

Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade

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Abstract

This article explores the competing discourses of radical feminism and sex radicalism on the international sex trade. These voices have been dominant in feminist debates on this issue and both have proved significant forces when it comes to legal reform. Radical feminists characterize prostitution as an abuse of human rights, regardless of whether it is forced or voluntary, and have fought for its abolition. They have had a substantial impact on the development and adoption of anti-trafficking legislation and instruments in various countries and at the international level. Sex radicals have offered compelling opposition, shifting the focus from the abolition of sex work to the human rights of sex workers. Their legal interventions have been geared toward self-determination for sex workers including decent working conditions and freedom of movement. This article employs the term "sex-work" as an analytical device by which to get to the bottom of these very different perspectives. An analysis of the respective emphases of radical feminists and sex radicals-on sex or work or sex-work-yields insight into the role assigned to the sex worker in each of these feminist theoretical discourses. This, in turn, has important implications for feminist activism in the international arena.

Keywords

Feminism; Prostitution

WORK, SEX, AND SEX-WORK: COMPETING FEMINIST DISCOURSES ON THE INTERNATIONAL SEX TRADE[©]

BY KATE SUTHERLAND*

This article explores the competing discourses of radical feminism and sex radicalism on the international sex trade. These voices have been dominant in feminist debates on this issue and both have proved significant forces when it comes to legal reform. Radical feminists characterize prostitution as an abuse of human rights, regardless of whether it is forced or voluntary, and have fought for its abolition. They have had a substantial impact on the development and adoption of anti-trafficking legislation and instruments in various countries and at the international level. Sex radicals have offered compelling opposition, shifting the focus from the abolition of sex work to the human rights of sex workers. Their legal interventions have been geared toward self-determination for sex workers including decent working conditions and freedom of movement. This article employs the term “sex-work” as an analytical device by which to get to the bottom of these very different perspectives. An analysis of the respective emphases of radical feminists and sex radicals—on sex or work or sex-work—yields insight into the role assigned to the sex worker in each of these feminist theoretical discourses. This, in turn, has important implications for feminist activism in the international arena.

Cet article étudie les discours contradictoires du féminisme radical et du radicalisme sexuel à propos du commerce international du sexe. Ces voix dominent les débats féministes sur cette question et toutes deux exercent des forces considérables en matière de réforme légale. Les féministes radicales définissent la prostitution comme une violation des droits de la personne, qu’il s’agisse d’une activité imposée ou volontaire, et elles ont lutté pour son abolition. Elles ont eu un impact considérable sur l’élaboration et l’adoption de lois et d’instruments anti-traffic dans divers pays et dans le monde. Les adeptes du radicalisme sexuel ont présenté une proposition convaincante, notamment d’accorder davantage d’attention aux droits de l’industrie du sexe qu’à son abolition. Leurs interventions légales visent principalement l’autodétermination des travailleurs du sexe, y compris des conditions de travail adéquates et le droit de circuler librement. Le terme « travail du sexe » est utilisé dans cet article en tant qu’instrument d’analyse pour aller au fond de ces perspectives très différentes. L’analyse de l’accent que les féministes radicales et les adeptes du radicalisme sexuel accordent au sexe, au travail ou au travail du sexe donne un aperçu des rôles attribués aux travailleurs du sexe dans chacun de ces discours féministes théoriques. À son tour, cela présente d’importantes implications pour l’activisme féministe sur la scène internationale.

I.	INTRODUCTION	140
II.	THE THEORETICAL BACKDROP	142
	A. <i>Radical Feminism</i>	142
	B. <i>Sex Radicalism</i>	144
III.	ENGAGEMENT WITH LAW	146
IV.	WORK, SEX, AND SEX-WORK	150
	A. <i>Radical Feminism</i>	150
	B. <i>Sex Radicalism</i>	152

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V.	THE ROLE OF THE SEX-WORKER	154
	A. <i>Radical Feminism</i>	154
	B. <i>Sex Radicalism</i>	155
VI.	FROM DOMESTIC THEORY TO INTERNATIONAL ACTIVISM	159
	A. <i>Radical Feminism</i>	159
	B. <i>Sex Radicalism</i>	163
VII.	CONCLUSION	166

When prostitution is referred to as “sex work” by women in prostitution who would leave if they could, the term is an indicator of their hopelessness. “Sex work” language has been adopted out of despair, not because these women promote prostitution but because it seems impossible to conceive of any other way to treat prostitute women with dignity and respect than through normalizing their exploitation.

- Kathleen Barry¹

This usage of the term “sex work” marks the beginning of a movement. It acknowledges the work we do rather than defines us by our status. After many years of activism as a prostitute, struggling with increasing stigma and ostracism from within the mainstream feminist movement, I remember the term “sex work,” and how powerful it felt to, at last, have a word for this work that is not a euphemism. “Sex work” has no shame, and neither do I.

- Carol Leigh, a.k.a. Scarlot Harlot²

I. INTRODUCTION

The focus of this article is not sex-work in and of itself but rather competing Anglo-American feminist discourses about sex-work. The competing discourses to which I refer are those of radical feminism and sex radicalism. This is a familiar pairing given that the sex wars of the 1980s are still a vivid memory.³ Then the central point of contention was the legal regulation of pornography. Radical feminists worked to uphold censorship laws and to develop new civil remedies for harms caused by pornography, all in the name of women’s equality. Sex radicals opposed censorship, challenging the monolithic nature of the radical feminist account of the

¹ Kathleen Barry, *The Prostitution of Sexuality* (New York: New York University Press, 1995) at 296.

² Carol Leigh, “Inventing Sex Work” in Jill Nagle, ed., *Whores and Other Feminists* (New York: Routledge, 1997) 225 at 230.

³ Carole S. Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge, 1984) [Vance, *Pleasure and Danger*]; Lisa Duggan & Nan Hunter, *Sex Wars: Sexual Dissent and Political Culture* (New York: Routledge, 1995).

meaning of pornography, and expressing grave doubts as to the capacity of state regulation to serve women's erotic interests.⁴ Today, these foes face off yet again, this time in the international arena over questions about "trafficking in women" and "sex-work."

