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# Behind the Sexual Division of Labor: Connecting Sex to Capitalist Production

Heidi Tinsman<sup>†</sup>

Sex still sells. It was standing room only at the Panel entitled "The International Sexual Exploitation of Women: Prostitution, Surrogacy, and Commercial Marriage." The preceding Panels, though thoughtful and provocative, did not generate the same degree of interest. Panel IV apparently struck a different chord than did previous discussions on subsistence farming and domestic service, *maquiladora* unions and GATT treaties: Sex-work<sup>1</sup> seemed unique, if not titillating. But just what *is* so unique about sex-work? Why do surrogacy and bride-selling pose problems different from those raised by garment-making and grape-picking? Why does the prostitute epitomize the *most* exploited woman? "Female sexuality," of course, is what is different about sex-work. Feminists attack men's control over it; paternalists rush to protect it in the name of women.

This paper examines the similarities, rather than the differences, between sex-work and other types of labor that women perform. Those who treat sex-work as uniquely exploitative accept the anti-feminist premise that female sexuality needs guarding. Those who consider prostitution and surrogacy to be unique because they involve sex ignore the ways in which sex is central to the exploitation of women in so-called "non-sex work," such as industrial and agricultural production. Sex-work is *not* unique, but neither should sex be considered just one of many variables that affect women's work. On the contrary, sex is central to the way in which all women are exploited in all types of work. Sexuality, the social meanings ascribed to procreative and biological differences, constitutes the fundamental power hierarchy between men and women that affects the sexual division of labor in all workplaces and is crucial to understanding all women's work.<sup>2</sup>

Panel IV missed this point. While the panelists stressed the uniqueness of sex-work, what became most obvious through the course of the presentations was the close similarity between sex-work and other types of employment. Phoebe Eng, Legal Counsel to *A Magazine*, began the Panel with a detailed description of mail-order brides, a multi-million dollar service industry that markets Asian women who are available for marriage to men in the United

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1. The term "sex-work," as used in this paper, refers to prostitution, surrogacy, and commercial marriage.

2. Note that this definition of sexuality is significantly broader than definitions of sexuality concerned solely with sexual intercourse.

States. Ms. Eng argued that mail-order bride services are conditioned by the existence of a global market and by a history of U.S. imperialism, and that they constitute a legal form of international prostitution. Next, Harold Cassidy, attorney for Marybeth Whitehead, the birth mother<sup>3</sup> in the *Baby M* case,<sup>4</sup> summarized the argument he successfully presented to the New Jersey Supreme Court against the enforceability of surrogacy contracts. He maintained that surrogacy was immoral and illegal because it involved the sale of children and the violation of a mother's right to know her own children. Alison Ward, a birth mother and former Vice-President and Director of Concerned United Birthparents, gave a personal account of the anguish she suffered when her family forced her to give up her child for adoption. She stated that birth-mothering primarily exploited poor white women and women of color and that surrogacy caused immeasurable damage to birth mothers and to children born of such arrangements. Finally, Veronica Vera, President of Prostitutes of New York (PONY), described her life as a sex-worker, her experience as an activist for prostitutes' rights, and the great satisfaction and fulfillment she derives from both activities. She criticized American society as sexually repressive and hypocritical and called for the decriminalization of sex-work.

These presentations shared a common theme: activities such as surrogacy, prostitution, and commercial marriage are "work," in that women receive payment in return for sexual services. With the exception of Ms. Vera, the panelists emphasized the same sexual and material<sup>5</sup> exploitation that was implicit in the analyses of women's work in previous Panels of the Symposium. Earlier speakers stressed that women's work is simultaneously structured by a global capitalist market and by gender relationships. Panel IV also entreated the audience to recognize that sex-workers are *workers* whose livelihood is conditioned by the capitalist market. Like women in other industries, sex-workers are exploited in their work specifically because they are women. But here the parallels between sex-work and other types of employment end. With the exception of Ms. Vera, Panel IV asserted that the extreme exploitation suffered by sex-workers merits special legal intervention in order to prohibit, or greatly limit, sex-work. Unlike the panelists who advocated the elimination of sex-work as inherently exploitative, panelists speaking about Mexican *maquiladoras* and West African subsistence farmers did not argue that employment in industrial and agricultural sectors be prohibited, despite

