

LES DEMOISELLES D'AVIGNON: PAINTING PROSTITUTION,
DELINEATING LAW

SHULAMIT ALMOG*

“It is well known that art will often—for example, in pictures—precede the perceptible reality by years. . . . Each season brings, in . . . various secret signals of things to come. Whoever understands how to read these semaphores would know in advance not only about new currents in the arts but also about new legal codes”

[WALTER BENJAMIN, *THE ARCADES PROJECT* 63–64 (Howard Eiland & Kevin McLaughlin trans., 2002)]

INTRODUCTION	63
I. <i>LES DEMOISELLES D'AVIGNON</i> AND THE INTERPRETIVE DISCOURSE..	65
A. <i>Overview</i>	65
B. <i>From the Moralizing-Shocked Gaze towards the Normalizing Approach</i>	67
C. <i>Challenging the Normalizing View of Prostitution</i>	70
II. ART CRITICISM ALONGSIDE LEGAL REGULATION OF PROSTITUTION	73
CONCLUSION.....	79

INTRODUCTION

Five nude women are jam-packed one near the other.¹ Four of them look ahead while the fifth faces them in profile.² The second woman has one hand behind her head and has her other hand loosely

*Shulamit Almog is a Full Professor at the Faculty of Law, University of Haifa and a co-director of the Center of Law, Gender and Public Policy. She would like to thank Ariel Bendor for his thoughtful comments and Lina Makhuli, Ori Goral and Michal Rubin for Excellent research assistance.

¹ *Avignon* in the painting's title refers to a street in Barcelona, known for the many brothels on it. For a detailed description of Pablo Picasso's *Les Femmes d'Alger (O. J. R. M.)* painting, see KIKI SMITH, *MOMA HIGHLIGHTS: 350 WORKS FROM THE MUSEUM OF MODERN ART*, NEW YORK 50 (Museum of Modern Art, 3rd ed. 2013). For additional verbal description, see Jonathan Jones, *Pablo's punks*, *THE GUARDIAN*, <https://www.theguardian.com/culture/2007/jan/09/2> (last visited Sept. 1, 2017).

² KIKI SMITH, *MOMA HIGHLIGHTS: 350 WORKS FROM THE MUSEUM OF MODERN ART*, NEW YORK 50 (Museum of Modern Art, 3rd ed. 2013).

holding some kind of fabric.³ The third woman raises her arms above her head. Masks conceal the faces of the two women on the right.⁴ One kneels with her legs spread.⁵ The other woman's hands are partially hidden by the fabric.⁶ At the bottom of the picture, there is a plate with fruit.⁷ The three women whose faces are exposed seem to have blank facial expressions.⁸ In the top left corner of the painting, there is a hand that does not belong to any of the women.⁹

The preceding paragraph is a literal explanation of Pablo Picasso's painting, *Les Femmes d'Alger (O.J.)*.¹⁰ This painting was presented to the world in 1907 after Picasso had completed many preparatory drawings and sketches.¹¹ Since 1907, the painting has been crowned as a central piece in the history of art in the twentieth century, and possibly of all time.¹²

Unsurprisingly, Picasso's seminal work has produced a vast interpretative repertoire. I will begin by describing a few angles of the repertoire that focus on the world of content surrounding the painting. Then I will juxtapose those interpretations with approaches that deal with legal regulation of prostitution. The discussion will pertain to two types of discourse. The first is the art-scholarship and critique that stems from and surrounds the painting; the second is a positivist normative legal discourse referring to prostitution since the last century.

Following some introductory remarks concerning links between art and law, I will describe various approaches—the moralistic, liberal, and feminist approaches—that have developed within the exegetical discourse regarding the painting. I will then show how these approaches can be detected in different legal regimes of prostitution's regulation. In the conclusion, I will point out a contemporary convergence towards two leading legal approaches to prostitution—one that conceives prostitution as a de facto contract between consenting adults, and the other that perceives prostitution as a form of exploitation and oppression. I will then demonstrate how the painting and its interpretations resonate with both approaches.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ KIKI SMITH, *MOMA HIGHLIGHTS: 350 WORKS FROM THE MUSEUM OF MODERN ART*, NEW YORK 50 (Museum of Modern Art, 3rd ed. 2013).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *History of the Painting*, THE MUSEUM OF MODERN ART, http://www.moma.org/explore/conservation/demoiselles/history_2_b.html (last visited Jan. 14, 2018).

¹² See, e.g., *Les Femmes D'Alger: Picasso's influences in the creation of a masterwork*, PRINCETON UNIVERSITY (Sept. 2006), http://blogs.princeton.edu/wri152-3/f05/cargyros/les_demoiselles_davignon_picassos_influences_in_th.html [<http://archive.li/4c5rN>].

2018] PAINTING PROSTITUTION, DELINEATING LAW 65

The paper derives from the paradigm of *literature alongside law* that was originally developed to describe the parallel flow of the law and literature, which sometimes meet.¹³ A new interpretation offered here delineates a parallel flow of *law alongside art*, which are two fields that reflect—each by employing different poetics and a different rhythm—social perceptions and their transformations.

I. *LES DEMOISELLES D'AVIGNON* AND THE INTERPRETIVE DISCOURSEA. *Overview*

In his poem, *The Art of Poetry*, Horace wrote, “[a]s is painting, so is poetry” (ut pictura poesis), indicating the similarity between the effect of words and the effect of images.¹⁴ This similarity is revealed when placing paintings beside other products of culture, such as the law.¹⁵ Horace observes that rich academic discourse focusing on the affinities of law and culture pays attention to law and art in general,¹⁶ and to painting in particular.¹⁷ Notwithstanding Horace’s observation, content interpretation of paintings is especially challenging, as verbal (novels, stories and poems), visual (particularly theater), and cinematic expressions are tools that easily garner wide range of themes. Through these themes, one may effortlessly create complex narratives. They have the power to forgo the limits of time and space. Their ability to present simultaneous viewpoints and perspectives, as well as variations of a single event is practically limitless. Painting, on the other hand, presents a static and frozen state.¹⁸ It may certainly produce rich interpretive viewpoints, but these viewpoints depend upon viewers that enliven and enrich the static perspective depicted in the painting. Under this background, let us telescope some of the readings *Les Demoiselles d’Avignon* produced over the years.

Women in prostitution have inspired countless artistic minds and

¹³ For a shared paradigm of literature and law, see Shulamit Almog, *Windows and Windows: Reflections on Law and Literature in a Digital Age*, 57 U. TORONTO L.J. 755, 779–80 (2007).

¹⁴ QUINTUS HORATIUS FLACCUS (“HORACE”), *THE ART OF POETRY* (C. Smart and E.H. Blakeney trans., 1928), available at <https://www.poetryfoundation.org/articles/69381/ars-poetica>.

