Undressing Government Censorship and the Adult Entertainment Exotic Dance Industry

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Abstract

Undressing Government Censorship and the Art of the Exotic Dance Industry

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Strip clubs, topless bars, gentlemen’s show lounges, nude dancing clubs, go-go dancing clubs, table dancing bars, couch-dance clubs, titty bars; all of these establishments, despite the different terminology, boil down to the common theme of exotic dance.

Since the more upscale versions of these clubs began springing up in popular commercial districts in the 1980s, citizens and government alike have made multiple attempts to prohibit the establishment of these businesses. While many of these attempts have been struck down due to First Amendment protection, other regulations have been put in place to limit the freedoms of the dancers, club owners, and even the patrons that visit the exotic dance establishments.

This research project seeks to determine whether regulations, such as public decency and zoning rules, are an infringement upon the First Amendment rights of the dancers to express themselves through dance and in turn a government supported censorship of specific forms of art. The project draws upon precedent cases from courts all over the United States regarding not only exotic dance but the regulation of alternative forms of art, the expert testament and research on exotic dance from Dr. Judith Lynn Hanna, and a history of dance, art and censorship from numerous scholars and researchers.

The arguments made in this project could not only have an effect on the zoning, public decency, and other regulations of the exotic dance adult entertainment industry, but they also potentially de-stigmatize the exotic dancer and challenge the public’s perception of the concepts of art and dance.

Thesis Question: Are labor and public decency regulations on the adult entertainment exotic dance industry a government supported censorship of art?
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Introduction

For thousands of years, nude or partially nude dance has been used in virtually every culture as a form of communication. The ancient Greeks often danced nude to celebrate birth, marriage, harvests, prepare for war, and celebrate victories.¹ Roman priestesses danced naked in the streets for festivals.² The Egyptians wore only thin veils across their breasts while dancing for entertainment.³ Women of the Mandan tribe performed nude, but for buffalo hides across their backs, to evoke The Great Spirit in religious festivals.⁴ Today, nude dancing can be performed for a partner to promote closeness, feelings of gratification, or even for profit.⁵

In modern times, the “exotic dance industry”, as it is now called, still utilizes nudity, closeness, props, staging, dance movements, and athletics to communicate a message between the dancer and the audience. Though this is true on a fundamental level, many religious groups, governments, politicians, and citizen groups have made numerous attempts to limit, if not completely ban, exotic dancing and exotic dancing establishments based on the premise that it does not qualify as a form of dance. Since many of the lawsuits and regulations proposed by these organizations have been struck down due to protection of The First Amendment, many other regulations on elements such as public nudity, public decency, and labor regulations have been attempts to subvert this infringement upon the civil liberties of club owners, exotic dancers, and patrons of clubs that offer topless or nude dancing. This study seeks to determine whether these regulations are, in fact, still a violation of the First Amendment as well as a government supported censorship of a specific art form.

Modern Exotic Dance History

The Beginnings

“The story begins in the 1860s -- in the music halls of London and the cabarets of Paris, Berlin, and Vienna, where Lydia Thompson, La Goulue, and Anita Berber perfect the art of titillation through dance. We move to New York's Ziegfeld Follies (and the beginnings of modern striptease) when Lillian Lorraine shoots to mega stardom, and then to Gypsy Rose Lee's Hollywood Burlesque...”6 This brief summation from Lucinda Jarrett’s book *Stripping in Time: a history of erotic dancing* highlights some of the major movements in the world of exotic dance. Beginning as early as the 1890s, exotic dance has been a sensation in America.

It is suspected that the first exotic dance performances in America were at the 1893 Chicago World’s Fair Columbian Exposition. What we now call belly dancing or Middle Eastern Dance was then called cooch dance, danse du ventre, cootch, or hootch-kootchy and was exhibited in a “Streets of Cairo, Algerian and Persian village exhibits.”7 The women were often nearly fully, if not fully clothed, and their bodies were adorned with jewels and bells to accentuate the, then extremely scandalous and erotic, movements of their hips and stomach.8 (See Figure 1)

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The first generation of what people today traditionally think of as striptease is believed to have begun when dancer Hinda Wassau accidentally stripped to full nudity in a performance in 1928. This created such a positive audience response that it is said that the accident often became a regular part of her performances. Unfortunately, there is no one set event that sparked the

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creation of striptease. In fact, the art of burlesque, which includes removing clothing during the performance, had been around in the United States since nearly 1890. ¹¹

**Burlesque and exotic dance in the 1930s**

In the 1930s New York City became the epicenter of American Burlesque. “Minskys Burlesque chain moved onto Broadway, taking over premises in Times Square and putting many legitimate theatres out of business. By 1935 there were an estimated 3,500 [exotic dancers] in the United States, playing to over 50,000 people per night”¹² This was the first time that striptease was seen as a sensationalist form of entertainment, with artists such as Gypsy Rose Lee becoming superstars in popular culture. This trend has continued into today, with artists such as Dita Von Teese obtaining international acclaim for their burlesque performances (See Figure 2).