Of course, there are many other feminist voices engaged in debates about the international sex trade.⁵ This article focuses on radical feminism and sex radicalism because these strands of theory represent the dominant feminist positions in the ongoing debates in this area. In particular, both have proved significant forces when it comes to legal reform. Radical feminists characterize prostitution as an abuse of human rights, regardless of whether it is forced or voluntary, and have fought for its abolition. They have had a substantial impact on the development and adoption of anti-trafficking legislation and instruments in various countries and at the international level.⁶ Sex radicals have offered compelling opposition, shifting the focus from the abolition of sex-work to the human rights of sex workers. Their legal interventions have been geared toward self-determination for sex workers, including decent working conditions and freedom of movement.

I am interested in exploring the ways in which feminist theory informs activist strategies, particularly legal strategies, and thereby translates into practice. I am also interested in tracking the way Anglo-American feminist discourses play out when imported into the international arena. An examination of feminist debates about the international sex trade offers considerable scope for analysis on both of these fronts.

I begin by sketching out the theoretical backdrop, articulating some of the main tenets of radical feminist and sex radical theory. I then briefly address the engagement of each strand of theory with law and legal activism. Then the article turns squarely to a consideration of the competing discourses of radical feminism and sex radicalism on the international sex trade. In so doing, I structure my discussion around the term "sex-work." I am not so much interested in the rejection or acceptance of the term by each theory, but rather, in using the term as an analytic device. By exploring the respective emphases of radical feminists and sex radicals—sex or work or sex-work—my aim is to get to the bottom of their very different perspectives on the international sex trade. My particular focus will be on the role assigned to the sex worker in each of these feminist

⁴ Vance, *ibid.*

⁵ For example, liberal and socialist feminist perspectives. See Susan E. Thompson, "Prostitution - A Choice Ignored" (2000) 21 *Women's Rts. L. Rep.* 217.

⁶ Coalition Against Trafficking in Women International, *CATW Yearly Report 2001* (Amherst: CATW, 2002) online: CATW <<http://action.web.ca/home/catw/attach/ReportOct2002.pdf>>.

theoretical discourses and on the implications of that for political and legal activism in the international arena.

II. THE THEORETICAL BACKDROP

A. *Radical Feminism*

Radical feminism focuses on sexuality as “the linchpin of gender inequality.”⁷ According to Catharine MacKinnon, radical feminist theory “treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender. Such an approach centers feminism on the perspective of the subordination of women to men as it identifies sex—that is, the sexuality of dominance and submission—as crucial, as a fundamental, as on some level definitive, in that process.”⁸

The particular genius of this system of domination is that, through it, gender is constructed in such a way as to produce women who consent to their own domination: “women have little choice but to become persons who then freely choose women’s roles.”⁹ For radical feminists, consent is as central to patriarchy in its modern guise as it is to capitalism. Women are first forced to submit to male domination under patriarchy but, eventually, they come to acquiesce in their own subordination.

Andrea Dworkin describes the process by which women’s resistance is broken down under patriarchy much as Marx described the way the worker’s resistance is broken down under capitalism. Women are first compelled by law to perform sex-labor for the benefit of men, for example, in marriage. By law, women’s bodies belong to their husbands, not to themselves.¹⁰ “The good wife submits; the bad wife can be forced to submit. All women are supposed to submit.”¹¹

The contract fiction comes into play to suggest that women at least enter into marriage voluntarily, but material circumstances belie the notion that women and men negotiate with one another on an equal footing. Women have been kept ignorant of technology and economics, indeed, of

⁷ Catharine A. MacKinnon, *Toward A Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) at 113 [MacKinnon, *Feminist Theory*].

⁸ *Ibid.* at 128.

⁹ *Ibid.* at 124.

¹⁰ The reference here is to marital rape exemptions in U.S. law.

¹¹ Andrea Dworkin, *Right-Wing Women* (New York: Putnam, 1983) at 79.

“most of the practical skills required to function autonomously.”¹² They have been “deprived of physical strength, [and] excluded from forums for the development of intellectual acuity and public self-confidence.”¹³ Just as workers’ abilities are, over time, whittled down to competence at a single task, women are steadily pared down from “a whole person to vagina and womb”¹⁴ rendering them fit only for sex-labor.

The submissive ideal is imposed on women from within as well as without. “Women are brought up to conform: all the rules of femininity—dress, behavior, attitude—essentially break the spirit. Women are trained to need men, not sexually but metaphysically. Women are brought up to be the void that needs filling, the absence that needs presence. Women are brought up to fear men and to know that they must please men and to understand that they cannot survive without the help of men richer and stronger than they can be themselves, on their own.”¹⁵

At the heart of radical feminist method is consciousness-raising, designed to undo this internalization of powerlessness and pave the way to the transformation of consciousness and material reality. Through consciousness-raising women come to realize that experiences of victimization that they once regarded as isolated, individual events are in fact elements of their collective oppression. MacKinnon asserts: “Consciousness raising, through socializing women’s knowing, transforms it, creating a shared reality that ‘clears a space in the world’ within which women can begin to move.”¹⁶

The debt that radical feminism owes to Marxism is again apparent when it comes to theorizing of the state and law. Just as the state and law are seen to reflect dominant class interests in some strands of Marxist theory, the state and law are seen to reflect male interests in radical feminist theory. MacKinnon declares that “[t]he state is male in the feminist sense: the law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interests of men as a gender.”¹⁷ Further, “[o]ver and over again, the state protects male power through embodying and ensuring existing male control over women at every level—cushioning, qualifying, or

¹² *Ibid.* at 22.

¹³ *Ibid.*

¹⁴ *Ibid.* at 16.

¹⁵ *Ibid.* at 81.

¹⁶ MacKinnon, *Feminist Theory*, *supra* note 7 at 101.

