of-the-century sex work."¹³⁰ Mirroring Terry's account of sexual agency, Blair argues further that, at the turn of the twentieth century, "black prostitutes transformed each sexual exchange into a stepping-stone toward their own financial independence."¹³¹

Similarly, in the context of the modern pornography industry, scholar Mireille Miller-Young has further argued that "black sex workers, while facing multiple axes of discrimination and harm, also *employ* hypersexuality and illicit eroticism to achieve mobility, erotic autonomy, and self-care."¹³² In the present

126. *Id.* at 1740.

127. *Id.* at 1747.

128. See CYNTHIA M. BLAIR, *I'VE GOT TO MAKE MY LIVIN': BLACK WOMEN'S SEX WORK IN TURN-OF-THE-CENTURY CHICAGO* 3-4 (2010); TERA HUNTER, "TO JOY MY FREEDOM": SOUTHERN BLACK WOMEN'S LIVES AND LABORS AFTER THE CIVIL WAR 154 (1997); PHILLIPA LEVINE, PROSTITUTION, RACE & POLITICS 6 (2003) (arguing that the views of prostitution as a threat to Whiteness and racial imperialism "had disruptive consequences for women dependent upon the sex trade for their livelihood"); VICTORIA W. WOLCOTT, REMAKING RESPECTABILITY: AFRICAN-AMERICAN WOMEN IN INTER-WAR DETROIT 106-13 (2001); Kamala Kempadoo, *Women of Color and the Global Sex Trade: Transnational Feminist Perspectives*, 1 MERIDIANS 28, 33 (2001) ("For many Black and Brown women, and increasingly for more men of color, sex work is more lucrative Sex with an 'exotic' is desired and valued among many tourists and exoticized subject devise strategies to benefit from this situation to the best of their ability"); McClintock, *supra* note 77, at 70.

129. See BLAIR, *supra* note 128, at 10 (stating that though "the communal memory of sexual abuse [of Black women in the United States] . . . helps us to see continuities in black women's sexual exploitation, it does not adequately account for black women's understanding of their own participation in Chicago's turn-of-the-century sex economy.").

130. *Id.* at 3-4.

131. *Id.* at 4.

132. See Mireille Miller-Young, *Hip Hop Honeys and Da Hustlaz: Black Sexualities in the New Hip Hop Pornography*, 8 MERIDIANS 261, 263 (2008) ("As a space for work, survival, consumption, and identity-formation, the genre proffers an opportunity to explore the gendering of black (post)modern desires, as well as the potential to think through historical echoes of the current controversies and debates around what exactly constitutes 'appropriate' black sexuality."); Mireille Miller-Young, *Putting*

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day, people of color are included among advocates who identify as “sex workers,” women who choose prostitution as a form of work and advocate for improved working conditions and other legal protections.¹³³

For example, the editors of *\$pread Magazine*, a contemporary publication by and about sex workers, explain that “[f]or a lot of people, sex work is preferable to other jobs because it’s possible to make more money for fewer hours of work, especially if you don’t have a lot of qualifications.”¹³⁴ They further argue that “[m]ainstream media coverage of the sex industry tends to be sensationalized and often judgmental, focusing either on trafficking or victim stories, or else on the glamorous high-end call girls who make thousands a week, rather than focusing on the vast majority of sex workers whose experiences are somewhere in between.”¹³⁵

In its report, *Behind Closed Doors: An Analysis of Indoor Sex Work in New York City*, the Urban Justice Center highlights a story about Angie, a young woman who offered sex for money to friends: “I started when the father of my child decided to take off with another woman. I was living in the Bronx, couldn’t make rent, and [had to] take care of my two children.”¹³⁶ Angie contends that she exercised her own agency and offered to sleep with friends for money.¹³⁷ “It was easy money,” she confessed.¹³⁸ “And since it was usually friends of people I knew, I felt pretty safe.”¹³⁹ Angie confirms that the prostitution was of her own volition and that she coordinated the meetings without a pimp.¹⁴⁰

Hypersexuality to Work: Black Women and Illicit Eroticism in Pornography, 13 *SEXUALITIES* 1, 1 (2010).

133. For first-hand testimonies by prostitutes who argue that they choose prostitution, see Silverberg, *supra* note 79; Kilgannon, *supra* note 2; Melissa Ditmore, *The Use of Raids to Fight Trafficking in Persons*, SEX WORKERS PROJECT, URBAN JUSTICE CTR. 26 (2009), <http://sexworkersproject.org/downloads/swp-2009-raids-and-trafficking-report.pdf> (interviewing Marta, a prostitute, who stated, “I would say listen to the women [prostitutes], because some people do it out of necessity—some people are forced to work in prostitution, but there are others who are not. When I say for necessity, I mean that here are those of us who have nothing in this country, and we do it to get a little house, or buy a piece of land, and it can be the easiest way to achieve that.”).

134. Silverberg, *supra* note 79.

135. *Id.*

136. Thukral et al., *supra* note 79, at 9.

137. *Id.* (“I knew that my boyfriend’s friends wanted to get up with me, wanted to sleep with me. I was flirting and said, ‘I’ll fuck you for \$100.’ They said, ‘Yeah,’ and then they asked if I wanted to meet their friends. It was easy money.”).

138. *Id.*

139. *Id.*

140. *Id.*

III. ABOLITIONISM, DOMINANCE FEMINISM & RACE

A. Abolitionist Feminism & Dominance Feminism

In contrast to liberal feminists, “abolitionist feminists” argue that too often prostitution is a manifestation of gender oppression and exploitation, and therefore, women rarely consent to prostitution.¹⁴¹ Abolitionist feminism and dominance feminism both frame prostitution as a form of gendered subordination against women regardless of the circumstances.¹⁴² Abolitionist feminists argue that prostitution often represents a form of “sexual domination and the essence of women’s oppression.”¹⁴³ Therefore, persons subjected to such domination, argue abolitionist feminists, are more accurately referred to as “prostituted persons.”¹⁴⁴ Thus, abolitionist feminism seeks to “change social norms that support sex trafficking and prostitution; and criminal law reforms that penalize trafficking, pimping and the purchase of sex, while decriminalizing the sale of sex.”¹⁴⁵

Notably, some abolitionist feminists concede that as their liberal feminist counterparts argue, “selling sex can be genuinely consensual and valuable choice for some people.”¹⁴⁶ Notwithstanding this concession, abolitionist feminists still advocate for criminalization of the purchase of commercial sex.¹⁴⁷ Their reconciliation of this view is based on the focus on prostitution as a form of structural oppression.¹⁴⁸ As Michelle Madden Dempsey has argued, feminist abolitionists see “prostitution [a]s wrong because it so often harms women both individually and by virtue of its tendency to sustain and perpetuate patriarchal structural equality.”¹⁴⁹ Thus, while some individuals concededly are empowered, not harmed by prostitution, the practice is still opposed because “the harm to so many others outweighs the benefits experienced by the few.”¹⁵⁰

Catherine MacKinnon’s dominance feminism hands down a similar verdict. MacKinnon, one of the most renowned scholars on this side of the debate, frames prostitution as a form of structural oppression through which men subjugate women.¹⁵¹ Under this view, prostitution of women for men’s

141. See MacKinnon, *Trafficking*, *supra* note 23, at 272. See generally Cianciarulo, *supra* note 77; Michelle Madden Dempsey, *Sex Trafficking and Criminalization: In Defense of Feminist Abolitionism*, 158 U. PA. L. REV. 1730 (2011).

142. See e.g., KATHLEEN BARRY, *THE PROSTITUTION OF SEXUALITY* (1995).

143. Havelková, *supra* note 76, at 108.

144. *Id.* at 63.

145. Dempsey, *supra* note 141, at 1730-31.

146. *Id.* at 1732-33.

147. *Id.*

148. *Id.* at 1745-46.

149. *Id.* at 1745.

150. *Id.* at 1746.