![Figure 2: Dita Von Teese](image)

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1980s to Today

From the 1930s until the 1980s, exotic dance establishments flourished across America. In the early 1980s, a more high class establishment began emerging; gentleman’s clubs with expensive restaurants and bars inside the establishment began to give a higher class audience a venue in which to view exotic dance without the fear of the stigmas that were attached to seedier clubs.14 Work in these clubs can often bring in a six-figure salary for dancers due to the high profile clientele who find security in the higher standards of admission and prices at the clubs.15 Since the door fees for clubs are usually considerably higher than those that are meant for the general public, the normal clientele is generally able to spend larger quantities on dances, drinks, and dinners. Some clubs such as Cheetah’s in Atlanta, Georgia are able to charge a $50.00 fee for entry, the average drink price is around $10.00, a meal is $50.00 per plate, and dances for individuals are generally around $50.00.

Exotic Dance in “High Art”

While exotic dance establishments may have garnered a less-than-desirable reputation, exotic dance and striptease has long been included in the so-called “high art forms”, such as opera, Broadway theatre, contemporary dance, and ballet. For example, Richard Strauss wrote his famous one-act opera *Salome* in 1906.16 During this particular opera, the title character performs a salacious dance to seduce her stepfather/uncle, “The Dance of the Seven Veils”, during which she removes her clothing.17 While the original production did not have Salome

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strip to full nudity, many recent productions have had the dance end in a flurry of spinning nudity.  

Exotic dance, nudity, and striptease have even made their way into the long-heralded genre of ballet. In 2005, there was great outrage when Russia’s National Ballet included nudity in their production of *Romeo & Juliet*. An article in the *Sydney Morning Herald* by Sharon, Verghis sums up the historical use of nudity in ballet and it’s usage of exotic dance, saying, “Nudity, in some form, has featured in works ranging from Graeme Murphy's *Tivoli* to the Australian Ballet's staging of *Bella Figura*.” In that same article, dance writer and historian Michelle Potter says, “Classical ballet is very sponge-like and it has always absorbed influences across the arts, and to try to maintain the white ballet tradition and the white tutu [renders it stagnant]. Of course, it's now drawing more on contemporary attitudes and modern dance, but that's just ballet moving forward, like all other art forms.”

Historically, Broadway theatre and contemporary dance have been on the forefront of including nudity and stripping in their performances. For example, the 1973 production of *Equus* contains a scene in which, “A young boy and a young girl, nervous, insecure and full of confused attractions, strip in a stable and approach each other. When the deeply troubled boy cannot get aroused in full view of the horse he worships, he angrily chases the girl away and viciously blinds the horses with a hoof pick.” The David St. Pierre Dance Company premiered *Un Peu De Tendresse, Bordel De Merde!* (Politely translated as A Little Tenderness, For Goodness Sake!) in

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2011, in which the dancers perform entirely nude, crawling over audience members, and becoming intensely personal with the patrons.  

Overall, exotic dance, eroticism, nudity, and striptease have made their way into other forms of art throughout history. While these works are usually met with some form of objection from critics and the public, they are always far more accepted and less stigmatized than exotic dances that occur in exotic dance clubs.

**Defining Dance**

Depending on which source is consulted, dance has many definitions. The Oxford dictionary defines dance as, “a series of steps and movements that match the speed and rhythm of a piece of music.” Accomplished exotic dance researcher and Affiliate Senior Research Scientist at the University of Maryland Judith Lynne Hanna defines dance as: “…purposeful, intentionally rhythmical, culturally patterned, nonverbal body movement communication in time and space, with effort, and each genre having its own criteria for excellence.” While, Professor Emeritus of Philosophy at California State University, Long Beach Julie Charlotte Van Camp defined dance as, “human movement that is formalized with such qualities as grace, elegance, and beauty, to the accompaniment of music or other rhythmic sounds, for the purpose of telling a story and/or for the purpose of communicating or expressing human emotions, themes, or ideas, and with the aid of mime, costumes, scenery, and lighting.” These varying definitions highlight

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the underlying problem with defining what is and is not dance; there is no universally agreed upon definition, and once individual genre’s are analyzed, specific movements and features of the genre become a point of contention between many dance experts.