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3. A "birth mother" gives birth to a child under a surrogacy contract. She is paid to bear a child through either artificial insemination, the implanting of a fertilized ovum in her uterus, or insemination through sexual relations with the contracting father. Upon the birth of the child, she surrenders all parental rights to the purchaser under the contract.

4. *In re Baby M*, 537 A.2d 1227 (N.J. 1988) (voiding surrogacy contract as violating law and public policy of New Jersey).

5. "Material exploitation" includes those economic and social factors that oppress women, such as poverty, lack of education, cultural dislocation, and lack of options.

the fact that such employment also involves the extreme exploitation and disempowerment of women. Labor advocates do not call for the closing of factories or the abolition of employment contracts. Instead, they stress the need for greater empowerment within the workplace and over the terms of the employment contract. In the case of sex-work, however, panelists urged the elimination of the work itself.

I asked Panel IV to explain this discrepancy: What is the difference between sex-work and other forms of work performed by women that compels advocates to call for the abolition of the industry in the first case, but not in the second? Many forms of non-sex-work are extremely exploitative. Women workers who make baseballs in Haiti have a two-year work-expectancy due to the crippling effects of their sewing activities. Garment workers in Mexico are paid below-subsistence wages that leave them unable to provide appropriate nutrition or healthcare for themselves and their families. Grape-pickers in Chile regularly give birth to deformed or dead babies as a result of exposure to high amounts of pesticides that have been used in the fields. Yet advocates for these women believe that the state and organized labor must act to improve work conditions, raise wages, and give workers greater power within decision-making processes. They do not call for the abolition of these specific types of employment. Why do they do so in the case of sex-work?

Mr. Cassidy answered that all forms of work must be considered separately; surrogacy involves unique issues, such as the right of a mother to know her child. He maintained that no comparison could be made between surrogacy and non-sex-work because motherhood could not be sold (while other services women perform presumably could be sold). He argued that the experiences of Alison Ward and Marybeth Whitehead demonstrate the intense suffering caused by the forced separation of mother and child, and that the pain they experienced is central to the immorality and illegality of surrogacy.

I was unsatisfied with this response. I agree that the prenatal contract forcing Marybeth Whitehead to give up her child constitutes an intolerable wrong, that Alison Ward's pain at the loss of her child is profound, and that the oppression of many birth mothers is inextricably linked to their economically disadvantaged positions in society. Clearly, sex-work often involves extreme forms of exploitation. However, I fail to see a qualitative difference between the destruction of Marybeth Whitehead's life by surrogate work and the death and destruction of a garment worker as a result of employment-related poverty and ill health. Both types of work involve the exploitation of women's bodies and lives, and both are structured by capitalist relations.

The view that sex-work constitutes a special category of oppression specifically more offensive than all other types of work, and alone demands unique legal intervention, suffers from three fundamental flaws. First, it assumes that reproduction should occur only within the nuclear family, and that all women

should naturally desire to nurture the children they conceive. This assumption is false. Common sense tells us it is sexist, and feminist theory tells us it is grounded in patriarchal efforts to control women's sexuality through the state. Further, such assumptions entail acute and immediate political dangers to women: they underlie the anti-choice position in the debate over abortion.

Second, legal prohibitions against surrogacy, prostitution, and commercial marriages do not effectively eliminate the exploitation of women. As Ms. Vera pointed out, legally prohibiting sex-work criminalizes sex-workers; it does not end male domination over women, abrogate the commodity status of female sexuality within capitalist relations, or propose alternative sources of employment. Prohibition attempts to eliminate a source of livelihood without altering the economic realities that make sex-work a primary source of income for women all over the world. This places the burdens, costs, and implications of "liberation" exclusively on the victims.