151. See MacKinnon, *Trafficking*, *supra* note 23, at 272 (“Within or across nations, the fundamental positions in this debate—to polarize somewhat, but this debate is remarkably polarized—

pleasure is always exploitative.¹⁵² Thus, from a dominance feminist viewpoint, prostitution is rarely, if ever, an authentic choice for women; in Catherine MacKinnon's words: "The sexual exploitation approach sees prostitution as the oldest oppression, as widespread as the institutionalized sex inequality of which it is analyzed as a cornerstone. . . . Prostitution here is observed to be a product of lack of choice, the resort of those with the fewest choices, or none at all."¹⁵³ Catherine MacKinnon's dominance theory offers a model for exploring the intersectional oppression that pushes women of color into prostitution.

Like abolitionist feminism, dominance feminism critiques prostitution as a pervasive and destructive form of structural gender inequality—of systemic and intentional male subordination of females. In her article, *Trafficking, Prostitution, and Inequality*, MacKinnon explores how, mainly in the context of international trafficking, women of color are victimized by structural oppression.¹⁵⁴ MacKinnon applies dominance theory to expose the structural oppression of women in the United States:

In [the USA], with parallels in other cultures, women's situation combines unequal pay with allocation to disrespected work, sexual targeting for rape, domestic battering, sexual abuse as children, and systematic sexual harassment; depersonalization, demeaned physical characteristics, use in denigrating entertainment, deprivation of reproductive control, and forced prostitution. To see that these practices are done by men to women is to see these abuses as forming a system, a hierarchy of inequality. . . . This subordination of women to men is socially institutionalized, cumulatively and systematically shaping access to human dignity, respect, resources, physical security, credibility, membership in community, speech and power. Comprised of all its variations, the group women can be seen to have a collective social history of disempowerment, exploitation and subordination extending to the present. To be treated "as a woman" in this sense is to be disadvantaged in these ways incident to being socially assigned to the female sex.¹⁵⁵

are the sex work model and the sexual exploitation approach." For Professor MacKinnon's analogous views of rape and rape law, see CATHERINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 175 (1989) ("[T]he law of rape presents consent as free exercise of sexual choice under conditions of equality of power without exposing the underlying structure of constraint and disparity."); Catherine A. MacKinnon, *Symposium Forward*, 46 TULSA L. REV. 1, 2 (2010-11) (arguing that the definition of rape has to "include forms [of force] such as inequality that are not physical").

152. ANDREA DWORKIN & CATHERINE MACKINNON, PORNOGRAPHY AND CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY 24-25 (1988).

153. MacKinnon, *Trafficking*, *supra* note 23, at 273-74.

154. *Id.* at 272.

155. MacKinnon, *supra* note 66, at 15.

For MacKinnon, this structural oppression often manifests itself in rape, sexual harassment, and sexual exploitation of women.¹⁵⁶ Thus, in contrast to their liberal feminist counterparts, abolitionist feminists and dominance feminists posit that structural inequality and intersectional oppression obscure alternative choices for some people of color. Abolitionist feminism has focused on how intersecting forms of race, gender, and class subordination obscure choice for many people of color trapped in prostitution. Abolitionist feminism gives voice to an alternative perspective of women of color in prostitution—one that has been marginalized.

The issue arises as to whether critical race feminism can draw upon abolitionist feminist critiques of prostitution to shed further light on how race and racism shape prostitution and trafficking in the United States. Like critical race feminism, abolitionist feminism and dominance feminism focus concern on the ways in which people of color are often victims of societal and structural discrimination. This alternative perspective, one that explores the nexus between race and structural oppression, is needed to diversify the discourse on how people of color experience prostitution.

However, critiques of dominance feminism—Catherine MacKinnon’s work in particular—raise some concerns. Much of this opposition stems naturally from scholars who support a liberal feminist perspective. Opponents have argued that dominance feminism is troublesome because it presumes that all women lack agency in prostitution when, to the contrary, a new movement of women have begun to see commercial sex “as a place of potential agency for women, rather than inevitable subordination.”¹⁵⁷ Along these lines, scholars have disputed MacKinnon’s view that prostitution is always exploitative of women.¹⁵⁸ The debate roars on, the issue of race poised in the margins awaiting intervention.

B. Exploring Connections Between CRT, Abolitionism & Dominance Feminism

Yet, critical race feminist scholars have begun to re-examine the “presumption of oppositionality between white feminists and feminists of color.”¹⁵⁹ This re-examination opens the door for consideration as to the ways in which dominance feminism and abolitionist feminism can shed some light on the role of racism in domestic prostitution and trafficking. Revisiting the “critique that feminism has been built on the erasure of women of color,”¹⁶⁰ Professors Kimberlé Crenshaw and Gerald Torres have called for a

156. DWORKIN & MACKINNON, *supra* note 152, at 24.

157. Ahmed, *supra* note 25, at 230.

158. *Id.* at 228 (citing DWORKIN & MACKINNON, *supra* note 152, at 24-25).

159. See Kimberlé W. Crenshaw, *Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality*, 46 TULSA L. REV. 151, 151-55 (2010).

160. *Id.* at 152.

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reconsideration of MacKinnon's dominance theory.¹⁶¹ MacKinnon's dominance theory posits that many women in recognized that women face structural gender subordination and that feminist scholars must challenge this subordination.¹⁶² Reconsidering MacKinnon's work and its parallels to critical race theory, Gerald Torres analyzed Mackinnon's focus on challenging structural inequality:

Professor MacKinnon claimed that if there was going to be any legal reform it had to begin with the recognition that the underlying social facts were the foundations upon which the normative claims were premised. Yet if the formal calls for equality were to be taken seriously, they had to start with a critique of subordination rather than assuming that the ordinary conditions of gender subordination were a necessary outgrowth of biological fiat or an organic precipitate of normal social relations. If what passed for acceptable, normal social relations routinely produced systematic inequality then it could no longer be acceptable and the legal rules that supported inequality would have to change in a way that would ultimately destabilize the putatively "non-political" substructure on which the law was based.¹⁶³

These structures also denigrate people of color and undermine efforts of people of color to escape sexual exploitation in the United States.

Likewise, Kimberlé Crenshaw argues that there are commonalities between MacKinnon's dominance theory and critical race feminism,¹⁶⁴ but scholars have often missed the intersections.¹⁶⁵ Scholars have long argued that Catherine MacKinnon's dominance theory epitomized the critique of feminist legal theory as essentialist. In *Race and Essentialism in Feminist Legal Theory*, Harris argues that the "dominance theory" of rape advanced by MacKinnon "assumes that there is only one 'true' feminism," namely one that analyzes women's experience solely from a gendered perspective and "incorrectly assumes that issues of race, class, and sexual orientation can therefore be safely ignored or relegated to footnotes."¹⁶⁶ Indeed, essentialist conceptions of rape failed to take into account that Black women perceive sexual exploitation as a form of intersecting oppression as "deeply rooted in color as in gender."¹⁶⁷

161. *Id.* at 151-55; see Gerald Torres, *Sex Lex: Creating a Discourse*, 46 TULSA L. REV. 45, 54, 55 (2010) ("Without wanting to rehearse the entire history of Critical Race Theory and its relationship with Critical Legal Studies or to feminism, I want to suggest here that was a misunderstanding about the critical content of Professor MacKinnon's methodological intervention.") (citations omitted).

162. Torres, *supra* note 161, at 54-55.

163. *Id.* at 55.

164. See Crenshaw, *supra* note 159, at 152, 156.

165. *Id.* at 156.

