
WHORES , VAGRANTS, AND NUISANCES: A PRELIMINARY ANALYSIS
OF PROSTITUTION IN MISSISSIPPI HISTORY (1865-1957)

By: Jacqueline K. Hammack

Submitted to: Dr. Janice Brockley

Jackson State University

Department of History

HIST383

INTRODUCTION

“From the second millennium B.C. forward control over the sexual behavior of citizens has been a major means of social control in every state society.”¹

– Gerda Lerner, *The Creation of Patriarchy* (1987)

This paper offers a preliminary analysis of the history of prostitution in Mississippi, from the end of the Civil War to the passage of the Civil Rights Act of 1957, the first post-Reconstruction Era civil rights legislation passed in America. This time period was chosen because it was supposed that the element of race would shape black and white women’s experiences with prostitution in distinct ways. While this was no doubt the case, it was not readily revealed in the sources that were consulted during the course of the research. Legal proscriptions on the practice of prostitution were chosen as the focus of this research, specifically the changes that saw prostitution being classified under vagrancy statutes to its own misdemeanor criminal classification, in an effort to trace whether and how these changes affected the lives of women, black and white. This research has taken an interdisciplinary approach to the development of prostitution in Mississippi, merging sociological and historical perspectives for greater insight.

INCORPORATING A SOCIOLOGICAL FRAMEWORK

Women’s sale of sex can be analyzed from three prominent sociological perspectives. From a functionalist perspective, the sale of women’s sexuality is purported to serve several clearly defined functions in the society. Modern sociologists have ascribed a variety of such functions for the presence of prostitution in American society. Namely, these functions are: (1) the availability of sexual gratification for men in the absence of emotional attachment; (2) the

presence of a sexual outlet for men who cannot or do not have non-commercial sexual relationships; (3) an opportunity for sexual activity that one's regular sexual partner will not engage in; and (4) a mechanism by which to distinguish proper sexual activity from improper sexual activity, thereby classifying women into acceptable and unacceptable social categories.²

The interactionist perspective seeks to determine individual motivations of women for becoming prostitutes, and of men for seeking the services of a prostitute. It emphasizes the importance of the deviant label in determining people's experiences with prostitution.³ Meanwhile, the conflict perspective emphasizes the relationship of social power to sex work. Some conflict theorists frame prostitution as a purely economic issue and claim that it should be decriminalized and treated solely as a labor issue, while other conflict theorists propose that prostitution uniquely affects poor women and, therefore, women of color, who are more likely to be poor than white women.⁴

In addition, two other sociological concepts are particularly applicable to any analysis of prostitution. Labeling theory, which "suggests that behavior that deviates from established norms is deviant because it has been labeled as such by others,"⁵ helps to explain the ostracization of prostitutes from acceptable society. Likewise, the practice of "blaming the victim,"⁶ is readily apparent in the discourse of dominant society regarding prostitution. Women who sell sex are overwhelmingly disparaged by the rest of society; rarely are prostitutes afforded empathy outside of academia and the province of humanitarianism. The consideration of these sociological perspectives and concepts can offer a more nuanced understanding of the historical phenomena of prostitution and its legal status.

PROSTITUTION IN HISTORICAL PERSPECTIVE

One can only speculate as to how long women have been selling sex, but the evidence suggests that they have done so for as long as humans have lived together in complex state societies.⁷ As early as 1930 B.C.E., Sumerian legal decrees functioned to regulate female prostitution.⁸ Clearly then, prostitution is not a uniquely modern social problem, and can be analyzed from both a sociological and historical perspective. While most societies throughout the historical record have put legal proscriptions in place to regulate prostitution, not all have prohibited the practice outright.⁹ Dominant American society (which is preponderantly educated, white, and upper-class) has criminalized the practice and labeled prostitution as a deviant behavior, with the result that women who sell sex carry a criminal stigma, even if they don't get swept into the criminal justice system.¹⁰

Acceptable sexual encounters between different classes of women and men have been legally ascribed for at least the past 4,000 years. Laws regulating acceptable forms of sexuality and sexual expression, including prostitution, were codified by none other than the inventors of writing as we know it: the Ancient Mesopotamians.¹¹ The law codes of Ancient Mesopotamia created a highly inequitable situation between males and females; women's sexuality was confined to being manifest in a particular situation (that is, marriage) for a specific purpose (that is, reproduction), while men were free to sexually cavort in whatever manner they wished.¹² It has been to the continuous disadvantage of women, who comprise one-half of the human race, that this pattern has been echoed throughout the history of civilization.