¹⁵ For a general view on links between the arts and law, see LAWRENCE ROSEN, *LAW AS CULTURE: AN INVITATION* (2009); See also LAW IN THE DOMAINS OF CULTURE (Austin Sarat & Thomas R. Kearns eds., 1998).

¹⁶ See, e.g., LAW AND THE IMAGE: THE AUTHORITY OF ART AND THE AESTHETICS OF LAW (Cosas Douzinas & Lynda Nead eds., 1999); LAW AND ART: JUSTICE, ETHICS AND AESTHETICS (Oren Ben-Dor ed., 2011); Wendy Nicole Doung, *Law is Law and Art is Art and Shall the Two Ever Meet?—Law and Literature: The Comparative Creative Processes*, 15 S. CAL. INTERDISC. L.J. 1 (2005).

¹⁷ For additional examples of the relation between law and art, see Jonathan Turley, *Art and the Constitution: The Supreme Court and the Rise of the Impressionist School of Constitutional Interpretation*, 2003 CATO SUP. CT. REV. 69; Benjamin A. Templin, *The Marriage Contract in Fine Art*, 30 N. ILL. U.L. REV. 45, 52–60 (2009); URIEL PROCACCIA, *RUSSIAN CULTURE, PROPERTY RIGHTS, AND THE MARKET ECONOMY* (2009).

¹⁸ For a fascinating description of the nature of depiction in paintings, see Max Black, *how do pictures represent?*, ART, PERCEPTION, AND REALITY 95 (W. E. Kennick ed., 1979).

have been brought up in representations in literature, drama poetry, cinema, and photography.¹⁹ Paintings are pieces of art brimming with images.²⁰ Paintings of women in prostitution were customary before and during Picasso's time.²¹ Despite the differences among these paintings, most of them were created by men, and thus bore the imprint of the masculine point of view.²² This is true for *Les Demoiselles d'Avignon* as well. Nonetheless, as Jonathan Jones notes, *Les Demoiselles* is so much more than "a recycling of [one of] the 19th century's biggest clichés—'loose women' cavorting in exotic interiors."²³ The discourse that developed around the painting transformed it into a representation that is capable, up to this day, of echoing the cultural ambivalence toward prostitution. As Carol Duncan described, "In the finished work, the women have become stylistically differentiated so that one looks not only at present-tense whores but also back down into the ancient and primitive past . . . placed on a single spectrum."²⁴ Simultaneously, the painting reflects the ambivalence regarding the legal regulation of prostitution. The interpretive approaches elicited by the painting cloak the naked demoiselles in a lavish gown of discourse. Before turning to it, a note in regard to the painter, Pablo Picasso, seems to be called for.

Numerous attempts were made to trace ties between Picasso's personal views of prostitution and his painting. Contrary to the assumption that Picasso was unaware of the issue of gender and prostitution,²⁵ one critic believes Picasso actually protested against the evils of prostitution in European society through his painting. This critic points to Picasso's deliberate choice to depict women in prostitution with intimidating and repulsive appearances.²⁶ Another critic hypothesizes that Picasso's painting reflected his frequent visits to brothels in Barcelona, and used portraits of his acquaintances as inspiration for *Les Demoiselles*. This critic mentions a discussion that Picasso had with his friends about the women in the painting, joking

¹⁹ See Musée d'Orsay, *Splendour and Misery. Pictures of Prostitution, 1850–1910*, MUSEE D'ORSAY, <http://www.colleensparis.com/wp-content/uploads/2015/12/Orsay-Splendour-and-Misery.-Pictures-of-Prostitution-1850-1910.pdf> (last visited July 12, 2015, 1:09 PM).

²⁰ Germaine Greer, *Artists have always glamorized prostitution. Manet savaged all their delusions*, THE GUARDIAN (Feb. 6, 2011), <http://www.theguardian.com/artanddesign/2011/feb/06/manet-olympia-prostitution-courtesan>.

For a discussion on the key motif of prostitution in art, see JENNIFER DOYLE, *SEX OBJECTS: ART AND THE DIALECTICS OF DESIRE* 45–70 (2006).

²¹ See, e.g., a study regarding the representation of prostitution in French impressionist paintings: HOLLIS CLAYSON, *PAINTED LOVE: PROSTITUTION IN FRENCH ART OF THE IMPRESSIONIST ERA* (1991).

²² See Musée d'Orsay, *supra* note 19.

²³ Jones, *supra* note 1.

²⁴ Carol Duncan, *The MoMA's Hot Mamas*, 48 ART J. 171, 176 (1989). DONALD KUSPIT, *A CRITICAL HISTORY OF 20TH CENTURY ART* (2006).

²⁵ DONALD KUSPIT, *A CRITICAL HISTORY OF 20TH CENTURY ART* (2006).

²⁶ Cory McKay, *Historical Influences of Picasso's Les Demoiselles d'Avignon*, MCGILL UNIVERSITY, <http://www.music.mcgill.ca/~cmckay/papers/miscellaneous/HistoryDemoiselles.pdf>.

that one of the women was Picasso's girlfriend and another the grandmother of a poet friend.²⁷ Though it is easy to understand the possible connections between an artist's personality and his or her work, it appears that in this context—the commentary sprouted by the painting—investigating the depths of Picasso's mind while painting *Les Femmes d'Alger*, and his views on prostitution, sexual fidelity or sex has limited importance, if at all, to the interpretational voyage which has developed over the years.

B. *From the Moralizing-Shocked Gaze towards the Normalizing Approach*

Immediately after the public exhibition of *Les Femmes d'Alger* in the early 1920's, a moralizing-shocked approach erupted.²⁸ The first reactions to the painting expressed shock at what was perceived as a provocative deviation from social decorum. The painting shed public light on a scene that was supposed to take place behind closed doors, and out of the respectable public's sight. The content of the painting was perceived as insolent and scandalous. The new and foreign aesthetic language which Picasso presented further fueled the uproar. The shocked gaze was focused on the painting's "willful travesty of acceptable canons of female beauty"²⁹ and the "crude sexuality of the prostitutes['] poses"³⁰ that displayed a brothel scene, which openly displayed scandalous sexual promiscuity.

The turmoil subsided and was soon thereafter replaced by a wide acknowledgement of Picasso's aesthetic innovation and artistic value. The Museum of Modern Art purchased the painting in 1939. To this day, it is considered as one of the highlights in the museum's collection. By the early 1970's, the painting was highly regarded.

Art critic Leo Steinberg published a formative article titled *The Philosophical Brothel*.³¹ The article represents an important turning point in the theoretical outlook of the painting's content. Steinberg begins by describing the closed-mindedness that prevented a

²⁷ Leo Steinberg, *The Philosophical Brothel*, 44 OCTOBER 7, 43 (1988).

²⁸ For an explanation on the mechanism propelling the moralistic approach, see HERBERT MARCUSE, *EROS AND CIVILIZATION: A PHILOSOPHICAL INQUIRY INTO FREUD 200–201* (1955) ("The full force of civilized morality [is] mobilized against the use of the body as mere object, means, instrument of pleasure; such reification . . . remain[s] the ill-reputed privilege of whores, degenerates, and perverts").