166. Harris, *supra* note 27, at 15.

167. *Id.*

However, further readings of Professor MacKinnon's work suggest common ground. Kimberlé Crenshaw has proposed that "MacKinnon's rhetorical posture toward gender power is parallel in many ways to the orientation of critical race theory to race."¹⁶⁸ In particular, Crenshaw argues that MacKinnon's dominance theory seeks to "universalize" rather than "essentialize" the ways that structural oppression has harmed women.¹⁶⁹ MacKinnon's dominance theory reveals how "gender is a . . . question of power, specifically of male supremacy and female subordination. The dominance approach centers on the most sex differential abuses of power."¹⁷⁰ Intersectionality also exposes "the ways in which . . . structures of power inextricably connect with and shape each other to create a system of interlocking oppressions, which sociologist Patricia Hill Collins termed a 'matrix of domination.'"¹⁷¹

Similarly, Gerald Torres has argued that the categorization of dominance theory as essentialist connotes "a misunderstanding about the critical content of Professor MacKinnon's methodological interventions."¹⁷² Finding similar commonalities between the two frameworks, Torres agrees that MacKinnon is important to critical race theory because her work creates a "critical feminist discourse."¹⁷³ Torres concurs that Crenshaw's intersectionality framework is similar to MacKinnon's dominance theory because each acknowledges the role of structural subordination of women and other groups.¹⁷⁴ As Torres points out, both frameworks share the same methodology¹⁷⁵ in that both rely on a critique of power.¹⁷⁶ Dominance theory exposes how "normative conceptions that justified social and political arrangements had to be understood with a descriptively adequately empirical understanding of those arrangements."¹⁷⁷

These arguments are particularly useful to the construction of a critical race feminist analysis of the commercial sex industry in the United States. Indeed, scholars have made similar arguments to suggest that MacKinnon's dominance theory offers parallels for critical race feminist analyses of prostitution

168. Crenshaw, *supra* note 159, at 156.

169. *Id.* at 162 ("But for the claim [that MacKinnon's subject is White] to be fully vetted, commonality isn't presumed or imposed by what women say their experiences are.")

170. Adrienne D. Davis, *Three Snapshots of Scholarly Engagement: Catherine MacKinnon's Ethical Entrenchment, Transformative Politics, and Personal Commitment*, 46 TULSA L. REV. 15, 17 (2010) (quoting CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 32, 32 (1984)).

171. On the "matrix of domination" theory, see COLLINS, *supra* note 56, at 42.

172. Torres, *supra* note 161, at 55.

173. *Id.* at 54.

174. *Id.* at 55.

175. *Id.* at 56 ("One of the things that was important about Professor Crenshaw's work was that it was consistent, methodologically, with Professor MacKinnon's. But many readers did not see that.")

176. *Id.* at 54.

177. *Id.*

involving women of color.¹⁷⁸ Sunny Woan argues that MacKinnon's dominance theory informs our perspective of how race and gender intersect in the coerced prostitution of Asian women.¹⁷⁹ For Woan, prostitution and trafficking are enforced by structural racism in the same way that gender inequality is enforced by structural male dominance over women.¹⁸⁰

Yet, notwithstanding these connections, there are some concerns about whether an abolitionist feminist or dominance feminist perspective fits squarely with the goals of a critical race feminist intervention into prostitution law and culture. For some scholars, these latter perspectives suggest that women can only experience prostitution through oppression, never through choice, a position that for some is factually inaccurate. In contrast, a critical race feminism perspective on prostitution rejects essentialist perspectives on women of color in prostitution by challenging the notion that all women experience prostitution in the same way.

Moreover, the focus on criminalization by anti-trafficking advocates¹⁸¹ should be a concern for people of color. Indeed, the abolitionist and dominance feminist perspectives focus on criminalization could be problematic for critical race feminists concerned with the targeting of people of color for mass incarceration.¹⁸² As Adrienne Davis and Annette Appell have argued "feminism is in desperate need of an account of social violence that offers a trenchant critique of violence against groups subordinated by gender while simultaneously avoiding collaborating with the carceral state and its war on communities of color."¹⁸³ Indeed, a longstanding critique of certain responses to sex trafficking is the skewed focus on punishment and criminalization at the expense of other policy concerns namely the protection of victims and the prevention of future crimes. In particular abolitionism has focused on changing

178. Sunny Woan, *White Sexual Imperialism: A History of Asian Feminist Jurisprudence*, 14 WASH. & LEE J. CIV. RTS. & SOC. JUST. 275, 306 (2008).

179. *Id.*

180. *Id.*

181. For critiques of the focus on criminalization and punishment of traffickers and purchasers of commercial sex, see Berger, *supra* note 89, at 531-33; Dempsey, *supra* note 141, at 1731-32 ("[T]he abolitionist recommendation to criminalize the purchase of sex has been a source of considerable controversy."); Jonathan Todres, *A Child Rights Framework for Addressing Human Trafficking*, 22 MICH. ST. INT'L L. REV. 557, 561 (2014).

182. For feminist critiques of mass incarceration generally and of people of color in particular, see Appell & Davis, *supra* note 48, at 3-4 (theorizing mass incarceration of Black men as a "reflection of both race and gendered discrimination"); Kimberlé Crenshaw, *Women, Race and Social Control*, 9 UCLA L. REV. 1418, 1422 (2012) ("More than simply adding women of color into the mix, this symposium interrogates the terms by which women are situated both within the discourse of mass incarceration as well as within various systems that overlap and that contribute to the vulnerability of racially marginalized women."); Roberts, *Social and Moral Costs*, *supra* note 22, at 1281-1294 (arguing that mass incarceration "damages social networks" "distorts social norms" and "destroys social citizenship" in the Black community.); Dorothy E. Roberts, *Systematic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2012).

183. Appell & Davis, *supra* note 48, at 6.

the law in support of the criminalization of purchasers of commercial sex.¹⁸⁴ Indeed, in my view, this focus on criminalization of purchasers—of individuals as a primarily legal and policy response to sexual exploitation obscures the need for state response to societal and state sponsored policies that push racial minorities into prostitution. Arguably, MacKinnon’s work overcomes these potential concerns; her focus has been on challenging structural oppression and recognizing that, in the context of prostitution, this structural oppression of women manifests itself as, and intersects with, racial subordination.¹⁸⁵

IV. BUILDING A STRUCTURE: A HISTORY & CULTURE OF RACIALIZED SEXUAL EXPLOITATION

The history of sexual exploitation of people of color in the United States shapes current societal views and legal approaches to domestic prostitution. Sexual exploitation has been a means of enforcing American systems of White supremacy including slavery, colonization, and racial apartheid. In order to understand how sexual stereotyping and oppression drive the modern-day sex industry, an understanding of America’s culture of racialized sexual subordination and commodification must be considered.¹⁸⁶ As Professors Adrienne Davis and Annette Appell have noted, “[b]lack feminist thought emerged from the political and intellectual need for systems of thought that could comprehend and interrogate the massive state-sponsored violence against black people enslaved in the New World, including what Angela Davis termed sexual terrorism.”¹⁸⁷ Along these lines, Dorothy Roberts argues that the inquiry should focus on “system intersectionality.”¹⁸⁸ In Roberts’s words, an intersectional perspective “enables us to analyze how structures of privilege and disadvantage, such as gender, race, and class, interact in the lives of all people, depending on their particular identities and social positions.”¹⁸⁹ Roberts recognizes that the prison and foster care systems in America create “a system of interlocking oppression” and “function together to discipline and control poor and low-income black women by keeping them under intense state supervision and blaming them for the hardships their families face as a result of social inequalities.”¹⁹⁰

184. Dempsey, *supra* note 141, at 1731-32 (“[T]he abolitionist recommendation to criminalize the purchase of sex has been a source of considerable controversy.”).

185. MacKinnon, *Trafficking*, *supra* note 23, at 277 (“Disproportionately, people in prostitution are members of socially disadvantaged racial groups or lower castes.”).

186. *See infra* Part III.

187. Appell & Davis, *supra* note 48, at 3-4.

188. Roberts, *Prison, Foster Care*, *supra* note 22, at 1476-77, 1491-92.

189. *Id.* at 1491-93.

190. *Id.* at 1491.

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Arguably, prostitution functions in the same way for people of people of color. Historically, sexual subordination and exploitation have functioned as critical tools in the racial subordination of people of color in the United States. In order to understand the link between the role of race in the modern culture of the commercial sex industry, it is important to explore how slavery and colonization created a culture that encourages and normalizes the sexual abuse, exploitation and prostitution of people of color in the United States. This culture of sexual exploitation in turn makes prostitution coercive and abusive for some, albeit not all, people of color.