The labeling of prostitutes as deviants has historically acted as an effective mechanism by which to ostracize them from polite society; it has proved especially well suited for "otherizing"

women who sell sex. Even in societies where prostitution as an institution was formalized – where women selling sex are courteously referred to as courtesans – the prostitutes themselves carried the stigma of deviance. Denied the privileges associated with the title “wife,” women selling their sexuality as courtesans enjoyed a degree of autonomy and prestige, but it was at the cost of being shunned by the dominant society.¹³

Labeling prostitution as deviant has served another important function in the historical subordination of women: it has acted as a means by which to keep women from forming solidarity amongst their sex. Women have been deterred from uniting as an oppressed class in part because societies have made sharp distinctions between virtuous and deviant women based primarily on their sexual conduct.¹⁴ Female sexual activity in the context of marriage has historically been lauded, while sexual activity outside the purview of a marital relationship has been censured if not outrightly criminalized. Definitions of proper and improper female sexual activity acutely influence women’s life experiences. A woman’s social class is determined by that of her father or husband, but unlike her father or husband, her social standing is dependent upon her sexual conduct. Even in the absence of legal prohibitions, social mores introduced an element of disdain between women who conformed with the ideology of female chastity and those who engaged in so-called sexual misconduct.¹⁵

THE EVOLUTION OF PROSTITUTION IN MISSISSIPPI

As feminist historian Gerda Lerner points out, lawmaking “always indicates that the practice being commented on or legislated for **exists and has become problematic** in the society.”¹⁶ With that point in mind, it is interesting to note that not every society has outlawed prostitution.¹⁷ Historically in the United States, and in Mississippi in particular, prostitution was

criminalized under vagrancy statutes. Prior to the legislation of laws specifically prohibiting prostitution in the United States, vagrancy laws served as the legal mechanism by which the patriarchal society exerted control over women's sexual liberty, occupational autonomy, and general social status and class. By legislating legitimate means of earning wages, vagrancy laws dictated acceptable forms of sexuality and sexual conduct for women. It was through the enforcement of vagrancy laws, and later specific prohibitions of prostitution, that women's sexual liberty was curtailed in Mississippi, as it was throughout the Southern United States in general.

After the Civil War, Mississippi's constitutions and statutes, in keeping with the "Paternalistic Dominance sex-gender system"¹⁸ employed by the United States in the late nineteenth and early twentieth centuries, served to uniquely disadvantage women who might have sought to generate income through the sale of their sexuality. In a system where race was the major determinant in the ascription of social status, women of color undoubtedly suffered more than their light-skinned counterparts. Free black women in Mississippi occupied the very lowest societal niche in existence in the aftermath of the Civil War. Not only loathed as freed slaves, black women were doubly prejudiced by their sex as well as their race. As chattel, black women had suffered the sexual assaults of their masters for generations; as freedwomen they were supposedly free of such intimate subordination, but the dominant white society stubbornly continued to label black women as lascivious by nature.¹⁹ The stereotype of sexually wanton black women helped to establish prostitution as an almost effortless means for poor, freed black women to earn a living wage as they were thrust from slavery to a so-called liberated state even while vagrancy laws existed which restricted such a practice. Uneducated white women without any practical occupational skills were likewise affected by prohibitions on the sale of sex.

In Mississippi following the Civil War, as in the South in general, the end of the Reconstruction Era saw the return of political power to Democratic white supremacists.²⁰ Historians have observed the efforts of these politicians to maintain control over blacks in the absence of the state-sanctioned institution of slavery. Christopher Waldrep deemed the actions of Southern Democratic lawmakers during so-called “Redemption”²¹ to be little more than “substituting [the] law for the lash.”²² Indeed, as William Cohen proclaimed, “the Thirteenth Amendment formally ended slavery, but the legacy of bondage proved stubbornly persistent.”²³ During this time, as the waning white planter class made a last grasp for power, vagrancy laws certainly functioned not only as a way to subordinate women and keep prostitution in check, but also as a broad-reaching mechanism for keeping black labor – male and female – under white control.²⁴

Mississippi’s consistent prohibition of prostitution continuously counterbalanced any freedom women might have been able to carve out for themselves by way of “proprietor prostitution.”²⁵ Table 1 below provides a brief synopsis of the changes to Mississippi’s prostitution laws from 1865 through 1957.