²⁹ David Lomas, *In Another Frame: Les Femmes d'Alger and Physical Anthropology*, in *PICASSO'S LES FEMMES D'AVIGNON* 104 (Christopher Green, ed., 2001); For more about artists' and art critics' reactions to the painting during the early era, see John Golding, *Les Femmes d'Alger and the Exhibition of 1988*, in *PICASSO'S LES FEMMES D'AVIGNON* 15 (Christopher Green, ed., 1958); *Art of the 20th Century: George Braque*, ALL-ART.ORG, http://www.all-art.org/art_20th_century/braque1.html (last visited Nov. 4, 2017).

³⁰ T. Tex Edwards, *The story behind Picasso's masterpiece Femmes D'Alger*, T TEX'S HEXES (July 22, 2009), <http://ttxshexes.blogspot.com/2009/07/picassos-masterpiece-femmes.html>.

³¹ Steinberg, *supra* note 27.

worthwhile examination of the painting's value when it first came out. He defines the types of questions that the critical discourse surrounding *Les Demoiselles* initially tackled, such as the painting's chronology, Picasso's debt to Cézanne, in what way Iberian and African influences are integrated in the painting, and how Picasso performed the impressive leap to cubism.³² However, Steinberg claims that one may ask questions of a different class about the painting, questions that previously have not been asked. For example, why are the women in the painting characterized as prostitutes? Could the same artistic effect been achieved had Picasso drawn card-players instead?³³

In order to examine these types of questions closely, Steinberg approaches the painting by studying the preliminary sketches and other paintings, both by Picasso and others. His analysis leads him to conclude that the essential factor in determining the painting's meaning is in fact, the viewer. Steinberg calls the viewer the "solicited viewer."³⁴ According to this viewer's point of view, the painting is not the most important expression of cubism, but first and foremost, a display of naked women.³⁵ Steinberg describes the view before the solicited viewer, who is confronted with brutal immediacy—his stare is returned in a defiant gaze:

Of the five figures depicted, one holds back a curtain to make you see; one intrudes from the rear; the remaining three stare you down. The unity of the picture, famous for its internal stylistic disruptions, resides above all in the startled consciousness of a viewer who sees himself seen.³⁶

Steinberg stresses that there is no inter-communication between the figures and the viewer. Each one communicates directly, and separately, with the viewer.³⁷ Steinberg believes that the quintuple gaze from the figures demonstrates crude sexuality.³⁸ Picasso was motivated to designate the naked women identified as prostitutes as the subjects of his painting because he wanted to express crude sexuality. Steinberg notes that Picasso painted the women to "personify sheer sexual energy as the image of a life force."³⁹

What position toward sexuality ascends from the painting? Steinberg maintains that Picasso conveyed a glorification of the power and vitality of sex.⁴⁰ Steinberg mentions Picasso's preliminary sketches

³² *Id.* at 11.

³³ *Id.*

³⁴ *Id.* at 15.

³⁵ *Id.* at 33.

³⁶ *Id.* at 12.

³⁷ *Id.* at 46.

³⁸ *Id.*

³⁹ *Id.* at 53.

⁴⁰ For the notion that *Les Demoiselles d'Avignon* represents Picasso's lifestyle, see Timothy R. Quigley, *Semiotics and Western Painting: An Economy of Signs*,

2018] PAINTING PROSTITUTION, DELINEATING LAW 69

which initially included two men in the painting—a sailor surrounded by naked women and food, and a man holding a skull or a book. Ultimately, the two figures were not included in the final version of the painting, but Barr deduced from the sketches that Picasso meant to depict a moralistic confrontation between virtue and vice, portrayed by the two men, one seemingly a medical student and the other overindulging himself with women and food.⁴¹ Steinberg does not accept this interpretation and maintains that Picasso—even if he linked sex to danger (for example, the danger of contracting sexually transmitted diseases [STDs])—never linked sex to sin. Picasso also never linked over-eating to sinning. Picasso was extremely fond of fine cuisine.⁴² Furthermore, Steinberg rejects commentary that attributes the “medical theme” to the painting and states that it is a mere conjecture that Picasso suffered from an STD and that the painting expressed his fear and anger toward women. Despite the possibility of truth in this information, Steinberg believes that juxtaposing the “medical theme” with the painting is a “simplistic reductiveness.”⁴³ Steinberg concludes that the *Demoiselles* are not a portrayal of the sins and dangers of sexuality or a lament on sexuality’s health tolls. Rather, it is an allegory of the joys of sex and the viewer’s powerful encounter with it.⁴⁴

Steinberg’s approach strongly echoes a liberal worldview that sex is pleasure and not an event that must be hidden or seen as embarrassing. Furthermore, Steinberg’s approach echoes the view that prostitution is normal and is a desirous practice for both the prostitutes and the men who buy their services.⁴⁵ According to this approach, prostitution is liberating, and constitutes a woman’s right to self-fulfillment.⁴⁶

Steinberg’s work facilitated the transition from the moralistic-shocked approach, which was the early response to the painting, to the liberal approach, which was representative of a zeitgeist who loved the pure joys of sex—including sex purchased via commercial transactions—unshackled by social or romantic conventions.⁴⁷ The essence of the liberal approach is that there are no grounds for moral or moralistic protest against the painting.⁴⁸ The typical, solicited viewer is a normal man, who reacts with jaunty self-indulgence to the pleasures

<http://timothyquigley.net/vcs/semiotics-frascina.pdf> (last modified Mar. 15, 2009).

⁴¹ Steinberg, *supra* note 27, at 10.

⁴² *Id.* at 38.

⁴³ *Id.* at 71.

⁴⁴ *Id.* at 43 (“I suggest that the *Demoiselles* project began . . . as an allegory of the . . . confrontation with the indestructible claims of sex.”).

⁴⁵ See, e.g., MARCUSE, *supra* note 28, at 200–01, who claims that this approach would be considered normal and normative in a utopia, and “would lead to a disintegration of the institutions in which the private interpersonal relations have been organized, particularly the monogamic and patriarchal family.”

⁴⁶ See, e.g., KUSPIT, *supra* note 25, at chapter 1, parts 1–2.

⁴⁷ Steinberg, *supra* note 27, at 10.

⁴⁸ *Id.*

of buying sex.⁴⁹ Ironically, the essay that was perceived as representing new horizons of critique seems to imply that the designated audience of the painting is rather limited, and includes only heterosexual men.⁵⁰ Over the following decades, one discerns another turning point in the commentary.

