TAMMY RUGGLES

Angels in the Night, 2015
Silver gelatin print, 24 x 36 in

COURTESY: THE ARTIST

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What Is a Prostitute?

Historical Attitudes Toward Sexual Freedom

The word "prostitute" comes from the Latin *prostare,* to "stand out," and from the very beginning until the present day prostitutes have been marked apart. Historically, the definition was based on a woman's moral shortcomings rather than her means of earning money. If she was considered freely available for the pleasure of men, she was a whore. The question was: How many men? Some authorities said five within a certain timeframe sufficed, others as few as two or as many as twenty thousand. Whatever the variations, there was no distinction between a woman whose virtue was for sale and one who was merely promiscuous. Both had the same rock-bottom legal and social positions. Money is now part of the definition of prostitution (at least in the West), but prostitutes are still viewed as unworthy of the same basic rights as others—and also as objects of intense sexual interest, whether admittedly or not. Whether they are seen as victims or vulturine whores, they remain the embodiment of everything the respectable classes are not.

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As attitudes toward sex have evolved, so has the place of prostitutes (both female and male) in the popular imagination. They have been perceived as the embodiment of disease, the face of foreign immorality, the casualties of a licentious age, or even feminist heroes. However, these perceptions are neither static nor uniform, and when sex and morality are involved, the law almost always moves more slowly than popular attitudes. In some settings—such as the hazy intersection of prostitution and marriage—the courts have had to step in to legitimize relationships that laws on the books still condemned.

This happened in Malibu, California, where tough-guy actor Lee Marvin lived with the actress Michelle Triola from 1964 until 1970. The couple moved in together soon after meeting on the set of the aptly named film *Ship of Fools.* While they never married, the wealthier Marvin supported Triola, and she changed her last name to "Marvin." However, after he abruptly married a former sweetheart in Las Vegas, he had her evicted from his Malibu house. As a settlement, he agreed to give her $833 per month for five years—but he stopped making payments after a year and a half. Triola ran to court for more money,

but before that question would even be considered she needed to convince a series of judges that she had not been for sale.

The case became an eight-year delight for tabloids and gossip columns worldwide, in part due to the showboating of Triola's attorney, the celebrity divorce lawyer Marvin Mitchelson, who was always ready to show off his Rolls Royce automobiles, pricey suits, and office hot tub. But Mitchelson's quirks paled next to those of his client and her opponent. Before the case ended in 1981, the world learned of Triola's abortions and miscarriage; Lee Marvin's occasional impotence; their mutual drug abuse; and other sordid details of the lives two rather mediocre people with too much money to spend. Triola eventually won the case (at least in principle), but only after the courts tackled the threshold question of whether a live-in girlfriend was more akin to a wife or a prostitute.

In its landmark opinion in *Marvin v. Marvin*, the California Supreme Court recognized that "[d]uring the past 15 years, there has been a substantial increase in the number of couples living together without marrying," arrangements that had achieved "social acceptance." However, the court noted, without marriage licenses the law still viewed such couples as living in sinful "meretricious" relationships, i.e., arrangements in which sex was traded for money. Any financial understandings between the two halves of such couples were treated the same as those negotiated through open car windows between streetwalkers and customers. The court decided that the law needed updating:

> To equate the non-marital relationships of today with [prostitution] is to do violence to an accepted and wholly different practice. … The mores of the society have indeed changed so radically in regard to cohabitation that we cannot impose a standard based on alleged moral considerations that have apparently been so widely abandoned by so many.

If, the court reasoned, Lee Marvin had given Triola a good reason to expect lifetime financial support, then the law should not stand in the way. Where there was no written contract that detailed such an arrangement, then the courts needed to look at the "conduct of the parties" during the relationship to deduce what they had in mind.

This was a watershed moment in the history of marriage and prostitution. Triola was transformed overnight from a gold-digging prostitute into something closer to a wife. However, her troubles were just beginning. Traditional wives were entitled to alimony, regardless of what their husbands wanted. Triola had to prove that Marvin had agreed to support her after they broke up. In the end, this was more than she or her loudmouth lawyer could do. After an eleven-week trial with sixty witnesses, the court awarded her nothing. (Triola's case wasn't helped by a young man who testified that he had sex with her in Micronesia for ninety straight days while Marvin was making a movie nearby.) Triola won on the law, lost on the facts, and became forever associated with the new concept of "palimony," something for which she never qualified.