¹⁷ *Ibid.* at 161-62.

de jure appearing to prohibit its excesses when necessary to its normalization.”¹⁸

MacKinnon is not asserting here that the state and law serve male interests in a straightforward instrumental sense. Rather, she links the ideals that underlie law in the liberal state—such as objectivity and neutrality—with masculinity.¹⁹ Courts, she says, “[r]elatively seamlessly ... promote the dominance of men as a social group through privileging the form of power—the perspective on social life—which feminist consciousness reveals as socially male. The separation of form from substance, process from policy, adjudication from legislation, judicial role from theory or practice, echoes and reechoes at every level of the regime its basic norm: objectivity.”²⁰ Law is thus depicted as serving simultaneously as coercive tool and as legitimating ideology.

B. *Sex Radicalism*

Sex radicals encompass a loose coalition of feminist academics, queer theorists, sex-trade workers, and others.²¹ They move beyond a timid liberal tolerance of sexual diversity to a positive embrace of sexual non-conformism with the idea that changing ideas about sex can change sex itself and with it the balance of power in society.

Consent is at the centre of the range of sexual activities that sex radicals champion, including commercial sex, gay and lesbian sex, public sex, and sadomasochistic sex. Sex radicals, however, do not uncritically endorse a liberal conception of consent. That is, they do not take assertions of consent at face value, on the presumption that everyone operates from a position of equal bargaining power. They acknowledge that sexuality and sexual activity is experienced in complex and contradictory ways and that it can serve simultaneously as a site of exploitation and victimization and as a site of subversion and agency.

However, sex radicals note that in law the capacity to consent has, for the most part, been a privilege enjoyed by those who engage in sexual behavior of the highest status, that is, heterosexual, married, monogamous,

¹⁸ *Ibid.* at 167.

¹⁹ Carol Smart, “The Woman of Legal Discourse” (1992) 1 Soc. & L.S. 29 [Smart, “Legal Discourse”].

²⁰ MacKinnon, *Feminist Theory*, *supra* note 7 at 162.

²¹ A sense of sex radical thought can be gleaned from the following texts: Pat Califia, *Public Sex: The Culture of Radical Sex* (Pittsburgh: Cleis Press, 1994); Ann Snitow, Christine Stansell, & Sharon Thompson, eds., *Powers of Desire: The Politics of Sexuality* (New York: Monthly Review Press, 1983); and Vance, *Pleasure and Danger*, *supra* note 3.

procreative, non-commercial sex. Though not libertarians, sex radicals tend to be deeply skeptical of state regulation. Gayle Rubin, for example, argues that sex law, rather than operating to counter coercive sexual practices, itself acts to coerce people into sexual practices that have been deemed “normal.”²²

Rubin calls for theoretical pluralism in defending and promoting sexual non-conformism.²³ Shannon Bell identifies this feature of sex radical theory as postmodern. “I read Rubin as a postmodern feminist theorist: she opens theoretical space for a multiplicity of sexual voices; she appropriates various elements of opposing ideologies and incorporates them into a new theory. Through a pluralism of theory, with no one privileged site, she constructs a space for difference(s).”²⁴ One can find, among others, liberal, Marxist, queer, and various strands of feminist theory simultaneously at work in sex radical texts.

This theoretical pluralism is certainly postmodern in that it undercuts the authority of grand theories that rely on totalizing structures, such as capitalism or patriarchy, for explanations. In drawing from these varied and sometimes conflicting theories, postmodern sex radicals highlight the plural and diffuse character of power, and the complex, multiple, and fragmentary nature of the subject. This is a Foucauldian conception of power that is disciplinary rather than repressive, and of the subject as constituted by, rather than a target of that power.²⁵

Postmodern sex radicals may eschew law altogether as a site of study or activism in accordance with Foucault’s exhortation to study power “at the extreme points of its exercise, where it is always less legal in character,” and in “its more regional and local forms and institutions” rather than “the regulated and legitimate forms of power in their central locations.”²⁶ When postmodern sex radicals do turn their gaze to law it is often to analyse its discursive effects. “Following the method of deconstruction, the task becomes one of unpacking the discourse of law to

²² Gayle Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality” in Vance, *Pleasure and Danger*, supra note 3, 267 at 306.

²³ *Ibid.* at 309.

²⁴ Shannon Bell, *Reading, Writing & Rewriting the Prostitute Body* (Bloomington: Indiana University Press, 1994) at 92-93.

²⁵ See Michel Foucault, *Discipline And Punish: The Birth of the Prison*, trans. by Alan Sheridan (London: Penguin Books, 1975); Michel Foucault, *The History Of Sexuality: An Introduction, Volume One*, trans. by Robert Hurley (New York: Vintage Books, 1978); and Michel Foucault, “Two Lectures,” in Colin Gordon, ed., *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, trans. by Colin Gordon et al. (New York: Harvester Wheatsheaf, 1980) [Foucault, “Two Lectures”].

²⁶ Foucault, “Two Lectures”, *ibid.* at 96-97.

reveal the context in which it has been constituted and the biases it contains.”²⁷ Thus, their legal projects are, for the most part, deconstructive rather than reformist.

III. ENGAGEMENT WITH LAW

The different legal strategies employed by radical feminists and sex radicals and their varying rates of success can be illuminated through an exploration of the relationships of each strand of theory to what Ngaire Naffine has referred to as the “Official Version of Law.” This is liberal legalism, wherein law is characterized as “an impartial, neutral and objective system for resolving social conflict.”²⁸ At the centre of this official version is the rule of law that dictates that no one is above the law and everyone is equal before the law. Thus, legal method is directed toward the application of neutral rules to whatever facts are deemed relevant in a given circumstance. As Elizabeth Comack points out, the official version of law, in form and in method, “presumes the existence of a particular kind of individual and a particular form of society. The subject of law is a universal, abstract person.”²⁹

As will be apparent from the foregoing discussion, both radical feminists and sex radicals are deeply ambivalent about engaging with law. Both strands of feminist theory are highly critical of the official version of law.