Table 1. The Evolution of Mississippi’s Statutory Prohibitions of Prostitution²⁶

Years	Classification of Prostitution Within the Statutes
1865-1918	Criminalized under vagrancy statutes
1918-1942	Criminalized under nuisance statutes
1942-1957	Criminalized under its own heading

In postbellum Mississippi, prostitution (and the keeping of houses of prostitution) continued to be criminalized only under vagrancy statutes until 1918.²⁷ That year, Senator Will

Whittington introduced legislation that re-classified prostitution as a nuisance crime. The legislation, which “declar[ed] all places in or upon which...prostitution is conducted or exists to be a nuisance,”²⁸ was approved by Mississippi’s House of Representatives and signed into law by Governor Theodore G. Bilbo.²⁹ Twenty-four years later, Mississippi again changed its laws pertaining to prostitution. In 1942, a consortium of twenty-nine senators³⁰ introduced legislation that again re-classified prostitution. Senate Bill number 220 was described as “An act defining and prohibiting lewdness... and prostitution and providing penalties for violation thereof,”³¹ in effect re-classifying prostitution in the hierarchy of criminal offenses, this time clarifying it to be a distinct misdemeanor instead of listing it under a sub-heading of any other criminal offense. This law was also approved by the legislature, and Governor Paul B. Johnson, Sr. signed it into law. Since the 1942 revision, Mississippi’s prostitution statutes have not been amended.³² Of note is the fact that the House and Senate Journals for these legislative sessions reveal no notable debate or even discussion surrounding the passage of these laws; they were introduced and passed without fanfare or fuss.

During this same time period, from 1865 through 1957, only two prostitution cases came before the Mississippi Supreme Court. In 1894, Mamie Peabody, Belle Johnson, and Tinie Walker, all of Warren County, Mississippi, appealed a conviction of prostitution to the Supreme Court by way of an *Affidavit in Forma Pauperis*. Counsel for Peabody, *et al* argued that insufficient proof or evidence existed to justify a conviction of prostitution. The ruling of the High Court stated that, “[i]n such cases, direct proof of guilt is not required; it may be inferred from the circumstances.”³³ The circumstantial evidence upon which Peabody, Johnson, and Walker were convicted included “that, with fair speech, they would solicit men, who would go into the house

with them, when the doors were closed.”³⁴ Interestingly enough, in support of its decision to uphold the conviction, the Supreme Court opinion quoted at length from the Christian Bible, specifically the book of Proverbs, proclaiming that the religious text’s “colors have lost none of their vividness in the lapse of centuries.”³⁵ The circumstances of this conviction reflect the ways value judgments were levied against women who sold sex in postbellum Mississippi.³⁶

Twenty-seven years later another prostitution conviction was challenged in the Supreme Court of Mississippi. In 1921, Hazel McDonald, a married woman residing in Forest County, Mississippi, appealed a conviction of “unlawfully becoming a vagrant, in that she is a common prostitute,”³⁷ and the Court found that the evidence upon which McDonald was convicted was insufficient to uphold such a conviction. McDonald’s situation differed considerably from that of Peabody, Johnson, and Walker almost thirty years before. As a married woman, Mrs. McDonald was afforded an air of respectability that was denied the appellants of the 1894 case. In addition, Mrs. McDonald was known to own and operate a taxi cab business³⁸, which made it difficult to prosecute her under the vagrancy statutes. Interestingly, no prostitution cases have come before the Mississippi Supreme Court or Court of Appeals since the 1942 legislation which classified prostitution as a distinct misdemeanor. On this point, it is important to remember that “litigation in higher courts, an expensive and time-consuming practice [was] undertaken, presumably, only if enforcement were of great importance.”³⁹

CONCLUSION

We have seen how a deviant label applied to the vocation of sex work can affect women, and how in postbellum Mississippi this label perniciously affected black women in particular. What then, of the other aforementioned sociological concepts and perspectives? Indeed, we can

apply functionalism, interactionist theory, conflict theory, and blaming the victim to the history of prostitution in Mississippi to yield further insight into the ways it affected black and white women. The functionalist perspective supports the view of ascribing stigma to prostitution as a mechanism by which to distinguish proper sexual activity from improper sexual activity, thereby classifying women into acceptable and unacceptable social categories.⁴⁰ Likewise, a consideration of the motivations of both the men who seek the services of a prostitute and those who keep prostitution illegal, as well as the experiences of women who engage in sex work – illegal or otherwise, is in keeping with an interactionist perspective. A conflict perspective also helps to bring into consideration essential elements of a true historical understanding of the development of prostitution in Mississippi, from legal prescriptions to economic pressures. Blaming the victim can also easily be an element in Mississippi's history of prostitution, especially as far as black women's experiences were concerned; the ascription of a lascivious nature based on the darkness of a woman's skin tone naturally served to place fault upon black prostitutes for their crimes.