C. *Challenging the Normalizing View of Prostitution*

As a launch pad, I will use another foundational article that was published three years after *The Philosophical Brothel*—Laura Mulvey’s *Visual Pleasure and Narrative Cinema*.⁵¹ In this article, Mulvey uses a psychoanalytic and feminist theory to analyze the gaze that is typical in a cinematic context. One can define the typical gaze in a cinematic context as an encounter between “woman as image, [and] man as bearer of the look.”⁵² Mulvey describes this encounter:

In a world ordered by sexual imbalance, pleasure in looking has been split between active/male and passive/female. The determining male gaze projects its phantasy on to the female figure which is styled accordingly. In their traditional exhibitionist role women are simultaneously looked at and displayed, with their appearance coded for strong visual and erotic impact. . . . Women displayed as sexual object . . . holds the look, plays to and signifies male desire.⁵³

Mulvey’s claim regards film as an art that places the gaze’s power at the base of its poetics. In a later article written in 1981, Mulvey clarifies this point and states, “In ‘*Visual Pleasure*’ my argument took as its axis a desire to identify a pleasure that was specific to cinema, that is the eroticism and cultural conventions surrounding the look.”⁵⁴ It is actually Steinberg’s work which elucidates that Mulvey’s insight is relevant to other forms of artistic expression, including painting. The description of the cinematic look with its two members—woman as image and man as bearer of the look—reflects the way Steinberg’s analysis describes *Les Demoiselles*’ effect.

Analyses such as Mulvey’s and Steinberg’s place a male viewer in

⁴⁹ *Id.*

⁵⁰ Katharine Conley, *When the Viewer’s Gaze is Returned: Teaching Picasso’s Demoiselles d’Avignon*, TEACHING ETHICS 87, 88 (2008), available at <https://www.uvu.edu/ethics/seac/Conley-When%20the%20Viewer%20Gaze%20is%20Returned.pdf>. See also Tamar Garb, ‘To Kill the Nineteenth Century’: Sex and Spectatorship with Gertrude and Pablo, in PICASSO’S LES DEMOISELLES D’AVIGNON 55 (Christopher Green, ed., 2001).

⁵¹ Laura Mulvey, *Visual Pleasure and Narrative Cinema*, in FILM THEORY AND CRITICISM: INTRODUCTORY READING 833 (Leo Braudy & Marshall Cohen eds., 1999).

⁵² *Id.* at 837.

⁵³ *Id.*

⁵⁴ See Laura Mulvey, *Afterthoughts on ‘Visual Pleasure and Narrative Cinema’ inspired by King Vidor’s Duel in the Sun (1946)*, in VISUAL AND OTHER PLEASURES 32 (Stephen Heath, Colin McCabe & Denise Riley eds., 1st ed. 1989).

2018] PAINTING PROSTITUTION, DELINEATING LAW 71

their center and not a female one. A common argument for why they do this is because poetics are gender-blind, and poetic products should be viewed this way. Mulvey addresses this point in a later article, and explains the complex cultural process where gazing women adopt a cultural convention, which molds them and sets their viewpoint while blurring their identity as women. In other words, women gazing at cultural forms of expression frequently adopt the masculine point of view, while suppressing their own. In Mulvey's words, "[t]he woman spectator in the cinema can make use of an age-old cultural tradition adapting her to this convention, which eases a transition out of her own sex into another."⁵⁵

Bypassing the default masculine-normalizing gaze is not easy and is only occasionally achieved. Nonetheless, Daniel Chandler acknowledges that the main audience for the different forms of art—literature, plastic art, cinema etc.—back then was male and that a growing recognition for audience, gaze, and experience is female today.⁵⁶

Anna Chave suggests an implementation of this type of position on *Les Demoiselles*. She describes the painting as a narrative of excluding women, which is expressed both in the painting itself and in the commentary over the years.⁵⁷ Chave commences with a description of the interpretive approach she wishes to challenge:

Virtually every critic who has addressed *Les Demoiselles* has not only assumed what is indisputable—that the picture's intended viewer is male and heterosexual—but has also elected to consider only the experience of that viewer, as if no one else ever looked at the painting. (Through *Les Demoiselles*, Picasso "tells us what our desires are," one critic declared, peremptorily.)⁵⁸

Chave places her view on *Les Demoiselles*' nonconventional critique, which Steinberg proclaimed his great innovation and many others readily adopted.⁵⁹ Chave claims that the painting is an expression that outrages her as a woman, which spurs feelings of empathy and moves her to identify with the *Demoiselles* themselves, who represent women in positions of absolute subordination.

[T]he place that *Les Demoiselles d'Avignon* conspicuously marks out for a client-viewer is hopelessly unsuited to me—a

⁵⁵ Laura Mulvey, *Afterthoughts on 'Visual Pleasure and Narrative Cinema' Inspired by Duel in the Sun*, in *PSYCHOANALYSIS AND CINEMA* 27 (E. Ann Kaplan ed., 1990).

⁵⁶ For details on the development of gaze theory and extensive bibliography, see Daniel Chandler, *Notes on 'The Gaze'* (1998), found at <http://visual-memory.co.uk/daniel/Documents/gaze/>;

⁵⁷ For similar interpretations, see Conley, *supra* note 50, at 91.

⁵⁸ Anna C. Chave, *New Encounters with Les Demoiselles d'Avignon: Gender, Race, and the Origins of Cubism*, 76 *THE ART BULLETIN* 596, 598 (Dec. 1994).

⁵⁹ *Id.*

heterosexual, feminist, female viewer [T]his helps me to view the demoiselles empathetically⁶⁰

Les Demoiselles presents Chave, who is a viewer, with a situation she defines as representing terror.⁶¹ She cannot help but link the content of the painting with her own life-experiences as a woman, who is burdened daily by the existence of prostitution. According to Chave, even though she was born privileged and spared from the distresses of prostitution and having to present herself naked for men's sexual selection, she too, like other women, can imagine how a woman feels when treated like a prostitute. Chave said that on the streets of New York, she too, feels like a victim to the widespread male suspicion that "a trace of whore lurks in every woman."⁶² That is why her reaction to the painting is ambivalent. "These demoiselles offend me, then—and yet, I confess, they attract me too . . . because it makes fun of the prostitutes' clients, despoiling their sexual appetites."⁶³

The feminine view of prostitution will later pave the way for a more radical approach.⁶⁴ Timothy Quigley offers a more radical view based on a semiotic reading. Quigley states that *Les Demoiselles*, like any other painting, speaks to us through a pictorial language, a set of conventions, as well as elements and rules that create signifiers. To the question of what signifiers the five depicted women create, he replies:

A gendered commercial exchange—between men with the relative socio-economic freedom to purchase or take their pleasure where they wished, and women whose relative lack of social and economic choice is evidenced in the sale of their bodies, actually or in representations. Implicit in such a commercial exchange is the existence of a . . . system specific to the culture, a system of thought in which the exploitation of women is normalized—made to seem unexceptional, normal, familiar. . . . In other words, the representation of naked women as prostitutes, in harems or brothels, etc. belongs to a system of prevalent but largely unspoken and unequal power relations.⁶⁵

By this reading, the *Demoiselles* generates a signifier for the social practice of oppression and control. The sexual exploitation of women included in this practice, which derives from vulnerability and weakness, is thought of as an unexceptional commercial transaction, which is a normal occurrence. *Les Demoiselles* is not the only painting in western culture (or culture in general) whose semiotic reading reveals

⁶⁰ *Id.* at 598.