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The *Marvin* decision was soon applied to gay couples, for whom marriage was unavailable. One of the first such cases came in 1982 and involved the flamboyant entertainer Liberace and Scott Thorson, his former travel secretary, chauffeur, animal trainer, and lover. Thorson claimed that Liberace had promised him $70,000 per year for life, plus $30,000 per year for pet care and the use of one of the pianist's homes in Palm Springs and Beverly Hills. Thorson also said that, at Liberace's request, he had forgone his own career as a dancer and had plastic surgery "to more closely conform his facial features to those of Liberace." Liberace denied that he ever made such promises. The two eventually settled out of court, with Liberace promising Thorson $75,000 in cash, two dogs, and three cars, but Thorson later went back to court and tried again, this time settling for $95,000 and no dogs or cars. In 1981, tennis champion Billie Jean King was also sued for palimony by her former secretary and lover, Marilyn Barnett. The case outed King as a lesbian and caused the cancellation of all of King's lucrative endorsement deals, but brought no fortune to Barnett. The court threw the case out.

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In most Western societies now, live-in lovers will not be classified as prostitutes where their relationships are seen as affectionate and supportive—in essence, more marriage-like—than straight sex-for-money trades. Yet even without quasi-marital trappings, a few types of commercial sexual exchanges have been blessed by the law. In pornography production, for example, paid sexual performers—prostitutes by any logical yardstick—can ply their trade so long as their sexual encounters are recorded on tape and no one involved is "gratified." That potentially millions of people will gratify themselves while watching the recording, and that the performers endure humiliation while *looking* gratified (a key skill of prostitutes), are aspects of porn production the law overlooks. If a camera is running while a person is being paid to be smacked, penetrated, or ejaculated upon in a hotel room, then that is perfectly legal. If the camera is off, then the room is a crime scene.

Another example of permissible commercial sex twists logic even further. From 1972 until 2014, vice cops in Hawaii were allowed to have paid sex with prostitutes "in the course and scope" of their duties, which purportedly gave police the "flexibility" they needed for thorough investigations. The law was not the first of its kind. In the eighteenth century, Parisian police patronized brothels to "learn" what was going on within. Following the Second World War, police measures against prostitutes and homosexuals regularly involved sexual contact—some of it forced—before arrests were made. Present-day sex-worker advocates report endemic police abuse, either in the form of violent rape or demands for sex in exchange for lenient treatment. But only in the Aloha State did the law explicitly allow police to enjoy prostitutes. No one paid much attention to this until Hawaii's legislature took up a new antiprostitution bill that omitted the rule, and Honolulu police pushed to have it put back in. The resulting publicity embarrassed the force and soon it gave up the effort. The four-decade prerogative of Hawaiian police to have paid sex with prostitutes and then haul them to jail came to an end.

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A more serious and legally ambiguous exception to prostitution law concerns sex surrogates, a term encompassing therapists who provide paid sexual contact to clients who, because of psychological or physical handicaps, have acute difficulties in achieving sexual fulfillment. Such patients include Mark O'Brien, a poet disabled by polio, who wished to experience some sort of sexual contact before dying (as depicted in the 2012 film *The Sessions*). Sex surrogates can provide a path—sometimes the only one—out of a crippling, lonely existence. The sex-surrogacy profession is regulated by a number of trade groups and sex surrogates can rarely be hired unless recommended and supervised by a licensed psychotherapist, but for opponents that is all a distraction from the fact that sex is being exchanged for money. Said one criminal-defense lawyer in New York City: "It doesn't matter if the client is disabled, it doesn't matter if he is suffering from some kind of emotional distress—that just makes it kind of sad. They have agreed to pay money for a sexual experience, and everyone understands that's the transaction. In my view, that's prostitution."

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The French National Ethics Committee agrees. In 2013, it issued a report criticizing the practice as the "un-

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ethical use of the human body for commercial purposes." In France, prostitution is technically legal, but soliciting and pimping are not. Therefore, while a sex surrogate may be paid for sex, marketing oneself as one or referring patients to one makes the practice a crime. French government officials approved the report, among them Marie-Arlette Carlotti, a minister responsible for issues involving people with disabilities, who called the practice "a form of prostitution." That decision has not stopped people in France from seeking sex surrogates, however.

Laetitia Rebord is a French woman in her thirties who is almost completely paralyzed and confined to a wheelchair. After unsuccessfully looking for sexual relationships through friends, websites, and male escorts, she told the *New York Times* in 2013 that she intended to find a sex surrogate in Switzerland or Germany, where the practice is legal. "A disabled person is seen as a child," Rebord said. "So inevitably, child[ren] and sex don't go together." Other disabled people in France seek surrogates closer to home. A female Dutch surrogate trained in Switzerland and working underground in France explained: "During the session, I can be a friend, the lover, whoever they want. If someone is in the wheelchair, I start in the wheelchair. I start playing the game of getting undressed in the wheelchair." To the untrained or unsympathetic ear, and to the French government, such statements evoke role-playing, which clients of prostitutes sometimes seek. The fact that prostitutes are now signing up for training as sex surrogates (along with nurses and physiotherapists) is not likely to help the profession there find legitimacy before the law.