A. Culture of Racialized Sexual Stereotyping & Exploitation

In the United States, domestic sex trafficking and prostitution are in large part direct descendants of American slavery.¹⁹¹ Indeed, “the convergence of race, class, and gender oppression characteristic of U.S. slavery shaped all subsequent relationships that women of African descent had within Black American families and communities, with employers, and among one another.”¹⁹² In particular, sexual stereotyping and commercial sexual exploitation were fundamental tools for enforcing Black slavery and, later, racial segregation and apartheid in the United States.¹⁹³

For example, in her scholarship on human trafficking, Karen Bravo explores how European societies imposed upon Black women the status of chattel, i.e., “‘not-human’ things.”¹⁹⁴ As purported justification of this status, Europeans have stereotyped Black sexuality as exotic, subhuman, and different from other races.¹⁹⁵ In *Black Female “Things” in International Law: A Meditation on Saartjie Baartman and Truganini*, Bravo frames the legendary case of the “Hottentot Venus” as a poignant example of the historic human trafficking of Black women’s bodies.¹⁹⁶ Saartjie Baartman was a Black South African woman whose body was displayed in museums and shows throughout Europe in the early 1800s as the “Hottentot Venus,” the purported epitome of deranged Black female sexuality.¹⁹⁷ Bravo explains, “They would use Baartman’s physique—unremarkable in an African context but exotic to Europeans—to make money by exhibiting her as a scientific curiosity to English audiences who clamored for novelty.”¹⁹⁸

191. See BLAIR, *supra* note 128, at 10.

192. COLLINS, *supra* note 56, at 4.

193. See, e.g., *id.* at 123-48.

194. Karen E. Bravo, *Black Female “Things” in International Law: A Meditation on Saartjie Baartman and Truganini* 1 (Robert H. McKinney Sch. of Law, Legal Studies Research Paper No. 2012-25, 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2159002.

195. *Id.* at 7-13.

196. *Id.* at 8-17.

197. *Id.* at 8.

198. *Id.* at 9.

Scientists were determined to “prove” that her sexual anatomy was different from women of other races.¹⁹⁹ After Baartman died from flu and excessive drinking, “[h]er brain and genitals were embalmed for scientific posterity in glass jars” and “her body cast, brain, skeleton and genitals were displayed to the public until the 1970s.”²⁰⁰ The case demonstrates how, even after the Atlantic slave trade was abolished in Britain and its colonies, some Whites sought to gain enormous economic profits by feeding off of widespread sexual stereotypes to exploit Black female bodies.

Similarly, in the United States, the stereotyping of Black women as prostitutes has shaped cultural notions of Blackness and Whiteness and justified the sexual exploitation of Black women.²⁰¹ As legal scholars have noted, American law has functioned to “create and shape identities, as well as influence the way individuals understand their identities in relation to others in society.”²⁰² For example, in *The Black Body as Fetish Object*, Professor Anthony Farley uses the metaphor of objectification of Black people to explore how Whites have used Black bodies to shape the cultural and legal meaning of “whiteness” in the United States.²⁰³ Farley argues that “there are no whites without blacks.”²⁰⁴ In other words, “the white identity is created and maintained by decorating black bodies with disdain, over and over.”²⁰⁵ Specifically, race is a “form of pleasure in one’s body which is achieved through humiliation of the Other and then, as the last step, through a denial of the entire process.”²⁰⁶ America’s “discourse of race involves lavishly decorating the black body with statistics, stories, and images of violence, narcotics,” and other racial stereotypes.²⁰⁷ Whiteness, as an identity, emerges out of this discourse; for “[i]f the black body is the site and cite of all ills, then the white body is not.”²⁰⁸ Thus, as Farley’s analysis suggests, sexual stereotyping has played a major role in shaping cultural views of “whiteness” and “blackness.”²⁰⁹

America’s racial construction of Black women as eroticized sex objects became further cemented during slavery and the antebellum years.²¹⁰ The

199. *Id.* at 13, 25-26.

200. *Id.* at 15.

201. See generally Butler, *supra* note 20.

202. See Osamudia James, *White Like Me: The Diversity Rationale’s Negative Impact on White Identity Formation*, 89 N.Y.U. L. REV. 425, 454 (2014).

203. Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457, 464 (1997).

204. *Id.*

205. *Id.* at 463.

206. *Id.* at 464.

207. *Id.* at 475.

208. *Id.*

209. See *id.*

210. Butler, *supra* note 20, at 1385-86; Darlene Clark Hine, *Rape and the Inner Lives of Black Women in the Middle West*, 14 SIGNS 912, 912 (1989) (“The links between black women and illicit sexuality consolidated during the antebellum years had powerful ideological consequences for the next hundred and fifty years.”); Lori A. Tribbett-Williams, *Saying Nothing, Talking Loud: Lil’ Kim and Foxy*

“Jezebel myth” represented the pervasive stereotyping of female slaves and other Black women as sexually loose, seductresses, and prostitutes.²¹¹ Black women came to represent the modern Jezebel, whose Biblical counterpart was a symbol of lust, sexual immorality, “innate wickedness,” and even “disobedience to God.”²¹²

Today, these racial myths fuel the racial subordination of women of color through prostitution.²¹³ The modern disproportionality of women of color in American prostitution is connected to this culture of racialized sexual objectification. Recent statistics suggest that the majority of people of color in prostitution do not freely choose to be there. A disproportionate number of people of color in prostitution are *trafficked*.²¹⁴ As argued below, intersecting with gender and class subordination, structural racism fuels prostitution and trafficking in several key ways. Furthermore, the modern day commercial sex industry perpetuates the racialized sexual exploitation of people of color that developed through slavery and colonization.²¹⁵ These stereotypes heighten modern demand for commercial sex with people of color. They also obscure the victimization of people of color as trafficking victims.²¹⁶

B. Coerced Choices: Colonization & Government Sanctioned Exploitation

Similar to slavery, government sanctioned sexual exploitation of other racial groups has made members of these groups vulnerable to commercial sexual exploitation. The long legacy of government-sanctioned anti-immigrant hostility and marginalization persists against Latinos in America.²¹⁷ U.S. laws

Brown, Caricatures of African-American Womanhood, 10 S. CAL. REV. L. & WOMEN'S STUD. 167, 173-75 (2000) (discussing how the Jezebel stereotype began during slavery and in modern times is perpetuated in the lyrics and persona of some Black female rap artists).

211. See BELL HOOKS, *AIN'T I A WOMAN? BLACK WOMEN & FEMINISM* 58-59 (1981); Butler, *supra* note 20, at 1385; Joan Harpley, *Black Women, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1365 (1996); Cheryl I. Harris, *Finding Sojourner's Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309, 313-14 (1999).

212. See Tribbett-Williams, *supra* note 210, at 173-75 (discussing how the Jezebel stereotype began during slavery and in modern times is perpetuated in the lyrics and persona of some Black female rap artists).

213. Bravo, *supra* note 3, at 249-50 (“Yet, the racism which arose with and permitted yesterday’s trans-Atlantic slavery makes today’s enslaved white women more valuable vis-à-vis-enslaved blacks or Asians.”).

214. MacKinnon, *Trafficking*, *supra* note 23, at 277 (“Disproportionately, people of color in prostitution are members of socially disadvantaged racial groups or lower castes.”); Jenée Desmond-Harris, *Sex Trafficking's Black and Brown Victims*, THE ROOT (Sept. 23, 2013, 12:53 AM), http://www.theroot.com/articles/culture/2013/09/human_trafficking_modernday_sex_slavery.html.

215. On the development of racialized sexual stereotypes and its modern day impact on sexual exploitation of women of color as seen through the law of rape law policy, see Jennifer B. Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 113-14 (1983).