Third, advocates of sex-workers' rights should stress the need for worker empowerment rather than the closing of industry, as industrialist and agricultural labor advocates argue. Labor advocates for non-sex-workers often object to capitalist exploitation and may even propose the abolition of capitalism as an ultimate goal, but they do not call for the elimination of work. Few workers who depend on wage labor for survival find cries to "close industry" an appealing emancipatory program. Instead, labor advocates stress the need to organize workers and to use the employment contract, an instrument of capitalism, to chip away the power employers exercise over employees. When workers successfully wrest higher wages, health benefits, decision-making power, or profit-sharing from employers, they are challenging one of the bases of capitalist relations: the power of employers to dictate the terms of employment in return for a wage. According to Marxist theory, capitalism attempts to exploit labor to accumulate profit, while increasing worker rights fundamentally undermines this goal. The championing of such rights is thus the tool through which capitalist relations are challenged and transformed.<sup>6</sup>

This analysis applies to sex-work. The most effective means of challenging the unequal and exploitative nature of sex-work without penalizing sex-workers

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6. According to the classic Marxist view of contract relations, the employment contract serves fundamentally as a means to sanction unequal power relations wherein an employer exercises control over a worker's life and labor in return for a wage. That many workers have "rights" guaranteed within contracts (right to a certain level of pay, duration of employment, fringe benefits, task definitions), or that workers can sue an employer for failing to fulfill a contract, demonstrates that workers have succeeded, but only to a limited extent, in circumscribing employers' power. It does not change the fundamental purpose of the contract: to formalize unequal relationships for the purpose of exploiting labor. The view that contracts are tools that sanction exploitation directly challenges the liberal concept of the employment contract as an agreement or reconciliation between different "interests" that can guarantee satisfaction for both parties. See Peter Gabel and J.M. Feinman, *Contract Law as Ideology*, in *POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 172 (David Kairys ed., 1982); Karl E. Klare, *Critical Theory and Labor Relations Law*, in *POLITICS OF LAW: A PROGRESSIVE CRITIQUE*, *supra*, at 65.

is to heighten workers' empowerment within these social relations. This tactic requires legalizing sex-work, creating unions or cooperatives (such as PONY), maintaining health and shelter facilities for sex-workers, and legislating legal channels through which women could bring charges against their male clients and employers for discrimination, abuse, and assault. The continued demand for female sexual services and the structure of the capitalist market ensure that banning sex-work serves only to drive sex-work underground and outside the reach of feminist advocates and labor organizers.

Given this correlation between sex-work and other work, all types of women's work should be treated alike under the law. Should such equality of treatment imply that the claim advanced in *In re Baby M*<sup>7</sup>—that surrogacy contracts are unenforceable—can be extended to critique the enforceability of non-sex contracts? Could the unenforceability of sex contracts be a tool to challenge employers' prerogatives and to limit the culpability of employees who leave their jobs before a contract terminates? The *Baby M* decision held that New Jersey could not force a woman to comply with a surrogacy contract because such an agreement forced a woman to alienate her rights as a mother.<sup>8</sup> By extension, a surrogacy contract also causes a birth mother to alienate her rights in her own body. Yet agricultural and industrial workers also alienate their rights and their bodies and submit themselves to arbitrary exploitation when they sell themselves into the service of employers.