If US sex surrogates are supervised by licensed therapists and follow professional ethical guidelines (condoms required, emotional attachment discouraged, etc.), the encounters will usually not bring legal trouble—although there is no guarantee. As crackdowns on prostitution become more aggressive, local law-enforcement agencies are free to decide that a client's disabilities or psychological needs do not trump prostitution laws. There are advocates for a clear exemption for sex surrogates from prosecution under prostitution laws, but so far their voices have not been heard.

Whatever the fate of this therapeutic niche, its very existence highlights an important step in the evolution of Western sexual beliefs: that fulfilling sex is an essential component of a well-lived life, regardless of whether one is married or attempting to produce children. "Sex helps the disabled reincarnate themselves and recover their human aspect," said Marcel Nuss, a disabled French sex-surrogacy advocate. Cornell law professor Sherry F. Colb agrees: "[D]isabled people certainly … have a right to sexuality that is of no lesser weight than the rest of the population." While that may seem obvious now, the fact that sexual satisfaction is equated with one's "human aspect" reflects a substantial, if not universal, shift in sexual norms. In places such as France, the law requires Mr. Nuss and Ms. Rebord to seek their pleasures abroad or illegally: "The sexuality of the disabled cannot be considered a right," said Anne-Marie Dickelé, a member of the National Ethics Committee. Time will tell whether Ms. Dickelé's view will prevail. It should not.

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While prostitution is legal in Australia, New Zealand, Switzerland, Canada, Germany, the Netherlands, and other places, it is still a crime in the majority of Western jurisdictions—although degrees of enforcement vary widely. Prostitutes laboring at the bottom of the profession, particularly those who still sell themselves on street corners and doorways, have dim hopes of ever seeing their work legitimized by the psychotherapeutic community or the law. The men, women, children, and transgendered people who work the streets have always suffered more legal and social oppression than their counterparts servicing a wealthier clientele. In Louisiana, for example, some of them have been labeled as dangerous sex offenders on a par with child rapists, and their services have been classified as sex crimes of a high order.

An 1805 Louisiana antihomosexual law condemned oral and anal sex as "crimes against nature." In a 1982 amendment targeting gay prostitutes, the law also criminalized offering oral and anal sex for money. Given that such sex acts are also part of the menu of services offered by straight prostitutes, the amended statute gave law enforcement a choice with regard to virtually every prostitute they hauled in: to charge him or her with the mild crime of garden-variety prostitution, or to ratchet up the legal stakes with a much more severe crime-against-nature charge.

In 1991, this second option became even more harsh, as anyone convicted of a crime against nature—even for the first time—was put on the state's registry of sex offenders, which effectively barred them from social services, employment, housing, and even, in some instances, homeless shelters and drug-treatment centers. Those on the registry had their driver's licenses and identification cards marked to announce in bright orange letters that they were sex offenders. They were also forced to disclose their sex-offender status to neighbors, landlords, employers, and schools. Whereas most crimes requiring sex-offender registration involve children or the use of force or violence, a charge of "crimes against nature" did not even require sex to take place: merely offering it could bring a conviction.

Inevitably, most of those convicted under the law were poor people of color, including homeless gay and transgendered people navigating a precarious existence by selling sex on the streets. In New Orleans, as of 2012, about 40 percent of all registered sex offenders had been convicted of "crimes against nature;" 75 percent of them were women, and 79 percent were African American. In the early 2000s, a homeless young man was sent to jail for four years on a crime-against-nature charge for uttering the words "fifty dollars" to an undercover cop. Upon his release, he was designated a sex offender—therefore, as noted, homeless shelters would not take him, much less social-service providers or potential employers. Had he been charged with ordinary prostitution, he would have served little or no jail time and spared the penalties of sex-offender registration.

In 2011, Louisiana finally ended the travesty of branding street prostitutes as criminals against nature, but it took years of subsequent, hard-fought litigation to force the state to lift the sex-offender status for the nearly seven hundred people who had already been convicted. However, even after this important step was taken, police were still charging homosexuals with crimes against nature, even when no prostitution was involved. In 2013, male undercover police officers in Baton Rouge were soliciting men for sex in parks and then arresting them for crimes against nature—despite the fact that laws against adult consensual gay sex had already been declared unconstitutional by the US Supreme Court. After protests about these arrests from the gay and civil rights communities brought Baton Rouge police a rash of negative publicity, the police department pledged to "learn from this, make changes, and move forward."

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