On the subject of uses of dance Hanna explains that dance can be utilized for a variety of reasons, some physical, some expressive, some personal, and some for monetary gain. She surmises that dance can be physical behavior (the movement of muscles and release of energy), cultural behavior (an expression of a person’s values and culture), social behavior (to interact with peers, psychological behavior (to express emotion), economic behavior (to earn money), political behavior (as a means of expressing a point of view), and, overall, a communicative behavior (to convey some idea from the dancer to the viewer)\textsuperscript{25}

**Defining Exotic Dance**

Judith Hanna defines exotic dance as, “a form of dance, fantasy, art, and theater that, by definition, is supposed to be risqué, disclosing more of the body and its movements than are usually seen in public. The climax is a striptease to nudity.”\textsuperscript{26} Additionally, there are different forms that exotic dance can take; pole dancing, couch dancing, performing a striptease onstage to music, performing a striptease in a burlesque style, or simply performing a dance routine nude or partially nude. Additionally, one must note that while exotic dancing is often thought of as a form of dance only performed by females, there are numerous establishments geared toward both homosexual men and heterosexual women that feature male exotic dancers.


In her extensive research and study of exotic dance, Hanna has been a patron at more than 100 clubs across the United States since she first began researching in 1956. In that time, she has compiled a list of moves and sequences of moves used across the industry. This list, which contains several moves that are unique to the genre of exotic dance, also contains many moves such as “strut”, “walk”, “kneel”, “split”, “crawl”, and “shimmy” that are found, in some form, in virtually all genres of dance (See Figure 2).

“Dance requires the same underlying faculty in the brain for conceptualization, creativity, and memory as does verbal language in speaking and writing. Both forms have vocabulary (in dancing, steps, and gestures), syntax or grammar (rules for putting the vocabulary together), semantics (meaning), and pragmatics (the social, economic, cultural, and historical context in which communication take place).” As can be seen from Figure 2 and Figure 3, even exotic dance has these elements in its repertoire; vocabulary (strut, walk, self touch, gyrate hips and torso, etc.), syntax (the way in which dancers combine these moves to make a routine, be it impromptu or previously choreographed), semantics (the implications that each movement gives, such as sexual interest in a patron, self-love, or care for appearance), and pragmatics (the environment, be it a couch dance, table dance, lap dance, or private show).

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Some Exotic Dance Movements
Dancers create sequences drawing upon such vocabulary and accoutrements as the following:

**Locomotion** (movement from place to place; four-inch heels are restraining):
- strut
- walk
- turn
- shimmy up a pole and lean back, often holding on with one hand
- slide to floor
- crawl
- from kneeling position, move knees outward and inward on right knee, place left foot on floor, then step on right
- jump
- split
- cartwheel
- somersault into a split

**Gesture:**
- self touch:
  - move hands over body creating curvilinear designs
  - brush stomach, breast, inner and outer thighs, genitals, buttocks
  - press breasts together
  - toss hair back with hand
  - slap buttocks
  - spread buttocks apart
  - lick fingers
  - flash (lower G-string to expose pubic area)
  - open legs to reveal vagina ("spread show," "go pink")
- pose, preen, pout
- rotate head with loose hair
- make eye contact to target and engage a customer with expectation of tip or sale of dance
- gyrate hips and torso
- thrust and rotate hips (bump and grind)
- undulate body or body parts
- shimmy breasts
- bend torso perpendicular to ground
- bend torso to peek through one's legs
- shake buttocks
- thrust buttocks toward spectator
- snake arms upward
- rotate knees toward and away from each other (butterfly)
- kneeling, hinge torso backwards
- standing or prone, bend leg back from knee
- bend backward (backbend) with hands and toes on the floor
- placing body on back of shoulders, extend legs up wall
- hold foot and extend leg full-length
- swing leg over customer's head
- standing, arch torso backward
- stand with torso bent over perpendicular to floor and extend one leg and both arms out to side
- seated with torso bent over parallel to floor, extend one leg out to side, bend the other leg with knee on ground to the other side and foot towards center of body

**Figure 2**
— breathe heavily
— prone on floor, spread and close extended legs
— prone on floor, raise buttocks up and down
— pretend to be caged
— supine on floor, arch torso
— supine on floor, open and close extended legs
— squat with knees turned outward
— contract genital muscles ("wink vulva")

**Levels:**
— standing in pose
— kneeling
— hanging on a pole near ceiling
— "floor work" (dancing without feet on the ground, with body on the floor or other horizontal platform)

**Place:**
— on the stage
— on a runway
— table dancing (for a fee, dancer stands near the customer’s table, her legs often between the legs of the seated customer)
— lap dancing (for a fee, dancer sits on a man’s lap and gyrates; style allegedly migrated from Las Vegas revues and seamy Tenderloin clip joints to elsewhere, including upscale venues)
— on a couch
— in a shower

**Costume and Makeup:**
— to create social identities
— use of significant colors (red suggests passion; white, purity and virginity; black, nighttime and the sultry female)