Radical feminists seek to unmask the claims of liberal law to objectivity and neutrality revealing its male bias. They regard the state, law, and the liberal subject as male, working in male interests to the detriment of women. How then, can law serve as an emancipatory tool for women? At the same time, though, radical feminists assert that feminists cannot afford not to engage with law. MacKinnon states that “the power of the state and the consciousness- and legitimacy-conferring power of law” are “political realities that women ignore at their peril.”³⁰

Consequently, radical feminists have devoted considerable time and energy to pursuing legal struggles, in particular as a means of seeking protection for women from sexual victimization. Through consciousness-

²⁷ Elizabeth Comack, “Theoretical Excursions” in Elizabeth Comack, ed., *Locating Law: Race/Class/Gender Connections* (Halifax: Fernwood, 1999) 19 at 65 [Comack]. See, e.g. Carol Smart’s exploration of “law as a gendering strategy” in Smart, “Legal Discourse”, *supra* note 19.

²⁸ Ngaire Naffine, *The Law and the Sexes: Explorations in Feminist Jurisprudence* (Sydney: Allen and Unwin, 1990) at 24.

²⁹ Comack, *supra* note 27 at 23.

³⁰ MacKinnon, *Feminist Theory*, *supra* note 7 at xiii.

raising, radical feminists purport to have accessed the truth of women's experience of sexual victimization and they have put this truth forward in legal forums to counter the story of objectivity and neutrality that liberal law tells about itself. This strategy has proved surprisingly successful in Canada and the United States. Radical feminists have won many legal victories on issues ranging from the creation of legal remedies for sexual harassment, to the upholding of criminal obscenity laws, to the reform of sexual assault laws in many jurisdictions.³¹

MacKinnon describes the import of such victories in the following terms:

My own work provides just one illustration of how this philosophical approach of theory from-the-ground-up has been productive in practice. This theory, applied, produced the claim for sexual harassment as a legal claim for sex discrimination. So now, when a woman is sexually harassed and she speaks of it, that is not simply a woman speaking in a different voice, or narrating her subject experience of her situation. She is saying what happened to her. And what happened to her, when it happens, is now authoritatively recognized in law as inequality on the basis of sex, that is, as a violation of women's human rights.³²

Postmodern sex radicals also challenge the official version of law, not with a counter-narrative that purports to tell a hidden truth, but rather with an assertion that there is no single truth to be uncovered, but rather, many, sometimes competing, truths. They too are leery of engagement with law, questioning the pride of place the legal forum has been accorded in much feminist activism and cautious of inviting "more law" when the effect of existing legal regulation has so often been negative for women and for others whose sexualities have been marginalized.³³

Nevertheless, sex radicals have been compelled into the legal forum in defensive mode. And, alongside their deconstructive legal projects, postmodern sex radicals have engaged in some reconstructive attempts. As Mary Joe Frug asserts, "[w]hat law (at least in part) constructs, law reform projects can re-construct or alter."³⁴ Attempts, however, to tell complicated stories that represent the multiplicity and diversity of sexual experience

³¹ See Catherine MacKinnon, "Points Against Postmodernism" (2000) 75 Chicago-Kent L. Rev. 687 [MacKinnon, "Postmodernism"]; Brenda Cossman *et al.*, *Bad Attitudes on Trial: Pornography, Feminism, and the Butler Decision* (Toronto: University of Toronto Press, 1997); Renate M. Mohr & Julian V. Roberts, eds., *Confronting Sexual Assault: A Decade of Legal and Social Change* (Toronto: University of Toronto Press, 1994).

³² MacKinnon, "Postmodernism", *ibid.* at 691.

³³ Comack, *supra* note 27 at 67.

³⁴ Mary Joe Frug, *Postmodern Legal Feminism* (New York: Routledge, 1992) at 128.

have met with little success in legal forums.³⁵ Postmodern sex radicals have not had nearly the impact on law that radical feminists have had.

What accounts for the difference in the way radical feminist and sex radical discourses have been received in legal contexts? How have radical feminists been so successful in having their claims heard in legal arenas while maintaining their trenchant critique of many of the fundamental tenets of liberal legalism such as neutrality and objectivity? Lise Gotell suggests that the secret of their success lies in the fact that despite their differences, law and radical feminism share the same modernist foundations.³⁶

What precisely constitutes modernism is hotly contested within and across disciplines.³⁷ Nevertheless, it is possible to identify some basic components of a modernist world view that are of particular relevance in connection with law and feminism. The subject of modernism is a coherent individual with an established identity. At one pole, this subject may be the atomistic rights-bearing individual of liberalism, at the other, Marx's collectivist subject whose identity is linked to class status.³⁸ Modernism privileges the scientific method, believing that truth can be established through the application of logic and empirical study.³⁹ It is characterized by the search for grand theories and the development of meta-narratives.⁴⁰ It is given to normativity.⁴¹ Finally, modernism holds to a theory of language within which language serves "one of two functions—it represents ideas or states of affairs, or it expresses the attitudes of the speaker."⁴² In this view,

³⁵ Lise Gotell, "Towards a Democratic Practice of Feminist Litigation?: LEAF's Changing Approach to *Charter* Equality" in Radha Jhappan, ed., *Women's Legal Strategies in Canada* (Toronto: University of Toronto Press, 2002) 135 at 152.

³⁶ Lise Gotell, "Litigating Feminist 'Truth': An Antifoundational Critique" (1995) 4 Soc. & L.S. 99 [Gotell, "Antifoundational Critique"].

³⁷ See Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995); Dennis Patterson, "Postmodernism/Feminism/Law" (1992) 77 *Cornell L. Rev.* 254 [Patterson]; Pierre Schizg, "Missing Pieces: A Cognitive Approach to Law" 6 *Texas L. Rev.* 1195 at 1213-17; and Daniel J. Singal, ed., *Modernist Culture in America* (Belmont: Wadsworth Pub. Co., 1991).

³⁸ Patterson, *ibid.* at 268.

³⁹ Comack, *supra* note 27 at 61.

⁴⁰ *Ibid.* at 62; Carol Smart, *Law, Crime and Sexuality: Essays in Feminism* (London: Sage Publications, 1995) at 71.

⁴¹ Brown, *supra* note 37 at 39.