216. Wolken, *supra* note 77, at 414.

217. See generally Kristina M. Campbell, *The Road to S.B. 1070: How Arizona Became Ground Zero for the Immigrants' Rights Movement and the Continuing Struggle for Latino Civil Rights in America*, 14 HARV. LATINO L. REV. 1 (2011); Karla M. McKanders, *Sustaining Tiered Personhood: Jim*

and society have supported and perpetuated this systematic denial of citizenship rights for Latino Americans.²¹⁸ Likewise, Asian Americans have endured racial discrimination and subordination.²¹⁹ In many cases, rape and prostitution of Asians has been a systemic tool for colonization and political conquest.²²⁰ As Sunny Woan has argued:

The narratives of many Asian women reveal the denigrating treatment they received from American soldiers. Filipina sex workers, for example, frequently report ‘being treated like a toy or a pig by the American [soldiers] and being required to do ‘three holes’—oral, vaginal and anal sex. The systems of prostitution perpetuated around U.S. military bases in Asia reaffirm the West’s perception of Asian women as sex objects. In these contexts, Asian sex workers are registered and tagged like domestic pets, further relegating them to a less than human status.²²¹

In this way, during war, the prostitution of Asian women has been particularly dehumanizing.²²²

Similarly, the systematic forced assimilation pushed Native Americans into prostitution.²²³ The federal government failed to provide relocated Native American communities with adequate social services or job training.²²⁴ Having been displaced without financial assistance, Native women, during the pre-World War II era, had limited job opportunities—one of which was prostitution.²²⁵ The U.S government did not completely abandon these policies in the 1970s and therefore the memory of them remains with Native Americans today.²²⁶ Many Native Americans suffer from intergenerational trauma as a result.²²⁷

Crow and Anti-Immigrant Laws, 26 HARV. J. ON RACIAL & ETHNIC JUST. 163 (2010); Lisa R. Pruitt, *Latino/as, Locality & Law in the Rural South*, 12 HARV. LATINO L. REV. 135 (2009) (discussing how Latinos often are racially profiled in the United States); Yolanda Vasquez, *Perpetualizing the Marginalization of Latinos*, 54 HOW. L.J. 639 (2011).

218. Vasquez, *supra* note 217, at 646-48.

219. Rose Cuison Villazor, *Rediscovering Oyama v. California*, 87 WASH. U. L. REV. 979, 991 (2010) (“Similar to many immigrants who have been cast as racially inferior, Japanese encountered discrimination in various aspects of their life.”).

220. Woan, *supra* note 178, at 282-86.

221. *Id.* at 286-86

222. *Id.* at 287-88

223. Melissa Farley et al., *Garden of Truth, The Prostitution and Trafficking of Native Women in Minnesota*, MINN. INDIAN WOMEN’S SEXUAL ASSAULT COALITION 14 (Oct. 7, 2011), http://www.prostitutionresearch.com/pdfs/Garden_of_Truth_Final_Project_WEB.pdf (“An honest review of history indicates that European system of prostitution was imposed by force on tribal communities through nearly every point of contact between Europeans and Native people.”).

224. *Id.*

225. *Id.*

226. Johnson, *supra* note 23, at 619-20.

227. *Id.* at 631-36.

C. *Spirit Injury*

The profound spirit injury that people of color experienced in the United States during and as a result of this history of sexual slavery and colonization is evidence of the lack of their free choice and consent to prostitution. Scholar activist Randall Robinson has written poignantly about the psychological damage to Black people that has resulted from not only slavery but also the social stigmas and racial myths (jezebel, lynch victim, criminal, etc.) that continue to shape American society.²²⁸ In particular, “a seeming eternal identity, a people’s whole memory [was] crushed under the remorseless commerce of slavery.”²²⁹ As a result of America’s perpetuation of these racial myths, society tends to see Black people as “without worth or history.”²³⁰ As a result, African Americans and other groups tend to suffer from a lack of self-esteem—what Robinson calls the long-term “psychic damage” from centuries of slavery and oppression.²³¹

Sometimes this resignation manifests itself as “spirit injury.”²³² Scholars have recognized “spirit injury” as a loss of sense of self-esteem, pride, and sense of belonging.²³³ Some kids internalize these racialized sexual stereotypes and other societal oppression and as a result resign themselves to prostitution.²³⁴ Some teens accept the belief that society will afford them few opportunities for employment and education and that prostitution is one of few viable means of supporting themselves.

For example, Native American women and children have testified to the profound loss of self-esteem that accompanies the evisceration of their cultural traditions as a result of mandated assimilation and other U.S. governmental policies and the loss of self-esteem that results in acquiescence to prostitution.²³⁵ Native women and children view the disproportionate representation of their community within prostitution as a legacy of America’s subordination of Native American cultures and communities.²³⁶ Native American prostitutes, for example, have testified to their emotional harm from

228. RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 11, 13-14, 26-28 (2000).

229. *Id.*

230. *Id.* at 26-28.

231. *Id.* at 56.

232. On “spirit injury,” see ROBINSON, *supra* note 228, at 56; Patricia J. Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerprinting as the Law’s Response to Racism*, in WING, *supra* note 27, at 229-236; Wing, *supra* note 46, at 37-39.

233. ROBINSON, *supra* note 228, at 56.

234. Valandra, *Reclaiming Their Lives and Breaking Free: An Afrocentric Approach to Recovery From Prostitution*, 22 *Affilia* 195, 206 (2006), available at <http://aff.sagepub.com/cgi/content/abstract/22/2/195.html> (discussing the need to provide race-based services that address the internalization of “race-based stereotypical beliefs by minority communities and their members who enter prostitution.”).

235. ROBINSON, *supra* note 228, at 13.

236. *Id.* at 3.

the sense of heightened racial animus from their customers. In the words of a prostituted Native woman in Minnesota: “My culture doesn’t put you around drugs or alcohol. It teaches you different values. It gives you belonging and faith. Back then [when I was in prostitution] I was not connected to my cultural identity. I thought prostitution was normal living.”²³⁷ In other words, some Native American children were stripped of their own cultural heritage, lost their self-esteem, and bought into the notion that prostitution was the only viable work available to them—that society would give and expect nothing more of them.²³⁸

D. Racialized Sexual Stereotypes Fuel the Modern Commercial Sex Industry

This spirit injury is obscured by a thriving prostitution industry which is fueled in part on the strong demand for commercial sex acts serviced by people of color. The modern day commercial sex industry perpetuates the racialized sexual exploitation of people of color that developed through slavery and colonization. Today, the sexual stereotypes and culture of sexual degradation that sustained slavery and colonization drive supply and demand in America’s modern commercial sex industry. The persistence of these stereotypes in American culture and society fuels the heightened demand for people of color in prostitution and pornography.²³⁹ For example, race and gender intersect in the modern portrayal of people of color as sexual deviants and eager participants in prostitution and pornography.²⁴⁰

As advocate Vednita Carter has argued, modern “pornographic videos and magazines perpetuate the myth that all Black women are whores.”²⁴¹ In her essay *Prostitution and the New Slavery*, Carter describes how she visited a porn store to assess the role of race in the marketing and sale of pornographic videos and magazines to the public.²⁴² Carter argues that, as she observed firsthand, Black pornographic videos are marketed by playing up stereotypes about Black women.²⁴³ Carter correctly observes that the titles of many porn movies “portray Black women as ready and willing for anything with anybody.”²⁴⁴ Furthermore, similar sexual stereotypes of Black people also invade music videos, mainstream magazines, and the lyrics of rock music and rap music.²⁴⁵

237. *Id.*

238. *Id.*

239. Carter, *supra* note 24, at 85-88.

240. *Id.*

241. *Id.* at 86.

242. *Id.*

243. *Id.* at 86-87.

244. *Id.*

245. *Id.* But see Theresa A. Martinez, *Images of the “Socially Inherited”: Inner City Youth in Rap Music*, 10 J.L. & FAM. STUD. 111, 111 (2007) (arguing that some rap music depicts minority youth in

Carter attributes this hyper-sexualization of Black people in American culture to the “impact of the slavery experience” on society.²⁴⁶ Likewise, pornographic videos and mainstream magazines have also promoted the sexual stereotyping of Black men as sex machines with a particularly insatiable desire for sex with White women.²⁴⁷

These sexual stereotypes fuel today’s demand for sexual tourism with women of color. Within the American prostitution trade, there is a strong demand for sex with Asian minors.²⁴⁸ Based on racial stereotyping and demand, Asian American girls, for example, are targeted and groomed for prostitution.²⁴⁹ Racialized sexual fetishes drive demand.²⁵⁰ Donna Hughes offered an example of the use of denigrating racial stereotypes to traffic Asian women: “Although an American citizen, the traffickers/pimps forced her to pretend she was a foreign Asian woman that couldn’t speak English.”²⁵¹ Pervasive sexual stereotypes of Asian women also drive demand for commercial sex. Sexual stereotypes of Asian women remain pervasive within popular culture.²⁵² The prevailing sexualized stereotypes of Asian women in modern culture are “rooted in the wellspring of colonially entrenched stereotypes of native women as exotic, sexually insatiable, and dangerously evocative.”²⁵³ Asian women also are stereotyped as sexually subordinate, conquerable, and thus, the perfect potential sex slaves.²⁵⁴ Americans assume “that Asian Pacific American women will be receptive objects of their advances, makes good victims, and will not fight back.”²⁵⁵ Racial stereotypes

images that “run counter to mainstream media images of criminal youth predators so prevalent in American society.”).