⁶¹ *Id.* at 599.

⁶² *Id.* at 598.

⁶³ *Id.* at 599.

⁶⁴ Conley, *supra* note 50, at 93.

⁶⁵ Quigley, *supra* note 40, at 2–3.

2018] PAINTING PROSTITUTION, DELINEATING LAW 73

society's underlying power structure of masculine dominance and control, as well as feminine subordination, which is perhaps the most adamant expression of prostitution. Quigley mentions many paintings that are characterized by this theme. It seems that *Les Demoiselles* takes a singular position in art history and human culture. The painting, that some see as “the amazing act upon which all the art of our century is built,” “the most innovative painting since Giotto,” and the “paradigm of all modern art,”⁶⁶ sets prostitution—five women offering penetration to their bodies for sale—at its core.

Chave and Quigley delineate that *Les Demoiselles* is transformed from a signifier of the joys of sex to a signifier of the victimhood of prostitution as a societal practice linked to inherent humiliation. This reading focuses on the anxious facial expressions of the unmasked women and the utter lack of interaction, intimacy and solidarity between them. Quigley writes:

[T]he representation of naked women as prostitutes, in harems or brothels, etc. belongs to a system of prevalent but largely unspoken and unequal power relations.⁶⁷

The women in *Les Demoiselles* are signifiers of a societal practice of oppression and control, framed, among other ways, by the law as a legitimate commercial transaction. This turning point in the commentary corresponds with radical feminism, which maintains that prostitution, existing within the frame of the current balance of power between women and men, is a phenomenon that places women in prostitution at the bottom of the social ladder, and exposes them to significant harms—mental, emotional and physical.⁶⁸ Branding the women as whores inevitably turns them into eternal representations of feminine victimhood.

II. ART CRITICISM ALONGSIDE LEGAL REGULATION OF PROSTITUTION

In this century and the previous ones, several legal approaches toward prostitution prevail. All of them reverberate the innuendos of commentary surrounding the painting. Today, at the end of the second decade in the 21st century, there are two main approaches that are conspicuous within the legal discourse: legalization of prostitution versus criminalization of buyers of prostitution. These approaches reflect the rivalry between the liberal approach and the radical feminist approach to prostitution. This rivalry exists in the interpretive discourse surrounding the painting.

Although the moralistic approach has lost much of its stamina,

⁶⁶ See Chave, *supra* note 58, at 596.

⁶⁷ Quigley, *supra* note 40, at 3.

⁶⁸ See Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271, 285–99 (2011).

signs of its existence can still be traced both in law and art. The moralistic approach to prostitution is ancient and is rooted in regimes influenced by religious norms. For example, in the year 1568, Pope Sixtus V declared the death penalty for prostitution as “sins against nature.”⁶⁹ Additional expressions of the moralistic approach can be found in regimes that may have not criminalized prostitution, but have indeed treated it as an evil that must be hidden away from the public’s eye.⁷⁰

A contemporary example to such a moralistic approach is to be found within the American legal system. Although each of the states has a separate legislative system,⁷¹ prostitution is illegal in all states excluding Nevada.⁷² In the rest of the states, the prostitutes, clients, procurers, and brothel owners are legally liable. In forty-three states, the penalties on procurers and brothel owners are more severe (usually substantially so) than those on prostitutes and clients.⁷³ In most states, prostitutes and clients receive identical and minor punishment.⁷⁴ On average, the punishment is no more than a few months of imprisonment and a fine. Several states impose harsher penalties on repeat offenders who are either prostitutes or clients (but usually not on repeat offenders who are procurers and brothel owners).⁷⁵

This approach is founded on the understanding that prostitution is immoral and harmful. It is not banned due to the harm caused to the women in prostitution, but due to the moral harm prostitution inflicts on society by challenging the traditional norms which allow sexual relations only within the institutions of marriage and partnership.⁷⁶ The penalties imposed on procurers and brothel owners are in light of the assumption that they contribute—more so than the prostitutes themselves and their clients—to the industrialization of the destructive practice of prostitution and to the spread of the problem in society. A supplemental reason is the moral failure of monetary gain accrued from others’ sexual activities.

⁶⁹ NILS JOHAN RINGDAL, *LOVE FOR SALE: A WORLD HISTORY OF PROSTITUTION* (Richard Daley trans., 2004).

⁷⁰ The State of Nevada in the United States, is an example for such a regime. The law allows prostitution in certain places, far from the populated and central areas. For a detailed account of this model, see Micloe Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 *YALE J.L. & FEMINISM* 69, 93–94 (1998).

⁷¹ For more details regarding the relevant laws in each of the states, in addition to federal law, see *The US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000119> (last visited Oct. 18, 2017).

⁷² For the American history of prostitution and its legal regulation see Gail M. Deady, *The Girl Next Door: A Comparative Approach to Prostitution Laws and Sex Trafficking Victim Identification Within the Prostitution Industry*, 17 *WASH. & LEE J.C.R. & SOC. JUST.* 515, 522–33 (2011).

⁷³ See *The US Federal and State Prostitution Laws*, *supra* note 70.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See Janie A. Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 *U. PA. L. REV.* 1655, 1665 (2010).

2018] PAINTING PROSTITUTION, DELINEATING LAW 75

Signs of the moralistic approach are evident even in Nevada, where prostitution is allowed. Brothels in Nevada are legal, but are subject to various meticulous restrictions that convey, more than the normalizing approach, the moralistic one. Prostitution in Nevada is limited to sparsely populated areas. Prostitutes are subject to limitations that seem to stem from a wish to make them invisible and minimize the damage to the public's morals. Hence there are decrees prohibiting prostitutes from renting apartments in city centers or neighborhoods of family residences, and limiting the time the women spend outside the brothel.⁷⁷

A normalizing approach to prostitution, similarly to the moralistic approach, has existed from time immemorial.⁷⁸ In this approach, the use of prostitution is perceived as legitimate and as a social necessity to fulfill men's natural sexual urges.⁷⁹ Accordingly, one finds that at some point in nearly every country, prostitution was regulated under state supervision, starting with Athens in classical times, where the state supervised and institutionalized prostitution,⁸⁰ and up to France in the 19th century.⁸¹ The legal situation in France is particularly interesting as it corresponds to the variety of interpretations regarding *Les Demoiselles d'Avignon*.