⁴² Patterson, *supra* note 37 at 263.

words “are seen as merely instrumental tools for describing some corresponding reality.”⁴³

The official version of law clearly fits within modernism and so too does radical feminism. The subject of radical feminism is not the atomistic liberal individual of the official version of law. Radical feminism, nevertheless, clings tightly to the notion of a coherent subject whose identity is tied to gender. Certainly, the radical feminist theory of male dominance and female subordination is a grand theory that makes normative claims. Though highly critical of the scientific method adopted by law, radical feminists still adopt a species of empiricism in their practice of consciousness-raising. Wendy Brown notes that “while insisting on the constructed character of gender, most also seek to preserve some variant of consciousness-raising as a mode of discerning and delivering the ‘truth.’”⁴⁴ She continues, “[t]his strand of feminist foundationalism transports the domain of Truth from reason to subjectivity, from *Geist* to inner voice, even while femininity itself is submitted to a methodology elaborating its fully fabricated nature.”⁴⁵ And in communicating that truth, radical feminists rely on the expressive and representative functions of language.

Thus, in making truth claims about women’s experience, radical feminists are able to make themselves intelligible in legal forums. Postmodern sex radical discourse, on the other hand, in every divergence from the tenets of modernism becomes almost entirely unintelligible and hence, largely ineffective in legal forums. Gotell asserts, “[t]he centrality of ‘Truth’ within legal discourse makes it resistant to complexity and contingency and responsive to demands which are both positivistic and categorical.”⁴⁶ The legal claims of radical feminists have been positivistic and categorical, while those of postmodern sex radicals have often been complex and contingent. This may, in part, account for the differing degrees of success that these strands of feminism have enjoyed in their engagement with law.

The content of the respective claims of radical feminists and sex radicals is also of central importance. Susan Boyd has stated, “[i]t is clear that some feminist voices will be ‘heard’ more readily than others within state structures, and these limits have something to do with dominant ideologies concerning women and family, the role of the state in advanced

⁴³ Gotell, “Antifoundational Critique”, *supra* note 36 at 100-01.

⁴⁴ Brown, *supra* note 37 at 41.

⁴⁵ *Ibid.* at 42.

⁴⁶ Gotell, “Antifoundational Critique”, *supra* note 36 at 102 [footnotes omitted].

liberal democracies, and bureaucratization.”⁴⁷ Radical feminists and sex radicals are most likely to be heard in legal forums when the stories that they are telling and the outcomes that they are seeking resonate with the understandings and goals of dominant constituencies. For example, Brenda Cossman has argued that the “victory” in the *Butler* case, wherein Canada’s obscenity law was upheld ostensibly because it protects women’s equality rights, is attributable to the dovetailing of the radical feminist account of pornography with the moralistic views of the conservative right.⁴⁸ In similar fashion, sex radical claims are most likely to be successful when they sound most liberal and most in tune with capitalist free market principles.

IV. WORK, SEX, AND SEX-WORK

A. *Radical Feminism*

Given the Marxist roots and consequent materialist focus of radical feminism, one might expect the “work” aspect of sex-work to predominate in radical feminist discussions. This is not the case. Radical feminists do not accept “work” as descriptive of commercial sex.

Certainly MacKinnon, in articulating her radical feminist theory, begins by paralleling feminism and Marxism. She proclaims,

[s]exuality is to feminism what work is to [M]arxism: that which is most one’s own, yet most taken away. ... As the organized expropriation of the work of some for the benefit of others defines a class, workers, the organized expropriation of the sexuality of some for the use of others defines the sex, woman.”⁴⁹

MacKinnon very eloquently describes how sexuality is that which is “most taken away” from women under patriarchy. Under patriarchy, women’s sexuality cannot, in fact, be said to be women’s at all. It becomes that which arouses desire in men.⁵⁰ MacKinnon concludes: “If women are socially defined such that female sexuality cannot be lived or spoken or felt or even somatically sensed apart from its enforced definition, so that it is its own lack, then there is no such thing as a woman as such; there are only walking embodiments of men’s projected needs.”⁵¹

⁴⁷ Susan Boyd, “(Re)Placing the State: Family, Law and Oppression” (1994) 9 C.J.L.S. 39 at 45.

⁴⁸ Brenda Cossman, “Feminist Fashion or Morality in Drag? The Sexual Subtext of the *Butler* Decision” in Cossman *et al.*, *supra* note 31, 42.

⁴⁹ MacKinnon, *Feminist Theory*, *supra* note 7 at 3.

⁵⁰ *Ibid.* at 118.

⁵¹ *Ibid.* at 119.

But what are we to take from MacKinnon's assertion that sexuality is, for women, "that which is most one's own?" Pushing the parallel with Marxism, this assertion would seem to suggest the possibility of an unalienated, non-exploitive sexuality. Something along the lines of Marx's early discussion of free labor, that is, labour as objectification without alienation—a means by which the worker gets in touch with nature, himself, and his "species-being."⁵²

This is not, however, the tack MacKinnon takes. Her theory precludes a parallel account of sexuality, at least for women. She takes issue with Marx's depiction of objectification without alienation as the foundation of human freedom. Women, she says, "have not authored objectifications, they have been them."⁵³ In this scenario, woman is not the worker, she is "the nature, the matter, the acted upon to be subdued by the acting subject seeking to embody himself in the social world."⁵⁴

Thus, in radical feminist theory, prostitution cannot be regarded simply as a form of employment with the same risks of alienation and exploitation as any other. Sex as "that which is most one's own" turns out to mean that sex is something that, for women, is somehow natural and integral to the self, and therefore more damaging when alienated than other human activities.

In this vein, Kathleen Barry states "[c]ommodification is one of the most severe forms of objectification; in prostitution it separates sex from the human being through marketing. Sexual objectification dissociates women from their bodies and therefore their selves."⁵⁵ Barry adds, "[s]ex is an integral dimension of the human being, of the self. When it is treated as a thing to be taken, the human being is rendered into a thing, an objectification that not only violates human rights but also destroys human dignity."⁵⁶

The "work" part drops out of sex-work. There is only sex, which is inherently exploitive and degrading to women under conditions of patriarchy. Radical feminists thereby link prostitution with a litany of practices they term "abuses of women" and "abuses of sex" including rape, battery, sexual harassment, sexual abuse of children, and pornography.⁵⁷

⁵² Karl Marx, "Economic and Philosophic Manuscripts" in Lawrence H. Simon, ed., *Karl Marx: Selected Writings* (Indianapolis: Hackett, 1994) 54 at 64.