246. Carter, *supra* note 24, at 87.

247. Gail Dines, *King Kong and the White Woman: Hustler Magazine and the Demonization of Black Masculinity*, in NOT FOR SALE, *supra* note 24, at 90-93.

248. Patricia Leigh Brown, *In Oakland, Redefining Sex Trade Workers as Abuse Victims*, N.Y. TIMES (May 23, 2011), <http://www.nytimes.com/2011/05/24/us/24oakland.html> (discussing an Oakland health clinic that was confronted with “an underground within an underground—the demand for Asian-American girls, with Cambodian-Americans among the most vulnerable”); Woan, *supra* note 178, at 278-79 (arguing that the strong demand for commercial sex with Asian women is fueled by “Asian Fetish syndrome” and the fantasy of the Asian woman as hypersexualized).

249. Brown, *supra* note 248.

250. Woan, *supra* note 178, at 278-282 (arguing that White men have a strong demand for commercial sex with Asian women in part due to sexual stereotyping of Asian women as hypersexualized).

251. Donna M. Hughes, *Race and Prostitution in the United States*, UNIV. R.I. 8 (2005), www.uri.edu/artsci/wms/hughes/race_prost.doc.

252. Yasmin Jiwanim, *From Dragon Lady to Action Hero: Race and Gender in Popular Western Television*, in ASIAN WOMEN: INTERCONNECTIONS 161, 165-66 (Tineke Hellwig & Sunera Thobani eds., 2006).

253. *Id.* at 161.

254. Suzie Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER, RACE & JUST. 177, 205 (1997).

255. *Id.* at 205. Shawn Ho, *Co-Synthesis of Dynamics Behind the Dearth of Asian-American Law Professors: A Unique Narrative*, 18 ASIAN AM. L.J. 57, 66 (2011) (arguing that even Asian-American female lawyers and lawyers are subjected to racialized sexual stereotypes).

also drive the modern demand for commercial sex with Native Americans.²⁵⁶ Native Americans, for example, are at a high risk for prostitution within the United States.²⁵⁷

Racial and sexual stereotypes structures prostitution in other ways as well. In the United States, “criminality has been associated with race.”²⁵⁸ And prostitution remains a major space in which the criminal justice system can construct both a criminal identity upon Black women based on race and gendered stereotypes. Prostitution itself is a business structurally based on race and class hierarchies. For example, women of color are paid less for the same sex services and face many more barriers to leaving the commercial sex industry.²⁵⁹ In some cities, the criminal justice response to prostitution is also highly racialized. In Chicago, for example, Black people in prostitution are arrested more frequently in relation to other racial minorities.²⁶⁰ Throughout the U.S., Black adults make up forty percent of prostitution arrests.²⁶¹

VI. INTERSECTIONALITY, STRUCTURAL RACISM & AMERICA’S COMMERCIAL SEX INDUSTRY

This section explores how various forms of structural oppression intersect to make people of color particularly vulnerable to sexual exploitation. Arguably, the State structures discrimination such that some people of color are targeted and pushed into prostitution, thus, for some even though some people of color “choose” prostitution, for too many that choice is coerced. When combined with other sources of vulnerability, race and gender discrimination are strong push factors toward prostitution. A disproportionate number of racial minorities are trafficked - coerced into prostitution in the United States. Intersecting discrimination based on race, gender, class, age and sexual orientation make people of color particularly vulnerable to prostitution in the United States.²⁶² There are several ways in which laws and policies support structural racism and in doing so, make people of color more vulnerable to sexual exploitation in the United States. As discussed below, poverty, unequal

256. See Farley et al., *supra* note 223, at 17.

257. *Id.* at 15; *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*, MINN. AM. INDIAN WOMEN’S RESOURCE CTR. 41-44, 108 (Aug. 2009), <http://www.indianlaw.org/sites/default/files/shattered%20hearts%20report.pdf> [hereinafter *Shattered Hearts*].

258. Barnes, *supra* note 18, at 958.

259. Hughes, *supra* note 251, at 8 (Former prostitutes testified that, “[i]n the American sex industry, you were priced by the geographical area you were in and by your race, looks, and . . . class status.”).

260. *Id.* at 2.

261. *Id.*

262. Carter, *supra* note 24, at 39.

educational and employment opportunities and inadequate health care are just a few examples of how American society perpetuates these vulnerabilities.

A. Disproportionality

Several studies confirmed that a disproportionate number of prostituted persons in various cities are people of color.²⁶³ Likewise, people of color make up the majority of victims of sex trafficking in United States cases investigated by the Department of Justice.²⁶⁴ For example, in 2008-2010, the U.S. Bureau of Justice Statistics determined that only 102 of the 460 victims of sex trafficking identified in cases investigated by the U.S. Department of Justice were White, and a majority of these 460 confirmed victims were reported to be Black and Latino.²⁶⁵

In several American cities, a disproportionate number of prostituted minors are people of color.²⁶⁶ In Atlanta, for example, young African-American girls compose an overwhelming majority of sexually exploited minors.²⁶⁷ Of concern, the average age of these girls is fourteen; some are as young as ten and eleven years old.²⁶⁸ Black children comprise fifty-five percent of all prostitution related arrests in the United States.²⁶⁹ Furthermore, the recent New York Prevalence Study of Sexually Exploited Children suggests that in New York, the commercial sexual exploitation of children was highly gendered and racialized.²⁷⁰ Reportedly, eighty-five percent of sexually exploited minors are

263. Sex Workers Project, *Revolving Door: An Analysis of Street Based Prostitution in New York City*, URBAN JUSTICE CTR. 30 (2003), <http://sexworkersproject.org/downloads/RevolvingDoor.pdf> (“The report determined, for example, that “out of 30 sex workers interviewed, 11 were Latino, 5 were White, 10 were African-Americans, 3 were Asian and of mixed heritage and 1 person declined to answer the question.”); The National Center for Missing & Exploited Children (NCMEC) warns that of the 800,000 children who went missing in America in 2012, thirty-four percent are African-American. See *Missing Minority Children Statistical Report*, BLACK & MISSING FOUND., <http://www.blackandmissinginc.com/cdad/stats.htm#1> (last visited May 19, 2013).

264. Allen J. Beck, Thomas H. Cohen & Tracey Kyckelhahn, *Characteristics of Suspected Human Trafficking Incidents, 2008-10*, BUREAU OF JUSTICE STATISTICS 6 (January 2011), <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2372>; Allen J. Beck, Thomas H. Cohen & Tracey Kyckelhahn, *Characteristics of Suspected Human Trafficking Incidents, 2007-08*, BUREAU OF JUSTICE STATISTICS 5 (January 2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf> (“Among the 438 suspects for whom information on race and Hispanic origin was reported, blacks represented the largest category (36%), followed by Hispanics (31%). Whites and Asians accounted for 13% and 16% of human trafficking suspects, respectively”).

265. Duren Banks & Tracey Kyckelhan, *Characteristics of Human Trafficking Incidents, 2008-2010*, BUREAU OF JUSTICE STATISTICS 6 (April 28, 2011), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2372>.

266. *Demand: A Comparative Examination of Sex Tourism and Trafficking in Jamaica, Japan, the Netherlands, and the United States*, SHARED HOPE INT’L 90 (2010), <http://sharedhope.org/wp-content/uploads/2012/09/DEMAND.pdf>.

267. *Id.* at 101.