This preliminary analysis reveals that Mississippi has continued the long tradition of statutorily prescribing acceptable applications of female sexuality. In many ways, legal prohibitions on the sale of sex have historically functioned to curtail women's economic advancement, and Mississippi is no exception. As Kamala Kempadoo observes: "Female sexual acts that serve women's sexual or economic interests are, within the context of masculine-ist hegemony, dangerous, immoral, perverted, irresponsible and indecent."⁴¹ The deviant label ascribed to prostitution has thus served to disadvantage women who lacked the education or skills that would have afforded them a wider range of occupational alternatives other than the sale of their sexuality.

The criminalization of prostitution went a step further than the social ostracization implemented by the deviant label, actively punishing women who utilized their sexuality as an agent of subsistence. Even before prostitution was itself specifically outlawed, the sale of sex was prohibited under Mississippi's vagrancy statutes. Black women, who were more likely than white women to earn their income by prostitution, were therefore ensnared into the criminal justice system even before prostitution was classified as a distinct crime.⁴² Race unquestioningly played a crucial role in the sexual politics of prostitution. This is evidenced by Glenda Elizabeth Gilmore's discussion of the ways white prostitutes were shunned by proper white society:

Locating white prostitutes in black neighborhoods served two purposes: it hid them from other white women, and it blackened them, reading them out of the white race. If they were metaphorically black, white men could visit them without guilt and white women need not care about their reformation.⁴³

Admittedly, additional research would yield further insight. As articulated by Christopher Waldrep "research into actual practice requires detailed study of the legal records of a particular community," which was not feasible given the constraints faced by this researcher. Victoria Bynum similarly highlights the difficulties of tracing the phenomenon of prostitution through the historical record, noting of prostitutes that "[t]heir marginality in society makes it difficult to reconstruct [their lives]."⁴⁴ Nevertheless, the basic assumptions which guided this research have been affirmed by the evidence thus far, and the research itself has shown how the merging of sociological and historical perspectives can indeed prove worthwhile in the analysis of the development of social problems.

NOTES

1. Gerda Lerner, *The Creation of Patriarchy* (New York: Oxford University Press, 1986; Oxford University Press paperback, 1987), 216.
2. Diana Kendall, *Social Problems in a Diverse Society* (Needham Heights, MA: Allyn & Bacon, 2001), 135.
3. Kendall, *Social Problems*, 135-136.
4. Kendall, *Social Problems*, 136.
5. Kendall, *Social Problems*, 12.
6. Kendall, *Social Problems*, 36.
7. Lerner, *Creation of Patriarchy*, 123-124, 138.
8. Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2d ed. (Atlanta, Georgia: Scholars Press, 1997), 23, 32.
9. Kendal, *Social Problems*, 129.
10. While males certainly engage in sexual activity for economic purposes, this paper shall focus on prostitution as it is practiced by women.
11. A subject-review of Roth's *Law Collections* immediately reveals this occurrence.
12. In addition to being evidenced in Roth's *Law Collections*, this conclusion can clearly be drawn from Martha T. Roth, "Marriage, Divorce, and the Prostitute in Ancient Mesopotamia," in *Prostitutes and Courtesans in the Ancient World* ed. Christopher A. Faraone and Laura K. McClure (Madison, Wisconsin: University of Wisconsin Press, 2006): 21-39; and Raymond Westbrook, "The Enforcement of Morals in Mesopotamian Law," *Journal of the American Oriental Society* 104 (Oct. - Dec., 1984): 753-756 [database online]; available from JSTOR; <http://www.jstor.org>; Internet; accessed 14 February 2007
13. Kendall, *Social Problems*, 129.
14. Lerner, *Creation of Patriarchy*, 217.
15. Lerner, *Creation of Patriarchy*, 215.
16. Lerner, *Creation of Patriarchy*, 102; emphasis by Hammack.
17. Kendall, *Social Problems*, 129.