**Exposure:**
— stripteasing (taking off one’s clothes in a suggestive and sexually stimulating manner: commonly worn are pasties, beaded bra with optional tassles, G-string or T-bar, underpants, strip pants, front and back panels, short dress, gown, robe, gauntlets [3/4 length gloves], jewelry, very high heels, hose)
— dance topless
— dance bottomless
— flash (lower G-string to expose pubic area)
— spread show (open legs to reveal vagina, “go pink”)
— spread buttocks to reveal vagina and anus

**Props and Features:**
— fan dance (the fan was initially used to circumvent New York’s nudity laws: it was illegal to be nude while moving, but not standing; ballerina Sally Rand used a fan because she could not afford a costume)
— tassels (fastened to pasties covering breast and made to twirl)
— “Eve act” with boa constrictor
— imaginary lover
— audience member brought onstage to dress in sultan turban and learn the “belly dance”
— trained bird removes clothes from stripper and carries them away
— put whipped cream and chocolate on body and take it off

**Figure 3**
Dance Theory

On a more scientific level, dance and movement professionals have developed several theories to analyze the movements of dance, which can be applied to any genre or type of dance; Laban Movement Analysis and Movement Discourse Analysis are two forms of analyses which are explained below along with their application to the specific genre of exotic dance. Dance theories are especially important to this discussion because they add a level of connoisseurship and expertise to the analysis of exotic dance, which would otherwise be based in subjective moral or taste judgments of any person who wanted to judge the quality of a piece of dance, which often happens in court cases where experts in the field of dance are not consulted or brought forward as expert testimony. Hanna says that, “Connoisseurship, an acquired ability to judge quality on the basis of having looked at many dances, is related to dance theory. Judgments rely on past experience, training, cultural biases, personal values, and idiosyncratic preferences.” She also writes that, “Studies of dance and sexuality usually do not draw upon the tools of movement analysis because researchers lack training in them or their concern is with the dance participants and their social context.” While, this may often be the case, this study attempts to propose that exotic dance is indeed a legitimate form of dance that should be afforded the same protections as any other expressive activity, and by explaining and viewing exotic dance through the lens of dance analyses theories, it can be seen as simple a different dance genre equal to any other in importance.

Laban Movement

Hungarian born artist and scientist Rudolf Laban set out to develop an analytical system for human movement that breaks down any movement into a series of smaller movements, all of

which are understood to mean different things in a different context. In his work, “Laban Movement Analysis: charting the ineffable domain of human movement” Ed Groff describes the Laban Movement System (LMA), saying, “a system of movement description, LMA provides a comprehensive vocabulary for identifying the ingredients of movement expression.” “LMA emphasizes the processes underlying motor actions rather than the resultant motor action as the notation, or its shorthand derivative, Motif, records how the four movement components – Body, Effort, Shape, and Space (BESS) – are integrated, or not, throughout the observed movements.” Additionally, Laban developed a system of notation for the parts and movements of the body that can be used by choreographers to notate particular movements of dancers (See Appendix 1 and 2).

**Application to Exotic Dance**

Because of its universality and it’s analysis of all movements rather than just poses, Laban Movement Analysis is probably the easiest dance theory to apply to exotic dancing. LMA uses the small notations and movements of the body to create a flow of motion that has no set positions or moves, but rather a stream of movements that the dancer makes with his or her body. A dance theorist or choreographer could possibly use this notation to transcribe a routine’s physical actions so that it may be later repeated. Additionally, the LMA for an exotic dance would contain many of the same notations and moves as dance forms such as ballet, jazz, or hip-hop.

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Movement Discourse Analysis

As defined by Judith Hanna, “Movement discourse analysis is similar to analyzing language: It views dance as a system of small units (movements) that combine to make words (vocabulary), that combine to make utterances (phrases), and which finally combine to make discourse (dance), shaped by social context.”34

Application to Exotic Dance

As was discussed earlier, when analyzed with the Movement Discourse Analysis method, it can be seen that exotic dance has all of the elements that are a part of the “language of dance”. The vocabulary of exotic dance includes moves such as strut, walk, self touch, gyrate hips and torso, etc... The syntax (the way in which dancers combine these moves to make a routine, be it impromptu or previously choreographed) being a full routine that a dancer would present for their performance, semantics (the implications that each movement gives) would be elements such as sexual interest in a patron, self-love, or care for appearance that can be inferred from the performance. Finally, the pragmatics of exotic dance (the environment) consists of the setting in which the dance takes place, be it a couch dance, table dance, lap dance, or private show.

Is Exotic Dance Art?