⁵³ MacKinnon, *Feminist Theory*, *supra* note 7 at 124.

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 1 at 29-30.

⁵⁶ *Ibid.* at 33.

⁵⁷ MacKinnon, *Feminist Theory*, *supra* note 7 at 113 & 127.

Some proponents of the theory go further, describing prostitution as not just one expression of male dominance but as “the cornerstone of all sexual exploitation.”⁵⁸ Barry describes prostitution as “the model, the most extreme and crystallized form of all sexual exploitation.”⁵⁹

B. *Sex Radicalism*

Marxist critics have charged that postmodern theory marks a shift from the material to the discursive that necessitates relinquishing any focus on the economic.⁶⁰ Such critics consequently dismiss new social movements organized around sexuality as “merely cultural.”⁶¹ Following this analysis, one might assume the emphasis for postmodern sex radicals would be on the “sex” part of sex-work.

Indeed, sex radicals do insist on the sexual character of prostitution. Rubin is careful to state that “[p]rostitutes and other sex workers differ from homosexuals and other sexual minorities. Sex work is an occupation, while sexual deviation is an erotic preference.”⁶² Nevertheless, in constructing a model of the reigning “sex hierarchy” and placing commercial sex within it, Rubin treats money as a variable of sex rather than sex as a variable of labour.⁶³ She links prostitution to other marginalized sexualities such as those of gay men and lesbians, transvestites, transsexuals, sadomasochists, and fetishists.⁶⁴

This move on Rubin’s part may constitute simply an accurate reflection of the historical links between sex workers and oppressed sexual minorities. It may be an acknowledgement of the discursive construction (particularly through legal discourse) of prostitute as sexual identity rather than prostitution as economic activity.⁶⁵

⁵⁸ Barry, *supra* note 1 at 9.

⁵⁹ *Ibid.* at 11.

⁶⁰ See for example, Teresa L. Ebert, *Ludic Feminism and After: Postmodernism, Desire and Labor in Late Capitalism* (Ann Arbor: University of Michigan Press, 1996).

⁶¹ Judith Butler, “Merely Cultural” (1998) *New Left Rev.* 33.

⁶² *Supra* note 22 at 286.

⁶³ *Ibid.* at 281. See also Noah D. Zatz, “Sex Work/Sex Act: Law, Labor, and Desire in Constructions of Prostitution” (1997) 22 *Signs* 277 at 293.

⁶⁴ *Ibid.* at 279.

⁶⁵ This is akin to the historical movement described by Michel Foucault in *The History of Sexuality: Volume I Introduction* (New York: Vintage Books, 1980) from conceptualizations of discrete sexual acts to conceptualizations of sexual identities.

But, for sex radicals, the claim goes beyond this. Many sex radicals deliberately seek to complicate any assertion that, for sex workers, prostitution is just about the money. For example, in an interview with Annie Sprinkle, a well-known U.S. sex-worker, performance artist, and activist, Shannon Bell stated, “[t]he standard line on prostitution is that prostitutes don’t have pleasure, which can’t always be true, which isn’t true of other forms of work.” Annie Sprinkle responded, “I got off sexually. I was never one of these people who said ‘I’m never going to have orgasms when I work.’ I had orgasms when I worked, not with all the guys.”⁶⁶

Is this a distortion of sex-work, a collapsing of the work part into the sex part? This cannot be the case, because when it comes to political activism, the emphasis for sex radicals shifts emphatically to work. Wendy Chapkis explains that, “[f]rom the perspective of prostitutes’ rights advocates ... what makes prostitution abusive in some but not all instances is a question of the conditions under which the *work* takes place (the relations of production) rather than the terms under which the *sex* takes place (for money, love, or pleasure).”⁶⁷ Sex radicals argue that sex-work should not be stigmatized because of its sexual aspect; rather than being subject to special surveillance as a sex crime, it should be regulated like any other form of labour. In this vein, Jo Bindman asserts the necessity of identifying prostitution “as an occupation susceptible like the others to exploitive practices” so that “sex workers can be included and protected under the existing instruments which aim to protect all workers from exploitation and women from discrimination.”⁶⁸

Sex radicals are insistent on keeping both sides of the hyphen in view, highlighting the extent to which sex and work are intertwined in the context of prostitution. This approach falls in line with a broader postmodern project framed by Judith Butler as follows: “The question is not whether sexual politics thus belong to the cultural or the economic, but how the very politics of cultural exchange confound the distinction between the two spheres.”⁶⁹ For sex radicals, the term “sex-work” offers a fluidity that allows for strategic shifts in emphasis. More importantly, it provides a

⁶⁶ Shannon Bell, *Whore Carnival* (New York: Autonomedia, 1995) at 42-43.

⁶⁷ Wendy Chapkis, *Live Sex Acts: Women Performing Erotic Labor* (New York: Routledge, 1997) at 131 [emphasis in original].

⁶⁸ Jo Bindman, “An International Perspective on Slavery in the Sex Industry” in Kamala Kempadoo & Jo Doezema, eds., *Global Sex Workers: Rights, Resistance, and Redefinition* (New York: Routledge, 1998) 65 at 67. See also Jo Bindman, *Redefining Prostitution as Sex Work on the International Agenda* (Vancouver: CSIS, 1997) online: CSIS <<http://www.walnet.org/csis/papers/redefining.html>>.

⁶⁹ *Supra* note 61 at 43.

reflection of the complex and sometimes contradictory character of commercial sex.

V. THE ROLE OF THE SEX-WORKER

You know, when I read some of the stuff written by so-called “feminist allies,” it feels like they are fighting over our bodies. Some of them say they are “pro-prostitution,” as if it could be that easy. Then there are others who say that prostitution is evil because it contributes to violence against women and they’ll have their “Take Back the Night” marches right through the Red Light district without even dealing with the sex workers as other women. It’s like prostitutes are just these bodies who are somehow connected to something bad and evil or something good and on the cutting edge of revolution. They just turn us into symbols.