In 19th century France, prostitution was not perceived as a crime, but rather as a "necessary evil" meant to satisfy the "brutal passions" of men.⁸² Several legal procedures were implemented to supervise the use of sexual services.⁸³ Brothels were commonly under police and health care supervision. This enforcement was presented as a means to protect the public from sexually transmitted diseases and to preserve the harmony of marriages.⁸⁴ In *The Arcades Project* (Das Passagen Werk), Walter Benjamin provides an eye-opening account of the degree of resolution reached in prostitution regulation in the 19th century.⁸⁵ Benjamin dedicates a full chapter to prostitution and gambling, and refers to a wide variety of sources which indicate that 19th century Paris had to deal with the aesthetic problem of prostitutes dimming the elegance of its famous arcades. Benjamin's descriptions of lower class

⁷⁷ See Bingham, *supra* note 70, at 93.

⁷⁸ See Noya Rimalt, *On Gender, Prostitution and Criminal Law: Reflections on the Proposal to Criminalize the Purchase of Sexual Services* 13 MISHPAT UMIMSHAL - LAW AND GOVERNMENT IN ISRAEL 439 (2010) (Isr.).

⁷⁹ *Id.* at 443.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Musee d'Orsay, *supra* note 19.

⁸³ *Id.*

⁸⁴ *Id.* The increase in unregulated street prostitution, in addition to the increase in the percentage of lower class women who turned to prostitution, signaled the death of regulation toward the end of the 19th century. Finally, in 1946, through legislative reform (the Loi Marthe Richard Bill) all brothels were shut down and prostitution became illegal.

⁸⁵ See WALTER BENJAMIN, *THE ARCADES PROJECT* (Howard Eiland & Kevin McLaughlin trans., (2002)).

prostitutes are surprisingly similar to the Barcelona *Demoiselles*. They are “creatures who are as grotesque as they are pitiable.”⁸⁶ These women usually wear cotton fabrics preferred by “African Negroes,” and have “pointed heads that are a sign of imbecility.”⁸⁷ The severe regulation of prostitutes influences their presence. Following is a typical example:

From the police edict of April 14, 1830, regulating prostitution: Art. (1) . . . They are forbidden to appear at any time, or on any pretext, in the arcades . . . (2) *Filles publiques* are not permitted to engage in prostitution except in licensed brothels (*maisons de tolerance*).⁸⁸

A contemporary example of normalizing regulation in the spirit of 19th century France is found in 21st century Australia. In the State of Victoria, prostitution has been institutionalized since 1999 and is regulated through The Prostitution Act from that same year.⁸⁹ The Prostitution Licensing Authority, a unique state authority founded in Victoria, publishes a guide for brothel owners which includes detailed instructions for washing used towels and linens, as well as instructions for handling clients’ complaints.⁹⁰

A second example of the contemporary implementation of the normalizing approach is prostitution institutionalization in the Netherlands. In the year 2000, an amendment to the Dutch law came into effect institutionalizing brothels.⁹¹ At the same time, the Netherlands mandated a stricter punishment for human trafficking and imported illegal workers from foreign countries for prostitution and exploited minors for prostitution.⁹² Prostitution and all its components became legal in the Netherlands.⁹³ Not only were women in prostitution permitted to practice prostitution and clients were permitted to purchase their services, third parties were also allowed to profit from brothels and

⁸⁶ *Id.* at 511–12.

⁸⁷ *Id.*

⁸⁸ *Id.* at 499.

⁸⁹ For details, see MARY SULLIVAN, COALITION AGAINST TRAFFICKING IN WOMEN, WHAT HAPPENS WHEN PROSTITUTION BECOMES WORK? AN UPDATE ON LEGALIZATION OF PROSTITUTION IN AUSTRALIA 13 (2005), available at <http://www.feministes-radicales.org/wp-content/uploads/2012/03/Mary-Sullivan-CATW-What-Happens-When-Prostitution-Becomes-Work...-An-Update-on-Legalisation-of-Prostitution-in-Australia.pdf>.

⁹⁰ See *Australia Prostitution Licensing Authority*, QUEENSLAND GOV’T, <http://www.pla.qld.gov.au>.

⁹¹ Before the change in legislation, prostitution itself was not prohibited. Brothel activity was illegal, but the law was not enforced. See Jessica N. Drexler, *Governments’ Role in Turning Tricks: The World’s Oldest Profession in the Netherlands and in the United States*, 15 DICK. J. INT’L L. 201, 217 (1996).

⁹² For the Dutch model, see Janet Halley et al., *From the International to the Local Feminist Legal Responses to Rape, Prostitution/Sex Work, and Sex Trafficking: Four Studies in Contemporary Governance Feminism*, 29 HARV. J.L. & GEN. 335, 398–401 (2006).

⁹³ See A.L. DAALDER, PROSTITUTION IN THE NETHERLANDS SINCE THE LIFTING OF THE BROTHEL BAN (2007).

2018] PAINTING PROSTITUTION, DELINEATING LAW 77

their management.⁹⁴ Local authorities were not permitted to express a moral view on prostitution since the legislature had already done that.⁹⁵ The transfer of the clause dealing with forced prostitution in the Dutch Penal Code “from the decency title to the title concerning the offences against personal freedom” expresses the normalizing approach.⁹⁶

The Dutch approach corresponds with Steinberg’s view, which views prostitution as a celebration of sexuality. Institutionalization of prostitution in the Netherlands brought an increase in tourism and the Red Light District in Amsterdam became a must-see attraction.⁹⁷ The red window resembling display windows with mannequins brings to mind *Les Demoiselles d’Avignon*. The passerby’s gaze at the women in the windows evokes Steinberg’s “solicited viewer.”⁹⁸ Like *Les Demoiselles*, the red windows are characterized by “brutal expressiveness.”⁹⁹ By gazing at the windows or the painting, the viewers become visual consumers.¹⁰⁰

I will now present the turning point evident in the last two decades, which were inspired by radical feminism in the legal regulation of prostitution. This turning point is directly related to a Swedish law passed in 1999 that placed criminal liability on clients of prostitution, procurers, and all other third parties connected to it. The women themselves bore no legal liability.¹⁰¹ This law defined prostitution as exploitation of women and the women in prostitution as victims. Purchasing of sex is defined as an act of violence against women. And indeed, the law was placed in the part of the Penal Code dealing with violent crime. This position is consistent with the radical feminist approach that aims to eradicate prostitution consumerism. Different variations of this fundamental approach known today as The Nordic Model were adopted by several countries over the past few years, including Iceland and Norway.¹⁰² Recently, France, homeland of *Les Demoiselles*, has changed the law in the spirit of the Nordic Model and prostitution has been prohibited with only clients criminalized.¹⁰³

In Israel, a gradual transition of the law can be perceived as a shift from the moralistic approach to the feminist one. The origin of the 1977

⁹⁴ *Id.* at 47–48.

⁹⁵ *Id.*

⁹⁶ *Id.* at 40.