As mentioned earlier, dance is generally defined by a dancer’s rhythmic movement in time to music, drawing upon a specific set of movements, or vocabulary, which can be combined in different ways to create a routine expressing an emotion, story, or another sort of communication. Exotic dance, though the traditional costume of the performer involves partial or

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complete nudity, has all of these defining characteristics. It can be analyzed using dance theories that are used for more traditional forms such as ballet, ballroom dance, or hip-hop and that use a standard vocabulary of moves and the expression of emotion as key metrics by which the dance is judged.35

In her many analyses of exotic dance, Hanna has dealt with the question of communication, sexual or lewd content, and whether or not exotic dance does in fact attempt to communicate a message to the viewer. Her explanation of the motives behind an exotic dance performance is as follows:

“The dancer artistically communicates to a patron, through body movement, proximity, touch, and dim light, the fantasy of “I am interested in you and you alone, I understand, you, you’re special and important to me”.”36

While this may be an extremely personal and sexually linked message, it is still a communication between the dancer and the patron, which is a common element among differing definitions of dance.

**Opposition to Exotic Dance as Art**

In her article, *Dance and Sexuality: Many Moves*, Hanna argues that dance and sexuality are inherently linked; saying, “Dance and sex use the same instrument—namely, the body—and both involve the language of the body’s orientation toward pleasure.”37 While this is unarguably true, many critics of the idea of including exotic dance as an art form, which would be afforded

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the same protection under the First Amendment as any other form of dance, adamantly disagree that sex and dance are similar in any fashion.

Many of those critics claim that the message being communicated by exotic dance is a lewd, immoral, or pornographic one that must be limited\textsuperscript{38}, but during her time spent observing and studying exotic dance, Hanna says that she observed more than just a sexual message being communicated. Many dancers draw on tactics from burlesque or other forms of entertainment to create a character or portray a parody.\textsuperscript{39} She says that she saw “a dancer making fun of the pretext of clothing, such as wearing and stripping a police uniform or a cowboy outfit and poking fun at gender identity or femininity by exaggerating their attributes.”\textsuperscript{40} This element of performance and communication of an idea clearly qualifies exotic dance as a form of dance and art, just like dance of any other genre.

**Myths about the Exotic Dance Industry**

One of the most prevalent myths regarding the exotic dance industry, among the multitudes that exist, is that the industry or establishment of a club in a certain geographic area creates numerous adverse secondary effects. While many court cases have cited studies by individual firms, there is a multitude of scientific research that refutes claims that the establishment of an exotic dance venue creates adverse secondary effects such as prostitution, increased drug sales, increased drug abuse, increase in cases of rape, and an increase in violent behavior. Hanna wrote in her guide for policy makers regarding the exotic dance industry, “A


review of the *Washington Post*, the *New York Times*, U.S. Department of Justice Office of Justice Programs’ reports, and several list-servs dealing with adult entertainment, prostitution, and other crime since 1995 reveal no such problems disproportionate to exotic dance businesses.”

Additionally, “Most studies cited by localities nationwide as evidence that exotic dance clubs cause adverse primary or secondary effects do not meet the basic requirements for the acceptance of scientifically valid evidence prescribed in Daubert v. Merrell Dow, 509 U.S. 579 (1993) or in the research methodology in Darwin G. Stuart’s Urban Indicators: Their Role in Planning, published by the American Society of Planning Officials…The few studies that meet Daubert or social science criteria for evidentiary value demonstrate either no deleterious impact associated with adult businesses or, in fact, positive effects (economic development in their neighborhoods).”

Another prevalent myth surrounding the industry and the dancers themselves is that nude dancing creates a view of women that objectifies them, strips them of their sexuality, and adds to the inequality between men and women in America. In her dissent on the case Barnes vs. Glen Theater, Judge Coffey perpetuated this myth citing the upholding morality as her justification for opposing exotic dance. She wrote,

“The clearest way in which nude dancing harms the performers, the audience and society in general, is through the degradation of women that results from their treatment solely as objects for lustful male sexual passions and appetite. When a woman is stripped of her

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clothing in the presence of a throng of observing males, we undeniably underscore the notion that a woman exists solely for the sexual satisfaction of a controlling group of males.”

In her research Hanna points out that she has spoken with hundreds of dancers, and she says, “…nearly all of the dancers in the 100 plus clubs I have visited, and others who have written about their experiences, view themselves as subjects, not object.” Additionally, “Women who perform exotic dance determine their self-representation and can earn six-digit incomes through tips and fees to dance for individual patrons.” If these were statements about professional models or professional athletes, there would be very little public resistance to the idea that their professions are not objectifying their bodies, regardless of the fact that their bodies are sometimes ensured for millions of dollars by their contractors or that their body is the only means through which they are earning an income. It is the stereotype of the nudity and exotic as a morally corrupt, baseless action that has caused this huge resistance to the idea of exotic dance being an empowering and self-confidence boosting profession.