Those who argue that sex-work is unique rely on the premise that sex-work is uniquely exploitative. Veronica Vera's presentation sought to refute this premise. She vehemently insisted that she was not exploited as a sex-worker. Speaking eloquently about her ability to control the condition of her work through PONY, Ms. Vera explained that she worked as a prostitute by choice and found pleasure in her job. Still, Ms. Vera ignored class issues: she failed to acknowledge that many women "choose" to work in prostitution because their options are extremely limited, and that they suffer considerable exploitation, or may even lose their lives, as a result of their work. However, Ms. Vera made the important point that not all sex-work is exploitative. Some women may also choose to be surrogate mothers for purposes of personal satisfaction and not out of economic necessity. These workers are not necessarily "exploited" (in either the Marxist sense of extracting surplus value by paying a worker less than her services are worth or in the liberal sense of being forced to engage in activities against one's will). Yet while Ms. Vera may be unexploited, her work invariably implies sexual subordination. Heterosexual prostitution and surrogacy invariably involve the sale of a woman's

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7. 537 A.2d at 1238.

8. *Id.* at 1251-53.

body for the satisfaction of a man, regardless of class. He buys, she sells.<sup>9</sup> The contractual relation is one of the provision of female sexual services for male consumption. According to feminist scholar Carole Pateman, prostitution and surrogacy are objectionable fundamentally because they involve subordination.<sup>10</sup> She argues that the exploitation of sex workers is contingent on a prior relation of women's subordination to men. Thus, prostitution and surrogacy are problematic not only because they may exploit women, but also because they institutionalize sexual subordination by commercializing male access to female bodies. Pateman further maintains that the subordination found in sex contracts conditions all employment contracts, because all employment contracts subordinate workers to employers.<sup>11</sup> Employment contracts in a capitalist market cannot be understood or transformed without understanding women's sexual subjection to men.<sup>12</sup>

Ms. Vera explained in her presentation that her choice to work as a prostitute was conditioned by her upbringing as a female in a society that stressed female acquiescence to male desire. Ms. Vera presented slides of herself as a child dancer dressed provocatively in leotards and as a high school senior in a beauty pageant. Ms. Vera stressed that social demands to flatter men's sense of masculinity continued past adolescence; at an earlier job as a Wall Street office assistant, for example, her primary responsibilities were to cater to men by serving refreshments, coyly solicit information over the phone, and lend feminine "charm" and diversion to business luncheons and receptions.

This presentation of women's socialization highlights the connection between sexuality and the types of work women perform. Why does Ms. Vera

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9. This statement reflects the power relations inherent in the sale of sex in our society. It is true that infertile women can purchase the services of a surrogate mother, just as women can hire other women as prostitutes and are capable of sexually abusing girls and boys. *Baby M*, however, involved a man and his right to a guaranteed contract; the right to "his child." Even in cases where women buy sexual services from other women, they do so in a sexual market that is conditioned by male dominance and the historical control that men have exercised over women.

10. CAROLE PATEMAN, *THE SEXUAL CONTRACT* 198-212 (1988).

11. *Id.* at 144-53. Pateman argues that the fundamental structure and dynamic of the employment contract is not exploitation, which she defines as the extraction of surplus value, or unfair terms of exchange and treatment. Rather, employment contracts require subordination, the right of one person to control another person, a hierarchy which Pateman maintains is conditioned by the sexual subordination of women to men.

12. *Id.* at 138-44. Pateman criticizes the Marxist concept of the capitalist contract, which focuses on exploitation and the inequality between employers and workers, because it defines workplace relationships as between gender-neutral individuals, when in reality "workers" in the capitalist workplace are assumed to be male. She argues that because women's sexual subordination to men is crucial to the organization of civil society, men and women workers are exploited on the basis of their "maleness" or "femaleness." This exploitation builds on and reinforces the social reality of male sexual privilege: male workers are exploited as *men* in the sense that male workers are assumed to be "family bread winners" for the women who provide them with subsistence and reproductive services. Female workers are exploited as *women* in the sense that female workers are assumed to belong to families in which men provide the major source of income and in which women shoulder the primary responsibility for the care of husbands and children. Thus the gender-neutral worker is really a male worker, and women are incorporated into the workplace specifically as *women*.