⁹⁷ See Musee d’Orsay, *supra* note 19.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ For the Swedish model, see Max Waltman, *Prohibiting and Ending Trafficking: The Swedish Prostitution Law*, 33 MICH. J. INT’L L. 133, 135 (2011); Halley, *supra* note 92, at 396–98.

¹⁰² See COALITION AGAINST TRAFFICKING IN WOMEN AUSTRALIA, DEMAND CHANGE: UNDERSTANDING THE NORDIC APPROACH TO PROSTITUTION, 17–18, available at <http://www.catwa.org.au/wp-content/uploads/2017/03/NORDIC-MODEL-2017-booklet-FINAL-single-page.pdf>. In these countries the model was fully implemented. Others adopted an adjusted model, including Luxemburg, Finland and South Korea. See *id.* at 31–34.

¹⁰³ *Id.* at 23.

Penal Code is in the British Mandatory Penal Code, which include the clauses regarding prostitution. These felonies are included under Article 10 of the Penal Code, titled “Prostitution and Abomination,” which was originally titled “Transgressions against Morality.” The two titles, which are both the old British Mandatory and the new Israeli, convey the moralistic approach to prostitution which resounds the public’s condemnation and the view of prostitution as impure and an affront to sexual morality.¹⁰⁴ Israeli law tries to minimize the public exposure to prostitution as much as possible,¹⁰⁵ yet another reflection of the moralistic view. However, the liberal approach also has a standing in Israeli law and its approach to prostitution. Prostitution itself and the consumption of it are not criminalized.¹⁰⁶ The approach taken is one that regards prostitution as a legitimate contract between two consenting parties, which constitutes a convergence of interests between them. Third parties are seen as trying to profit at these parties’ expense, and thus their interference in the contract is illegitimate and a possible conflict of interests that may interfere with the consenting parties’ interests. Thus, Israeli law, which distinguishes between prostitution by choice and by force,¹⁰⁷ does not interfere in the first, and aims to prevent the second.

Nevertheless, although the legal status in Israel mostly reflected the normalizing approach, over the last few years there has been a change.¹⁰⁸ Starting with the 18th Knesset (Israeli Parliament), several bills were proposed for legislative reform that criminalized clients of prostitution. The last bill was proposed on March 20, 2017.¹⁰⁹ In April 2016, the Justice Minister announced the building of an inter-ministerial team tasked with examining the possibility of criminalization of prostitution consumers and studying international models, including the recently enacted French model.¹¹⁰ Over the last few years, the discourse surrounding criminalization of prostitution clients has been spreading, in light of the changes taking place in different countries and some

¹⁰⁴ Rimalt, *supra* note 78, at 452.

¹⁰⁵ The Penal Code prohibits owning and renting a venue for prostitution, and restricts the advertising of prostitution services. *Id.* at 453.

¹⁰⁶ Third parties involved in the prostitution industry are regarded as criminals. For the details of the Israeli model, see SHULAMIT ALMOG PROSTITUTION: CULTURAL AND LEGAL ASPECTS, 112–19 (2008); see also Shulamit Almog, *Prostitution as Exploitation: An Israeli Perspective*, 11 GEO. J. GENDER & L. 711, 723–28 (2010)(henceforth: Prostitution as exploitation); Halley, *supra* note 92, at 401–05.

¹⁰⁷ Rimalt, *supra* note 78, at 453.

¹⁰⁸ See Shulamit Almog, *Israel, Where Prostitution is Legal, Debates Criminalising the Men Who Pay for Sex*, THE CONVERSATION (Oct. 27, 2016), <https://theconversation.com/israel-where-prostitution-is-legal-debates-criminalising-the-men-who-pay-for-sex-66257?sa=google&sq=shulamit+almog&sr=1>.

¹⁰⁹ Draft Bill for Prohibition of Prostitution Consumerism and Assistance for Prostitution Survivors, HH (Knesset) 2017.

¹¹⁰ Lee Yaron & Sharon Pulwer *Israeli Justice Minister Mulls Criminalizing the Hiring of Prostitutes* HAARETZ (Apr. 17, 2016) <http://www.haaretz.com/israel-news/.premium-1.714841>.

countries adopting reforms in the spirit of the Nordic Model.¹¹¹ In June 2017, the Ministry of Welfare published recommendations for legislation.¹¹² The public discourse in Israel on the subject mainly reflects the liberal normalizing approach and the radical feminist approach in favor of the Nordic Model.

The convergence toward these two fundamental approaches is apparent in the ongoing international legal discourse. The first approach, where prostitution is considered a legitimate occupation worthy of the legal system's protection, is embodied in the 2015 Amnesty International decision persuading countries to abolish the criminalization of prostitution and to protect the human rights and security of prostitutes.¹¹³ The second, competing, approach is epitomized in a 2014 European Parliament decision. It is in the spirit of the Nordic Model to prohibit prostitution and criminalize clients.¹¹⁴

The two approaches differ in how they answer a fundamental question—how should society regard prostitution? I will now return to *Les Demoiselles d'Avignon* in order to propose some responses to this question through a contemporary view of the painting.

CONCLUSION

Whether intended by Picasso or not, present-day viewing of *Les Demoiselles* challenges conventions deeply rooted in every social field, including law regarding prostitution.

I commenced with the moralizing-shocked approach, which regarded prostitution as a sin that must be eradicated. Then I presented two approaches of artistic critiques that developed later in time. Leo Steinberg described *Les Demoiselles* as a glorification of the power and vitality of sex, which was created by the eye contact between the solicited viewer and the soliciting prostitute in the painting. Then, I explored how feminist criticism challenged the view that implicitly or even overtly saw men as an active viewer. I also explored how feminist

¹¹¹ See, e.g., Press Release, A Word from the Committee Chairperson MK Zehava Galon, Knesset's Subcommittee on Combating Trafficking in Women and Prostitution (2008), http://www.knesset.gov.il/committees/eng/docs/sachar_yor_eng.htm.

¹¹² The Ministry of Labor and Social Welfare recently published its recommendations for legislative reform regarding prostitution. According to the recommendations, gradual penalties would be imposed on repeat offenders—administrative penalties without incrimination, a fine and double fine, and a conditional settlement, while the issue is transferred to the criminal track only for the fourth offense. See Omri Efraim *Recommendations for Reducing Prostitution: Punishing Clients and Caring for Minors* YNET (June 6, 2017), <http://www.ynet.co.il/articles/0,7340,L-4971988,00.html>.

¹¹³ See Amnesty International *Policy on State Obligations to Respect, Protect and Fulfil the Human Rights of Sex Workers* (May 26, 2016), available at <https://www.amnesty.org/en/documents/pol30/4062/2016/en>.

¹¹⁴ Erika Schulze et. al., *Sexual Exploitation and Prostitution and its Impact on Gender Equality*, EUROPEAN PARLIAMENT (2014), [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET\(2014\)493040_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2014/493040/IPOL-FEMM_ET(2014)493040_EN.pdf).

criticism emphasized the repulsion and even anger instigated by the situation represented in *Les Demoiselles* among viewers with gender sensitivity. I concluded by describing how the painting corresponds with prostitution and the legal regulation of prostitution. According to this last reading, the *Demoiselles* who created this breathtaking artistic composition were women sentenced by the painting to everlasting infamy.