There is also a large opposition to exotic dance within the feminist culture. These women often call for “regulation should prevent harms to women, including sexual harassment, discrimination and sexual assault” to which exotic dance often leads. Hanna contradicts these allegations, saying, “Exotic dancers often resent feminists who infantilize them as hapless, exploited victims of patriarchy and unbridled male control, lust, and avarice…”

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The myths regarding exotic dance are not just limited to the possible psychological or criminal effects that it may have on dancers or audiences. Many in the Christian Right, who often picket and protest exotic dance clubs in the name of morality and Christianity, claim that “...exotic dance in perilous to the patriarchal social order: the “ungodly” exotic dance clubs destroy femininity and undermine men. “Passive,” “modest” woman steps out of the domestic realm into the “demimonde” public arena where she shamelessly removes her clothing and moves her nude, or semi-nude, body for sexually enticing commercial purpose and economic independence.”

While the Christian Right is not the only religious sect that believes that women should be submissive to men, the United States law disagrees with nearly all of them. The law says that is the right of all people to be able to pursue economic prosperity and independence and that, as long as they are not breaking any public decency regulations, women should be allowed to use their body for whatever purposes they desire.

Despite this fact, there have been numerous attempts to completely ban exotic dancing, most of which have been overturned based on exotic dancing’s protection as art under the First Amendment. Unfortunately, groups such as the Christian Right and local lawmakers who lobby for regulations based upon preserving the morality of their communities have attempted to use other regulatory means, such as labor regulations and public decency regulations to limit the

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freedom of exotic dancers and patrons, regardless of whether or not this may infringe upon the freedom of speech and expression given to all people by the First Amendment to the United States Constitution.

**Exotic Dance, Government Censorship, and the First Amendment**

To explain how exotic dance relates to the First Amendment, Hanna writes, “The continuum of dance as art ranges from exotic dance, considered by some as “low brow art” (another example is popular social dance) to “high brow art” (such as ballet). The play continuum extends from child and family play to adult playful fantasy entertainment. The sexuality continuum goes from theatrical erotic fantasy (exotic dance) to illegal contractual sexual intercourse (prostitution). On these continua, exotic dance is low brow art, adult playful entertainment and erotic fantasy—all of which are constitutionally protected.”

While, this seems like a perfectly logical and simple explanation as to the place of exotic dance in the grand scheme of artistic endeavors and their place within the protection of the First Amendment, politicians, citizens, and other law makers have not always seen the situation in such a light. There have been numerous attempts throughout history to completely ban exotic dance, many of which have been struck down as unconstitutional.

In 2006, a Federal judge in Florida struck down Daytona Beach’s anti-nudity laws, saying that they were unconstitutional. In 2008 a judge in Des Moines, IA upheld a prior ruling that exotic dance was in fact art, despite attempts to ban the art or fine club owners for public

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decency violations. In September of 2010, the case of *Borough of Sayreville v. 35 Club* in New Jersey ruled that activities such as nude dancing that happened inside the club were protected under the First Amendment not only as art but as freedom of expression.

While, the total ban on exotic dance has been deemed unconstitutional in many places, many governments still try to limit the places and ways in which exotic dance may be practiced by imposing labor and public decency regulations on the industry in the name of morality and moral standards.

**Regulations on the Exotic Dance Industry**

“… In 1937, the Minsky brothers, theater owners, convinced the U.S. House Immigration Committee to rule that the burlesque “striptease is an American Art” and thereby preventing foreigners from practicing it in the United States.” This was one of the first recorded legal cases involving the art of striptease or exotic dance, and the flood of cases has been almost constant ever since 1937. “Laws restricting exotic dance clubs have been enacted and contested nationwide—e.g., in Amarillo, Atlanta, Austin, Beaumont, Bettendors, Bridgeview, Boston, Bridgeport, Chattanooga, Cicero, Cleveland, Cumberland, Dayton, Davenport, Denver, Detroit, Eatonville, Everett, Federal Way, Fond Du Lac, Fort Lauderdale, Hager City, Henrietta, Houston, Indianapolis, Kennewick, Kent, Lake County, Lansing (Illinois), Latham, Los Angeles, Macon, McHenry County (Illinois), Mobile, Moline, Mt. Joy, New Castle, Newport (Kentucky), New York City, Phoenix, Pills, Pittsburgh, Providence, Rack, Roanoke, Rostraver, St. Paul,

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The many attempts to outright ban exotic dance on the premise of immorality, lewd conduct, and negative externalities outlined previously are not the only attempts to eliminate this art form. Legislators and citizen activist groups alike have attempted numerous different ways to either ban the essential elements of exotic dance through regulations based in public decency and nudity or through regulations on the labor rules involved with exotic dancers and the clubs in which they work. While these are not direct infringements upon the right of the dancers to express themselves, they eliminate the freedom of choice that dancers and choreographers in other genres enjoy such as; regular salary, freedom of costume choice, the option to use nudity as an expressive device in a performance, and the ability to interact in whatever way they choose with the audience. Outlined below are cases of labor and public decency regulation, their outcome, and how they are an infringement upon the expressive rights of exotic dancers.