268. *Id.*

269. Hughes, *supra* note 251, at 1.

270. Frances Gragg et al., *New York Prevalence Study of Commercially Sexually Exploited Children*, WESTAT, at ii (Apr. 18, 2007), <http://www.ocfs.state.ny.us/main/reports/csec-2007.pdf>

female and sixty-seven percent are Black.²⁷¹ Similarly, a groundbreaking report exposed the fact that, the prostitution of Native American women and girls is increasing at disproportionate and “alarming rates.”²⁷²

B. Poverty

Discourse on anti-trafficking law and policy rarely confronts the reality that state-sponsored laws and policies have proximately caused the disproportionate vulnerability that people of color encounter vis-a-vis prostitution and trafficking. With respect to Native Americans, for example, state sanctioned forced relocation of Native Americans has caused to a myriad societal problems, including poverty, sexual abuse, and violence against women. These vulnerabilities make them easy targets for sexual exploitation.²⁷³ For example, in the Shattered Hearts Report, advocates explain how relocation and ensuing poverty has made Native women and children vulnerable to prostitution and other forms of economic coercion.²⁷⁴ Landlords in Minnesota coerce women and children into prostitution as a condition for keeping their housing.²⁷⁵ Impoverished Native American women and girls are recruited from shelters and homeless youth centers.²⁷⁶

The dehumanization of women of color through sexual and racial stereotyping has undermined society’s willingness to help these women escape poverty.²⁷⁷ For example, “Sapphire,” a modern variation of the Jezebel stereotype, is used to further stigmatize poor Black women. Sapphire is depicted as emotionally untamed, quick to mock and berate others. She is over-emotional, loud, and angry.²⁷⁸ The sassy Sapphire, like her Jezebel counterpart, is oversexed; her countless number of illegitimate children is evidence of her impassioned, insatiable sexuality.²⁷⁹ Similarly, the stereotype of Black and Latina women as incompetent mothers or welfare mothers persists in modern

(“CSEC in NYC were predominantly female (85 percent), Black/African American (67 percent), and 16 to 17 years old (59 percent). Just four percent ($n=82$ girls) were age 13 or under. NYC had the only children who identified as transgender ($n=31$), and the majority of children identifying as gay, lesbian, bisexual, and questioning. Nearly one fifth of the NYC children were Hispanic/Latino.”).

271. *Id.* at 86.

272. Johnson, *supra* note 23, at 670.

273. Carter, *supra* note 24, at 43-44; *Shattered Hearts*, *supra* note 257, at 41-43.

274. *Shattered Hearts*, *supra* note 257, at 41-43.

275. *Id.*

276. *Id.* at 44.

277. Bela August Walker, *Fractured Bonds: Policing Whiteness and Womanhood through Race-Based Marriage Annulments*, 58 DEPAUL L. REV. 1, 3 (2008).

278. See Ann C. McGinley, *Hillary Clinton, Sarah Palin, and Michelle Obama: Performing Gender, Race, and Class on the Campaign Trail*, 86 DENVER U. L. REV. 709, 722 (2009); Verna Williams, *The First (Black) Lady*, 86 DENVER U. L. REV. 833, 836 (2009).

279. See Regina Austin, *Sapphire Bound*, in WING, *supra* note 27, at 291 (Discussing how rape laws deprived protection to the “jezebel”—“the wanton, libidinous Black woman whose easy ways excused white men’s abuse” of her.”).

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day culture.²⁸⁰ Society often constructs unwed females of color as “Sapphires.”²⁸¹ The stereotype justifies policies that control Black reproduction, parenting, criminality, and a myriad other legal-political issues.²⁸² The stereotyping of Black women, from “jezebels and breeder women of slavery” to “ubiquitous Black prostitutes and ever-present welfare mothers of contemporary popular culture,” remains “fundamental to Black women’s oppression.”²⁸³ Even professional Black women have been unable to escape societal stereotyping of them as angry sapphires or otherwise deviant from the gendered standards of domesticity and femininity that mainstream American society has reserved for White women only.²⁸⁴ As a poignant example, even First Lady Michelle Obama has been depicted publically as an “angry Black woman” in ways that conjure up the Sapphire stereotype and otherwise denied the presumption of being recognized as a “lady.”²⁸⁵

C. Denial of Educational & Employment Opportunities

Structural racism has made people of color vulnerable to continued sexual exploitation and modern trafficking. Some anti-trafficking advocates have begun to make the case that racism is “a key factor in sexual violence against Native American women and girls and in extreme physical and sexual violence against Native women and youth.”²⁸⁶ There are undeniable links between the denial of educational and employment opportunities to certain racial groups and their increased risk for sexual exploitation.²⁸⁷ Black, Latino, and Native peoples in America have been systemically denied equal access to education in the United States.²⁸⁸ Furthermore, punitive zero tolerance policies and racial

280. See Elizabeth M. Iglesias, *Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality*, 49 VANDERBILT L. REV. 869, 904-06, 909-12 (1996); Roberts, *Prison, Foster Care*, *supra* note 22, at 1437; Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 J. GENDER & L. 1, 11-12 (1993). See also April L. Cherry, *Welfare Reform and the Use of State Power in the Prostitution of Poor Women*, 48 CLEV. ST. L. REV. 67, 69 (2000) (“Although on its face, “welfare reform” is racially neutral, African-American women and other women of color are primarily targeted by the new welfare regime. Underlying the welfare reform regime, its rhetoric, and its requirements is the image of the typical welfare recipient as a promiscuous African-American teenage girl or woman, with little or no sexual self-control.”).

281. See Austin, *supra* note 18, at 878-95.

282. Roberts, *Prison, Foster Care*, *supra* note 22, at 1437.

283. COLLINS, *supra* note 56, at 7. See generally Roberts, *supra* note 182.

284. See Williams, *supra* note 278, at 834.

285. *Id.* at 836 (“Understood in this way, the resistance to Mrs. Obama was an effort to assert the primacy of a white patriarchal hierarchy. Specifically, the premise underlying these critiques was that, as a Black woman, Mrs. Obama was unqualified per se to serve as First Lady.”).

286. *Shattered Hearts*, *supra* note 257, at 103.

287. *Id.* at 108-09.

288. Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations*, 3 COLUM. J. OF RACE & L. 166, 168-69 (2013) (arguing that slavery and other forms of racial discrimination created a pattern and practice of forced illiteracy that persists today.”).

disproportionality in school discipline policies have pushed minorities out of schools for minor behavior infractions,²⁸⁹ Yet, research has demonstrated that a minor who has been expelled from school has a higher risk of getting involved in prostitution.²⁹⁰ Recent studies show that minority girls are particularly susceptible to severe disciplinary actions from the juvenile justice system.²⁹¹

Employment discrimination and abuse based on race, gender, nationality and immigration status is pervasive in the United States.²⁹² People of African,²⁹³ and Latino²⁹⁴ origins, for example, remain vulnerable to coerced or forced sexual abuse and exploitation.²⁹⁵ As a result of historic racial oppression, today's Native women and girls in Minnesota still do not perceive that alternative employment options are available to them.²⁹⁶ In a recent groundbreaking study on Native women in prostitution, seventy-five percent of

289. David Simson, *Exclusion, Punishment, Racism and Other Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. REV. 506, 515-522 (2014).

290. *Shattered Hearts*, *supra* note 257, at 82.

291. KIMBERLÉ CRENSHAW, PATRICIA OCEN, JYOTI NANDA, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED, UNDERPROTECTED 5 (2014).

292. See Janie A. Chuang, *Achieving Accountability for Migrant Domestic Worker Abuse*, 86 N.C. L. REV. 1627, 1627 (2010) ("Despite the importance of their work, migrant domestic workers are some of the most exploited workers in the world. They are often discriminated against based on their gender, class, race, nationality, and immigration status, and they are excluded from labor law protections in most countries of destination."); Robin Fretwell Wilson, *Children at Risk: The Sexual Exploitation of Female Children after Divorce*, 86 CORNELL L. REV. 105, 105-07, 130 (2000); Administration for Children & Families, *Fourth National Incidence Study of Child Abuse & Neglect (NIS-4) Report to Congress, Executive Summary*, U.S. DEP'T OF HEALTH & HUMAN SERVICES, 9, 41 (Jan. 5, 2010), http://www.acf.hhs.gov/sites/default/files/opre/nis4_report_exec_summ_pdf_jan2010.pdf ("Unlike previous NIS cycles, the NIS-4 found strong and pervasive race differences in the incidence of maltreatment."); *Broken Levees, Broken Promises: New Orleans' Migrant Workers in Their Own Words*, SO. POVERTY LAW CTR. 3 (2006), <http://www.splcenter.org/sites/default/files/downloads/brokenlevees.pdf> [hereinafter *Broken Levees*] (Migrant workers, consisting mainly of people of color, experienced abusive employment practices, including a refusal to pay, by companies rebuilding New Orleans. One worker testified: "I'm here every morning at 6 a.m.. to wait for work. There's nothing reliable. With every new job, there is a risk of not getting paid.").