The grouping of the different readings clarifies how use of naked female figures (it does not matter whether they were created as a more or less verisimilar representation of actual women, or whether they were imagined by Picasso) represents several issues—the social infamy connected to prostitution,¹¹⁵ the fact that the infamy is a social-cultural construction, and the problematic normalization of the infamy. In other words, *Les Demoiselles* was potent enough to produce conflicting gazes and approaches pertaining to its content—a brothel scene. After the first shocked reactions to the painting, the normalizing gaze appeared, represented by Steinberg’s approach. This gaze normalizes the scene in the painting on two levels. First, it defines the heterosexual man as the viewer and his probable reaction to the depicted scene as paralleling “normal” viewing. Second, this gaze implies a normalizing approach to prostitution, an approach which often enough the law has a major role in establishing and maintaining, especially through the application of the contractual conception of prostitution.

In 1975, Roland Barthes, in an ironic, sophisticated text, designated the prostitution contract as “the model of the good contract.”¹¹⁶ In the complex text which relates to philosophical issues in the background of contract law common to modern bourgeois society, Barthes elaborates that prostitution signifies a “good contract” because it is free from “the *imaginary embarrassments* of the exchange”¹¹⁷ that require mutual attention in regular contracts. The prostitution contract is one of the only contracts in bourgeois society where one receives something (sexual use of the body) for nothing (money). The party receiving the use of the seller’s body is exempt from trying to decipher the seller’s wants, since the contract is based on the assumption that these wants do not exist, or at least their existence should not matter in the buyer’s world. The normalizing approach *à la* Steinberg relies on, is this imaginary contract which if not forced on one of the parties, is flawless.

Legal systems such as the Dutch are in fact based on the appreciation that the prostitution contract must be protected. According to this approach, the act of prostitution is a legitimate contract between

¹¹⁵ For elaboration regarding the social infamy, see Prostitution as exploitation, *supra* note 106, at 11–21.

¹¹⁶ ROLAND BARTHES, ROLAND BARTHES 59 (Richard Howard trans. 1977).

¹¹⁷ *Id.*

2018] PAINTING PROSTITUTION, DELINEATING LAW 81

two parties, based on a convergence of interests and wants. The law has no business interfering with the fundamental validity of the prostitution contract. The law should only be there to guarantee that the contract will be consensual and that there will be public peace.¹¹⁸ Supervision of brothels will guarantee the component of consent by ensuring social rights for prostitutes and by prohibiting human trafficking.

At the same time, in the spirit of Chave's and Quigley's critique, which is associated with a more radical feminist approach to prostitution along the lines of the Nordic Model, the brutal expressiveness of the painting creates a powerful visual representation of Barthes' inferred surmise that the prostitution contract deprives the selling party's humanity.¹¹⁹ Following this surmise, the painting presents five women who are caught forever in the inevitable outcome of the "good contract." While they are off-handedly labeled as the selling party of the contract, their full and rich human existence is replaced by their one-dimensional identities as prostitutes.

Whereas the liberal approach aims to protect the consensual prostitution contract when it is free from force and compulsion, the radical feminist approach maintains that such a contract does not exist.¹²⁰ While the liberal approach sees prostitution as a convergence of interests based on free, informed consent, the radical feminist approach, adopted in the Nordic Model, understands prostitution as a gender-based issue and as one of the ways patriarchy preserves its supremacy over all women.¹²¹ Subsequently, the radical feminist approach wishes to transfer the legal focus from the woman-prostitute to the man-client, and to define him a sex offender.

Among other things, the radical feminist approach seeks to reveal the hypocrisy of the liberal approach, which supposedly acknowledges sexual liberation. According to the radical feminist approach, the liberal approach does not normalize sexual intercourse as claimed in Steinberg's reading, but rather normalizes the male's need for abundance of available sex even when it involves exploiting women and dooming them to social infamy.¹²² The duplicity of such standing is revealed, for example, when works displaying nude prostitutes are displayed in museums and are available for the public gaze, but actual female nudity is denounced and condemned by society and prohibited by law.¹²³

¹¹⁸ For extended information, see Prostitution as exploitation, *supra* note 106, at 93–103.

¹¹⁹ See Chave, *supra* note 58.

¹²⁰ See Quigley, *supra* note 40.

¹²¹ See COALITION AGAINST TRAFFICKING, *supra* note 102.

¹²² Shulamit Almog, *Prostitution as Exploitation: An Israeli Perspective*, 11 *Geo. J. Gender & L.* 711 (2010).

¹²³ For example, artist Deborah de Robertis was charged with indecency after undressing in front of Édouard Manet's painting Olympia in Musée d'Orsay. It is worth quoting de Robertis' in this context: "Traditionally the body of the model is objectified to serve the message of the artist. My work suggests the opposite—the viewer is subjugated by the gaze of the model." See Stephen

What is the relation between these different approaches? None of the readings presented here may claim supremacy. None can invalidate the other readings. I do not doubt the authenticity of those who see the painting, as Steinberg does, as a representation of the vivacity of sex. Alongside such interpretation, to this day, there are those who experience the painting as detached from fundamental conceptions of prostitution. At the same time, there are those who will find it impossible to view *Les Demoiselles*, five prostituted women—their enforced infamy eternalized, without a sense of dismay.

I return to Roland Barthes and to his observation regarding the nature of the painting: “The picture . . . exists only in the account given of it; . . . in the total and the organization of the various readings that can be made of it: a picture is never anything but its own plural description.”¹²⁴ Under this background, the perpetually frozen contour of five naked women in *Les Demoiselles d’Avignon* constitutes a unique platform for examining social conceptions and legal regimes of prostitution, especially due to the the various readings of the painting. Jonathan Jones claims that *Les Demoiselles d’Avignon* signifies the usually hidden rift between past and future.¹²⁵ Jones refers to the gap between art’s past and future, but also notes that the observation may apply to the gap between the legal regulation of prostitution in the past and the fundamentally different legal future waiting ahead.

Heyman, *Deborah de Robertis: Shocking for a Purpose*, N.Y. TIMES (Sept. 29, 2016), <https://www.nytimes.com/2016/09/29/arts/international/deborah-de-robertis-shocking-for-a-purpose.html>.

¹²⁴ See ROLAND BARTHES, THE RESPONSIBILITY OF FORMS, IS PAINTING A LANGUAGE? 150 (1991). For Barthes’ distinction between photographs and paintings as descriptions of reality, see ROLAND BARTHES, CAMERA LUCIDA—REFLECTIONS ON PHOTOGRAPHY (Richard How trans. 1993).

¹²⁵ Jones, *supra* note 1.