18. Lerner, *Creation of Patriarchy*, 239.
19. Lerner, *Creation of Patriarchy*, 88. See also Gerda Lerner, ed., *Black Women in White America: A Documentary History* (New York: Vintage Books, 1972), 163; and Bell Hooks, [Gloria Watkins] *Ain't I A Woman: Black Women and Feminism* (Boston: South End Press, 1981), 62.
20. Darlene Clark Hine, William C. Hine, and Stanley Harrold, *The African-American Odyssey*, 3rd ed., Combined Volume (Upper Saddle River, N.J.: Pearson - Prentice Hall, 2006), 327-328.
21. Hine, *African-American Odyssey*, 327.
22. Christopher Waldrep, "Substituting Law for the Lash: Emancipation and Legal Formalism in a Mississippi County Court," *The Journal of American History* 82, no. 4 (Mar., 1996): 1425-1451. [database online]; available from JSTOR; <http://www/jstor.org>; Internet; accessed 22 February 2008
23. William Cohen, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," *The Journal of Southern History* 42, no. 1 (Feb., 1976), 31. [database online]; available from JSTOR; <http://www/jstor.org>; Internet; accessed 22 February 2008
24. Jonathan M. Wiener, "Class Structure and Economic Development in the American South, 1865-1955," *The American Historical Review*. 84, no. 4 (Oct., 1979): 970-992. [database online]; available from JSTOR; <http://www/jstor.org>; Internet; accessed 22 February 2008
Also see Cohen, *Negro Involuntary Servitude in the South*; and Waldrep, *Substituting Law for the Lash*.
25. Paula Petrik, *No Step Backward: Women and Family on the Rocky Mountain Mining Frontier. Helena, Montana, 1865-1900* (Helena: Montana Historical Society Press, 1987) quoted in DuBois, Ellen Carol, and Lynn Dumenil, *Through Women's Eyes: An American History with Documents* (Boston and New York: Bedford/St. Martin's, 2005), 351.
26. Data derived from Hammack's research in Mississippi Code (1857) sec. 69, art. 344; Mississippi Code (1871) sec. 2836; Mississippi Code (1880) sec. 2969; Mississippi Code (1892) sec. 1322; Mississippi Code (1906) chpt. 148, sec. 5055; Mississippi Laws (1918) chpt. 193; and Mississippi Code (1972) as amended, sec. 97-29-49.
27. Mississippi Code (1857) sec. 69, art. 344; Mississippi Code (1871) sec. 2836; Mississippi Code (1880) sec. 2969; Mississippi Code (1892) sec. 1322; Mississippi Code (1906) chpt. 148, sec. 5055; and Mississippi Laws (1918) chpt. 193.
28. Mississippi Laws (1918) chpt. 193.
29. Mississippi *Senate Journal* (1918); and Mississippi Laws (1918) chpt. 193.

30. Mississippi *Senate Journal* (1942) reflects that the following Senators introduced Senate Bill no. 272: Johnston, Sullivan, Knox, Loving, Warren, Bramlette, Hopkins, Riddell, Monaghan, Grice, Culkin, Ford, Daws, Hauberg, Richardson, Stubbs, Gavin, Daniel, Robinson, Collier, Hull, Cato, Cochran, Ivy, Dearman, Arnold, Ivy, Davis, and Rice.
31. Mississippi Laws (1942) chpt. 284.
32. Mississippi Code (1972) as amended, sec. 97-29-49.
33. Peabody v. State, 72 Miss. 104 (Miss. Sup. Ct. 1894)
34. Ibid.
35. Ibid.
36. It is interesting to note that, while the race neither of the three appellants is specified, the Circuit Judge in his argument does specify that **white** men were seen with the women. The implications of this are unclear, indicating that further research into the Circuit Court case from which the appeal originated would likely yield additional insight into the unique ways that women of color were affected by the deviant stigma of prostitution. The appellants were, in fact, black women, but this fact was not evident in the Supreme Court record; the fact was only briefly mentioned in the *Vicksburg Evening Post* 8 December 1893, the day of the Circuit Court proceedings.
37. McDonald v. State, 127 Miss. 402 (Miss. Sup. Ct. 1921)
38. Ibid.
39. Wiener, *Class Structure and Economic Development*, 982.
40. Kendal, *Social Problems*, 135.
41. Kamala Kempadoo, "Globalizing Sex Workers' Rights," in *Race, Class, and Gender: An Anthology*, ed. Margaret L. Andersen and Patricia Hill Collins (Belmont, California: Thomson Wadsworth, 2007), 240.
42. Teresa Amott, and Julie Matthaei, *Race, Gender, and Work: A Multicultural Economic History of Women in the United States* (Boston: South End Press, 1991), 150-160.
43. Glenda Elizabeth Gilmore, *Gender and Jim Crow: Women and the Politics of White Supremacy in North Carolina, 1896-1920* (Chapel Hill: The university of North Carolina Press, 1996), 72.
44. Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill and London: The University of North Carolina Press, 1992), 94.