**Labor Regulations**

Labor regulations in the realm of exotic dance can take many forms; regulations on dancer proximity, the requirement of dancers to wear nametags, file for licensure, or other identifying criteria which could endanger their personal safety, and whether or not exotic dancers are in fact employees of the clubs for which they work deserving of befits of full-time work or if they are independent entertainment contractors. All of these issues not only impede the rights of dancers to freely practice their chosen art form, but they are also regulations that are not imposed upon other “high brow” forms of dance such as ballet, opera, theatre, or contemporary dance.

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Dancer Proximity Regulations

Regulations on the distance that dancers must stay from club patrons account for a large portion of the types of regulation on the exotic dance industry over the last 15 years. For example, in 1997 a four-foot restriction was upheld by the Washington State Supreme Court in the case of *Ino, Ino, Inc. v. City of Bellevue*. The court supported the idea that dancers in exotic dance clubs must stay a minimum of four feet from patrons and were not allowed to have any physical contact, saying that it “imposes a reasonable time, place, or manner restriction on the performance of the dance.”

To refute the claims that regulations on distance do not detract from the message and communication that the dancer is trying to create or convey to a patron, Daniel Linz, Eva Blumenthal, Edward Donnerstein, and company used empirical testing of two different hypotheses to prove that dancer proximity is a necessary part of nude dancing: (1) Dancers who perform six inches from the patron will be perceived as communicating a more intimate relational message than dancers performing four feet from the patron and (2) Dancers who perform six inches from the patron and touch him will be perceived as communicating a more intimated relational message compared to dancers who perform either six inches away and do not touch him, or four feet from the patron.

The study found that participants did in fact report receiving a greater reception of relational communication message, intimate communication, and erotic communication when the

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dancer was dancing within six inches of them and able to touch them, versus four feet away.\textsuperscript{56} There was, though, very little difference between the responses of patrons when dancers were six inches away with no touching and four feet away.\textsuperscript{57}

This study proves empirically that regulations on dancer proximity are in fact a violation of the First Amendment rights of the dancer because they are changing the meaning and interpretation of the artistic message which the dancer is attempting to convey, which is the part of the artistic endeavor that is protected.

Additionally, there have been court cases that have ruled in favor of touching and close proximity in exotic dance. “…in City of Anaheim v. Janini and Ly (1999), the Court points out “the rich variety of American theater, past and present, involving audience members in stage, television, and circus performances.” The Court held the individual patron-focused lap dancing part of exotic dance is not prostitution.”\textsuperscript{58}

\textbf{Dancer Licensure}

A second area of frequent regulation on labor for exotic dancers is that of requiring the filing of licensure for dancers or other identifying materials to be kept on file that contain the legal names and addresses of dancers, which could possibly endanger the dancer’s safety. As Hanna points out in her research, Licensures are often kept as public record and, because of the

sexual attraction message that is communicated through their mode of dance, could possibly make the dancer the subject of a stalker.  

While many cities in Alabama have instituted laws requiring both exotic dance clubs and exotic dancers to obtain licensure, one representative in Texas has been attempting to take this rule to the next level. In January of 2013 Representative Bill Zedler proposed a bill that would not only “require a background check and registration with the Labor Department. [It mandates] that exotic dancers would need to “conspicuously display” the license while working. They could only obtain the license after completing a training program on human trafficking.” Another argument against this proposed regulation is that this license “places the burden squarely on the women on the stage, not on the companies and clubs reaping far bigger profits than their employees.”

Employees vs. Independent Contractor

A third type regulation on the labor of the exotic dance industry, and the most hotly debated by politicians, is that of employee vs. independent contractor. In many states, exotic dancers are hired as independent entertainment contractors. This distinction means that dancers are often denied health insurance, unemployment benefits, a retirement plan, reliable work conditions, salaries, and other benefits of full-time employment.