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work as a prostitute? Why do women in the *maquiladora* industry sew garments while men manage production and marketing? Feminist scholars such as Michèle Barrett, Annette Kuhn, and AnnMarie Wolpe argue that sexual divisions of labor, both inside and outside the home, are connected to historically specific organizations of procreation and sexuality. Women's work is never fully outside the sexual marketplace.<sup>13</sup> Indeed, the dynamics of women's non-sex-work bears a strong relationship to the dynamics of both paid and unpaid sex-work in a given society at a given point. Barrett, Kuhn, and Wolpe argue that specific material relations produce sexuality as an ideology and as the practice of men's sexual control over women, and that it forms the fundamental basis for gender hierarchies that oppress women.<sup>14</sup> Thus sexuality is always crucial to the connection between women's work and capitalist production.

The interconnection between sex and capitalism illustrates the impossibility of distinguishing the subjugation of women in sex-work contracts from that of women in non-sex-work employment contracts. The reputed distinction relies on both the patriarchal concept of "protecting women" and on the assumption that sex and non-sex labor are separable. Women are exploited in the industrial and agricultural work force not simply as workers, but as *women*. The fact that women in all societies provide men with sexual services in the form of child-bearing and sexual intercourse effectively conditions the types of work and educational opportunities available to them. Likewise, employers' perceptions of the type of work "appropriate" for women, perceptions of how they can treat women at work, and perceptions of the types of services they can demand from women, are conditioned by gender relationships rooted in the social reality of male sexual dominance.

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13. MICHÈLE BARRETT, WOMEN'S OPPRESSION TODAY: PROBLEMS IN MARXIST FEMINIST ANALYSIS 152-86 (1980); Annette Kuhn & AnnMarie Wolpe, *Feminism and Materialism*, in FEMINISM AND MATERIALISM: WOMEN AND MODES OF PRODUCTION 1, 1-10 (Annette Kuhn & AnnMarie Wolpe eds., 1978).

14. Marxist-feminist scholars argue that male domination of women is crucial to capitalist development due to the two roles male-headed households play in producing the labor force. First, the patriarchal family justifies paying women less than men, thereby suppressing women's wages. Second, women's unpaid domestic labors provide male workers with crucial subsistence services not covered by the wage an employer pays in exchange for labor. See, e.g., Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in WOMEN AND REVOLUTION 1 (Lydia Sargent ed., 1981); Heidi Hartmann, *Capitalism, Patriarchy, and Job Segregation by Sex*, 1 SIGNS 137 (1976). Alternatively, radical feminists argue that inequality between men and women is rooted fundamentally in men's control of women's sexuality and is not necessarily contingent on capitalist relations. See, e.g., KATE MILLET, SEXUAL POLITICS 23-58 (1970); SHULAMITH FIRESTONE, THE DIALECTIC OF SEX 1-15 (1970); Alix Kates Shulman, *Sex and Power: Sexual Bases of Radical Feminism*, 5 SIGNS 590 (1980). See generally CATHARINE A. MACKINNON, SEXUAL HARASSMENT AND WORKING WOMEN (1979) (arguing that both inequality in workplace between men and women, and sexual harassment of women, stem from male domination over women in sexual relations).

Barrett, Kuhn, and Wolpe therefore bridge Marxist-feminist and radical feminist theory by joining the former's concern with patriarchy and capitalism to the latter's focus on sex. BARRETT, *supra* note 13, at 152-86; Kuhn & Wolpe, *supra* note 13, at 1-10.



The frequency of sexual abuse and harassment suffered by working women indicates that more than simple "labor" is bought and sold in the market place. A woman's whole person, including her sexuality, is also purchased. Understanding the sexual division of labor requires the recognition that societies sexually subordinate women to men. Therefore the Panel on sex-work was far from a novel twist: it went to the heart of the Symposium's goal to understand women's exploitation in productive relations.