- Sandy, former teenage street prostitute ⁷⁰

The differing emphases of radical feminists and sex radicals on the sexual and work-related aspects of prostitution ultimately have important consequences for the role accorded to the sex-worker when each theory is translated into activism.

A. *Radical Feminism*

In radical feminism, the sex-worker is object, not subject. As commodified object rather than alienated subject, she cannot speak for herself. Thus, radical feminists speak in her place, representing the prostitute and thereby, occupying the field. According to Anne McClintock, Barry “refuses to appear publicly with sex workers or let them speak for themselves, on the grounds that they are too poor, too victimized, and too prone to false consciousness to be able to represent themselves objectively.”⁷¹

There is room for sex worker voices in radical feminist discourse only in so far as they are the voices of former sex workers who are telling the right story, the brutal “truth” of the experience of prostitution. For example, radical feminists are happy to share the podium with members of Women Hurt in Systems of Prostitution in Revolt (WHISPER), an organization of ex-prostitutes that characterizes all prostitution as sexual abuse and dedicates itself to helping other women escape “the life.”⁷²

⁷⁰ Chapkis, *supra* note 67 at 127.

⁷¹ Anne McClintock, “Sex Workers and Sex Work: Introduction” (1993) Social Text 1 at 7.

⁷² For a full description of the history and activities of WHISPER, see Bell, *supra* note 24 at 123; Evelina Giobbe, “Confronting the Liberal Lies About Prostitution” in Alison M. Jagger, ed., *Living With Contradictions: Controversies in Feminist Social Ethics* (Boulder: Westview Press, 1994) 120.

Despite assigning sex workers hopeless victim status, radical feminists accuse those who insist on designating their activity as “work” with liberatory potential of a peculiar excess of agency. As McClintock points out, Barry “condemns as irresponsible women who enter the trade out of choice: ‘We do an injustice to our sex if we do not ask women to be socially responsible for the choices they make.’”⁷³ Such women are dismissed as pawns or apologists for the sex industry.

This plays into old dichotomies of deserving victims versus bad women.⁷⁴ Often, once radical feminists take their theory on the road, this divide casts Third World women as the deserving victims while North American and Western European sexworkers’ rights activists are consigned to the role of bad women who are selling out their sisters for their own selfish pleasure and a few bucks. This binary classification does a disservice to both sides. The “bad women” have to bear the stigma of the label as well as the legal consequences of their transgressions. Those exalted as “deserving victims” in this scenario are simultaneously denigrated as incapable of agency, and they too have to endure legal surveillance, no less onerous for being imposed in the name of their protection. In the end, both “bad women” and “deserving victims” are silenced.

B. *Sex Radicalism*

Sex radicals purport to make space for sex workers to speak for themselves. Alison Murray, an Australian sex worker, researcher and activist states that “[s]upport of sex workers’ rights is part of a larger postmodern challenge to conventional feminism, which allows for a cacophony of voices and refuses the binary dichotomy in which all women are constituted as ‘other.’”⁷⁵

The fact that many of the creators of sex radical theory and participants in sex radical activism are themselves sex workers bears out this assertion.⁷⁶ Questions have been raised, however, about which sex worker voices are likely to participate in and to be heard in the cacophony that Murray describes. Does sex radicalism empower only the already more privileged among sex workers? Does it have any value for the most

⁷³ *Supra* note 71 at 7.

⁷⁴ Jo Doezema, “Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy” in Kamala Kempadoo & Jo Doezema, eds., *Global Sex Workers: Rights, Resistance, and Redefinition* (New York: Routledge, 1998) 34 at 42 [Doezema, “Forced to Choose”].

⁷⁵ Alison Murray, “Debt Bondage and Trafficking: Don’t Believe the Hype” in Kempadoo & Doezema, *ibid.* 51 at 52.

⁷⁶ For example, Annie Sprinkle, Carol Queen, and Carol Leigh. See Nagle, *supra* note 2.

oppressed among sex workers? Are existing class and race divisions replicated in the discussion?

In the U.S. context, Call Off Your Old Tired Ethics (COYOTE) has been described as “the best-known, most visible, and most politically significant” sex workers’ rights organization. It counts among its members outspoken and prolific proponents of sex radicalism including Carol Leigh, who has been credited with originating the term “sex work.”⁷⁷ Critics of COYOTE have charged that “their celebrations of ‘happy hookerdom’ are the result of white, middle-class privilege, and that they are atypical and unfit spokeswomen for the majority of prostitutes—whose ‘choice of profession’ is made under far greater constraints.”⁷⁸

In the course of eighteen months of fieldwork in San Francisco, Elizabeth Bernstein found that there is indeed a gulf between members of COYOTE and other sex workers based on race, class, educational background, and on the types of sex-work in which they are most likely to engage.⁷⁹

The vast majority of COYOTE’s members are white, middle-class and well educated. ... They are predominantly call-girls, escorts, exotic dancers and masseuses. ... Many work out of expensively furnished homes or rented ‘work spaces.’ ... Others work in lavishly decorated, view-filled houses run by madams. ... The average hourly fee, whether or not one is ‘in business for herself,’ is \$200.⁸⁰

In contrast, the San Francisco streetwalkers that Bernstein interviewed were more racially diverse, most had a maximum of tenth or eleventh grade educations and came from low-income or welfare families, and the prices they charged more commonly ranged from \$20 to \$100.

Even among streetwalkers, Bernstein identifies clear distinctions based on race and “body capital” that have a bearing on working conditions and on rates of pay. She places women who engage in “sex-for-drugs” prostitution in a category by themselves. She found that such women were mostly homeless and plied their trade at all hours of the day or night with the goal of scraping together enough money for a hotel room or a vial of heroin or crack. Twenty dollars was the standard price for a range of sex acts, though sometimes the women engaged in direct exchanges of sex for drugs.

⁷⁷ *Supra* note 2.

⁷⁸ Elizabeth Bernstein, “What’s Wrong with Prostitution? What’s Right with Sex Work? Comparing Markets in Female Sexual Labour” (1999) 10 *Hastings Women’s L.J.* 91 at 110.