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In February 2013, The Kansas Department of Labor lobbied to the state’s Supreme Court to officially declare all Kansas exotic dancers as employees of the clubs in which they work.\textsuperscript{62} In the article “Exotic Dancers Ruled as Employees in Topeka Decision”, profiled Club Orleans and the working conditions for the girls who were performing there;

“According to the Labor Department, dancers were required to pay non-negotiable “rent” for use of the stage and dressing rooms, as well as extra fees for the disc jockeys and bouncers. House rules governed what the dancers could do in their shows and the prices they had to charge for specific types of dances. The women were required to sign in with the bouncer at the beginning of a shift and weren’t allowed to leave the premises until the end of the shift, according to the Labor Department. “While Milano’s claims one reason for this is to prevent prostitution … it is reasonable to conclude that this restriction of the dancers’ movement is to ensure that the dancers mingle with the club’s customers between their dance rotations to encourage customers to purchase drinks and food.””\textsuperscript{63}

The Kansas Supreme Court ruled that since management was exacting such control over the dancers that they were in fact employees of the club, and that they were now legally allowed to draw unemployment and the club was allowed to provide health insurance options in accordance with the new federal regulations.\textsuperscript{64}

Public Decency Regulations

One of the most frequently cited United States Supreme Court Cases regarding public decency and the regulation of nudity in exotic dance is Barnes v. Glen Theatre out of South Bend, Indiana.65 In this case from 1990, the courts ruled that the State of Indiana can regulate public nudity on the premise of preserving morality and public order.66 In Indiana, the public nudity statute defines nudity as, “the showing of the human male or female genitals, pubic area, or buttocks with less than opaque covering, the showing of the female breast with less than opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.”67 This ruling has never been overturned, and individual localities in Indiana are still allowed to restrict public nudity in the way that they see fit to preserve the morality and public order of the community.

The other landmark case in the realm of public decency litigation was the 2000 case of Erie v. Pap’s A.M. in this case, the court ruled that it was within the control of the government to regulate public nudity if the goal was to limit the “harmful secondary effects” (such as crime, property depreciation, and sexually transmitted diseases”).68

These two cases have been held as precedence in numerous other cases that have limited the expressive abilities of exotic dancers. Hanna writes, “An important assumption informing the underlying First Amendment jurisprudence is that expression as an abstract category is valued

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over its contents.” In this sense, not only does a ban on public nudity assume that the content of the dance is worthless or non-communicative, but it is directly violating the rights of the dancers to freely express themselves through their chosen art form, which has its own rules of decorum, including nudity, physical contact, and sexual expression.

**Negative Impacts of Regulations**

While the Christian Right, certain politicians and lawmakers, the United States Supreme Court, and other anti-exotic dance groups may keep trying to enforce regulations to limit the First Amendment right of dancers to expose their body or through other regulatory means, not all people oppose exotic dance. Through her numerous interviews with persons living near exotic dance clubs, and other non-affiliated persons, Hanna discovered that many people are able to see the benefits that exotic dance can provide as businesses, tourist attractions, and places of employment. She wrote, “Many citizens not only object to regulations of exotic dance clubs because they infringe on civil liberties but may also object to the cost of regulations. “Dance police” can divert scarce resources from fighting crime that has victims.” Forcing exotic dance adult entertainment clubs to comply with or litigate regulations can decrease the club’s contribution to the economy (they pay taxes, employ people, purchase a range of goods and services, and sometimes attract new businesses to a neighborhood.”

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Conclusion

Exotic dance has had a long and tumultuous history as an art form. Beginning as belly dance, which is today considered to be a cultural dance and even a modest form of dance, exotic dance evolved through some “happy accidents”, such as in the case of Hinda Wassu, through the importing of foreign art, such as burlesque, and through fifty years of major industry growth. Though there are many different definitions of what is dance and exotic dance, it is undeniable that exotic dance shares many moves and principles with other genres of dance that have never been questioned as art. Additionally, any act of art which communicates a message between the dancer and patron, even if the message is one of a sexual nature, is protected not only as art but as expression under the First Amendment to the United States Constitution.

Legislation such as public decency regulations and labor regulations, including dancer proximity regulations, licensure requirements, and employee policies, have simply become a way to circumvent the prior ruling that exotic dance is protected form of expression. These regulations seek to provide barriers to entry or continuation within the adult entertainment exotic dance industry and to try to choke the industry entirely. Though these regulations are never an outright condemnation or ban on exotic dance or its elements, they do act as a form of government supported censorship since there are no such regulations that are imposed on other genres of dance that utilize the same moves or that also utilize public nudity. Hanna sums up the implications of such regulations, which are usually based upon preserving the moral order or the public order of a community, saying, “An expression-restricting law based on public morality reflects a political consensus among a majority of elected representatives, not necessarily the
moral preferences of a majority of the citizens. Thus, the law violates two foundational principles embodied in the Constitution—limited government and residual individual sovereignty.”

Overall, since these regulations are selectively enforced only on the adult entertainment exotic dance industry and not on other genres, they are in essence a government supported censorship of art. While there have been a few regulatory attempts at fairness in the past year, such as the Department of Labor of Kansas case, there needs to be a call for more fairness across the industry and an end to the politically supported stigmatization of both patrons and dancers in exotic dance establishments in the future.

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Appendices

Appendix 1

(a) major components

(b) limbs, limb segments, & articulations

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Appendix 2

Bibliography