293. See Adrienne D. Davis, *Slavery and the Roots of Sexual Harassment*, in DIRECTIONS IN SEXUAL HARASSMENT 457, 462-63 (Catherine MacKinnon & Reva B. Siegel eds., 2002) ("Foregrounding the interplay between slavery's political economic structure and its sexual norms . . . sheds light on the plantation complex as a vast workplace and one of the earliest American sites of institutionalized sexual harassment. The labor relation as defined by slavery incorporated sexual relations for purposes of pleasure, profit, punishment, and politics."); Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 GOLDEN GATE U. L. REV. 817, 819 (1993) ("analyzing case law that showed how "the harassment of African-American women incorporates images of slavery, degradation, sexual availability and natural lasciviousness.").

294. Ontiveros, *supra* note 293, at 820 ("Like African American women and Asian American women, society considers Latinas naturally sexual; in this instance evoking the image of the 'hot-blooded' Latin. In addition, Latinas are often perceived as readily available and accessible for sexual use, with few recriminations to be faced for abusing them.") (citations omitted). See generally Campbell, *supra* note 217; McKanders, *supra* note 217; Pruitt, *supra* note 217; Vasquez, *supra* note 217.

295. Ontiveros, *supra* note 293, at 817 ("For women of color, sexual harassment is rarely, if ever, about sex or sexism alone; it is also about race. For us, racial epithets are spoken in sexist terms and sexual or sexist comments involve our race and our culture.").

296. Farley et al., *supra* note 223, at 13.

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the women interviewed had sold sex in exchange for shelter, food, or drugs.²⁹⁷ Thus, some young Native women perceive prostitution as an economic consequence of having lost their land, culture, and means of economic survival during colonization and the subsequent deprivation of human rights and opportunity by the U.S. government.²⁹⁸

Women of color—particularly migrant and Latino workers are vulnerable to labor trafficking and economic exploitation that create major financial hardships for their families.²⁹⁹ Furthermore, women of color face limited employment opportunities and are pigeonholed into menial work such as household work, food services, and migrant farm work, thereby increasing their vulnerability to prostitution and sexual exploitation.³⁰⁰ A research report by the Southern Poverty Law Center chronicled the ways in which such hostility undermines the ability of Latina women to earn a fair living.³⁰¹ The report found, for example, that in the South, Latinas are “routinely cheated out of their earnings and denied basic health and safety protections. They are regularly subjected to racial profiling and harassment by law enforcement.”³⁰²

Employment equity is also compromised for women of color.³⁰³ Empirical research suggests that the stereotyping of women of color as prostitutes is a driving force in the sexual harassment of women.³⁰⁴ Some women of color who are deprived of employment opportunities perceive limited opportunities and are compelled into prostitution as a means of economic survival.

D. Health & Health Care

State-sanctioned structural racism and sexism have also made people of color vulnerable to physical and emotional abuse and hence, poor health. For example, repeated exposure to past violence, abuse, and exploitation, including that sanctioned or facilitated by state action or inaction, has made Native American people vulnerable to prostitution.³⁰⁵ Native American women are more vulnerable to sexual abuse by the general population.³⁰⁶

297. *Id.* at 25.

298. *Id.* at 32-33.

299. *Broken Levees*, *supra* note 292, at 7-8.

300. *Under Siege: Life for Low-Income Latinos in the South*, S. Poverty Law Ctr. 4 (Apr. 2009), <http://www.splcenter.org/sites/default/files/downloads/UnderSiege.pdf>. (“In fact, Latinos in the South—many of whom came here to escape crushing poverty in their home countries—are encountering widespread hostility, discrimination and exploitation.”).

301. *See generally id.*

302. *Id.*

303. *See generally* Hernandez, *supra* note 18.

304. *Id.*

305. *Shattered Hearts*, *supra* note 257, at 61.

306. *Id.* at 66 (“National data show Native women to be over 2.5 times more likely to be raped or sexually assaulted than women in the general population.”).

Inadequate health care is an additional barrier that undermines economic survival and democratic participation for all women—especially poor minority women—and places them at further risk for sexual exploitation. The recent “war on women,” the aggressive attacks by conservatives launched by some public officials, sought to limit women’s access to contraceptives and other family planning resources.³⁰⁷ As President Obama acknowledged, access to reproductive health care “makes a difference in whether they can go out there and—and [sic] earn a living for their family. These are not just women’s issues. These are family issues. These are economic issues.”³⁰⁸ As Michele Gilman has argued, the absence of adequate health care creates a snow ball effect; “Clearly, a lack of access to family planning resources limits women’s abilities to obtain education, hold jobs, have healthy children, and provide for their families.”³⁰⁹ Thus, inadequate health care creates the classic paradigm of economically disadvantaged women made vulnerable to prostitution.

In summary, these various manifestations of structural racism and sexism coerce some people of color into prostitution. As Catherine MacKinnon has argued, economic coercion too often is misconstrued as consent.³¹⁰ For example, the fact that women in pornography engage in sex knowing that pictures are being taken or films are being shot does not mean that they have freely chosen to be there.³¹¹ Moreover, the coercive societal factors leading them into prostitution are also obscured. As MacKinnon has argued, women who sell their bodies out of economic necessity have not fully consented to prostitution; nevertheless, men who believe that, when a woman “is found doing the one thing left after 99% of her options are precluded, when she is so desperate she is out of any other possibility,” misconstrue consent to preserve prostitution and the status quo.³¹²

CONCLUSION

Critical race feminism is an important and appropriate framework for unpacking the issue of choice and prostitution in the United States. Critical race feminism informs the discourse over prostitution and choice by exploring the

307. See Michele Estrin Gilman, *Feminism, Democracy, and the “War on Women,”* 32 *LAW & INEQUALITY* 1, 1-3 (2014).

308. *Id.* at 11 (citing Sarah Kliff, *Full Transcript of the Second Presidential Debate*, WASH. POST (Oct. 16, 2012), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/10/16/full-transcript-of-the-second-presidential-debate/>).

309. *Id.*

310. Professor MacKinnon has written extensively on how consent is misconstrued and obscured in various forms of sexual exploitation. See MacKinnon, *Trafficking*, *supra* note 23, at 294; Catherine MacKinnon, *Pornography as Trafficking*, 26 *MICH. J. INT’L L.* 993, 996 (2004-05).

311. MacKinnon, *supra* note 3, at 996 (“[J]ust as throwing money at victims of sexual abuse does not make it a job, taking pictures of it does not make it freely chosen or desired. It makes it pictures of paid rape—rape in the real, if regrettably seldom in the legal, sense.”).

312. MacKinnon, *Trafficking*, *supra* note 23, at 295.

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ways in which race and gender intersect in America's commercial sex industry. The modern commercial sex industry uses the racial sexual stereotypes and other strategies to intentionally exploit, oppress, and demoralize people of color in prostitution. The conditions and circumstances that prostitutes in America face are horrible and contradict the image in the Terry story of women of color who are empowered emotionally and financially by selling their bodies. Contrary to the pervasive narrative about prostitution as a form of sexual liberation and economic freedom, an alternative narrative exposes prostitution in America as a form of structural oppression in which race, gender, and class intersect.

In conclusion, this article seeks to raise awareness that race and racism obscure choice for many (albeit not all) women of color in prostitution. Scholars and policymakers must further explore the role of race in promoting prostitution and sex trafficking in the United States, including the nexus between racial bias and racial discrimination in coercing people of color to engage in prostitution, and the role of racial hierarchies in structuring America's commercial sex industry. In particular, the role of the State in supporting laws and policies that coerce people of color into prostitution and otherwise make them vulnerable to sexual abuse and exploitation must remain a continued focus on critical race feminist scholarship and legal interventions.