⁷⁹ *Ibid.*

⁸⁰ *Ibid.*

Given her assertion that “under certain circumstances, prostitution may be ... empowering or liberatory,” and “under other circumstances it can be the most disempowering of exchanges, particularly for the already desperate and weak,”⁸¹ Bernstein suggests that framing sex-work in the language of empowerment and pleasure might have greater resonance for some sex workers than for others. Thus, it may be that sex radicalism only offers a voice to a very particular segment of the sex-worker population.

Similar arguments have been made when it comes to the international sex workers’ rights movement with respect to divisions between Western women and Third World women. Indian journalist Bachi Karkaria, reporting on a 1994 International AIDS conference, wrote with admiration of a presentation by Cheryl Overs, an Australian sex worker and activist. Ultimately though, Karkaria concluded that there could be no common ground between “this articulate forty-something woman” and “the ghoulish, painted masks of Kamathipura.”⁸² To her mind, the material conditions of Bombay brothels mire Indian prostitutes in the victim status that Overs refuses.

The sex workers’ rights movement has characterized itself as international, at least since the formation of the International Committee for Prostitutes Rights (ICPR) in 1985, but to begin with, this characterization was more of an aspiration than a reality. Kamala Kempadoo notes that there was no formal participation by Third World sex workers at the first two World Whores Congresses, in 1985 and 1986, and even in subsequent years the “dominance of the West was evident.”⁸³ As a consequence, “much of what was laid out in the Charter [World Charter for Prostitutes Rights (1985)] and discussed at the congresses was defined by (white) western sex workers and advocates.”⁸⁴ In 1997, the dominance of the West, and the United States in particular, was challenged dramatically in a storming of the podium by South and Central American sex worker delegates.

The initial lack of representation of Third World sex workers in the international movement contributed to the popular conception that sex worker struggles are products of North America and Western Europe. This is simply not the case. Sex workers’ movements and organizations exist in

⁸¹ *Ibid.* at 117.

⁸² Quoted by Rajeswari Sunder Rajan, “The Prostitution Question(s): (Female) Agency, Sexuality and Work” in Ratna Kapur, ed., *Feminist Terrains in Legal Domains: Interdisciplinary Essays on Women and Law in India* (New Delhi: Kali for Women, 1996) 122 at 128.

⁸³ Kamala Kempadoo, “Introduction: Globalizing Sex Workers’ Rights” in Kempadoo & Doezema, *supra* note 74, 1 at 20 [Kempadoo, “Sex Workers’ Rights”].

⁸⁴ *Ibid.*

Uruguay, Brazil, Venezuela, Chile, Mexico, Suriname, India, Colombia, Peru, South Africa, Japan, Dominican Republic, Nicaragua, Indonesia, Taiwan, and Turkey.⁸⁵ For example, the Mahila Samanwaya Committee, founded in Calcutta in 1994, is one of the world's largest sex workers' organizations. Its activities have included public rallies against eviction campaigns and police raids launched against Indian prostitutes.⁸⁶ La Unión Unica, founded in Mexico City in 1993, advocates for a membership of around 20,000 night workers.⁸⁷ In South Africa, the Sex Workers Advocacy and Education Taskforce (SWEAT), founded in 1994, has fought for the inclusion of sex workers' rights in the South African Constitution.⁸⁸

The lack of Third World representation in the international movement has steadily been rectified over the past decade, but the initial history of exclusion calls for vigilance, lest the "postmodern cacophony of voices" be reduced to a "free market of ideas" in which the already dominant monopolize the debate.

I want to make very clear that in raising questions about which sex workers are empowered by sex radicalism and sex workers' rights groups I am not making any claims about authenticity or lack thereof. I am not suggesting that there is a "true" sex worker voice that these groups have somehow failed to uncover, nor that the experiences of the most poverty-stricken and downtrodden, whether in domestic or international hierarchies, are somehow more "authentic" than the experiences of those higher up the ladder. I am alert to Ratna Kapur's charge that "the Third World victim subject has come to represent the more victimized subject; that is, the real or authentic victim subject,"⁸⁹ and I am not positioning the Third World sex worker thus here. My concern relates to the scope of any inquiry into the experiences, desires, and demands of sex workers. If the goal is to create a postmodern cacophony, a multitude of voices must be introduced into the mix to effectively shake up the stock narratives.

⁸⁵ *Ibid.* at 21.

⁸⁶ "Part Three: Sex Workers' Organizations Introduction" in Kempadoo & Doezema, *supra* note 74 at 169.

⁸⁷ *Ibid.*

⁸⁸ *Ibid.* at 168.

⁸⁹ Ratna Kapur, "The Tragedy of Victimization Rhetoric: Resurrecting the 'Native' Subject in International/Post-Colonial Feminist Legal Politics" (2002) 15 Harv. Hum. Rts. J. 1 at 2 [Kapur, "Victimization Rhetoric"].

VI. FROM DOMESTIC THEORY TO INTERNATIONAL ACTIVISM

A. *Radical Feminism*

As stated previously, radical feminists regard prostitution as a human rights violation that hurts all women, not just those who engage in it. Janice Raymond sums up this position as follows:

[P]rostitution expresses the worth of all women. Prostitution has an enormous impact on the way men value and treat women in general and any woman in particular. ... Because any woman's body can be commodified and sold as sex in the market place, all women can be reduced to sexual objects and instruments. The degraded role into which prostituted women are cast sanctions the sexual exploitation of all women, eroticizes women's inequality, and thus bolsters women's personal and social subordination.⁹⁰

Barry declares that it is the obligation of Western feminists to find a common base for collective action against prostitution worldwide; they must first come to understand their own sexual exploitation in their own countries, through the process of consciousness-raising, then join Third World women in a global struggle. She asserts that "international feminism gives voice and presence to that which has been unspoken in the global oppression of women ... particularly in areas of the world where women may be at great risk in claiming their right to be free of sexual exploitation."⁹¹

Informed by this theoretical position, radical feminists have waded enthusiastically into the international arena in support of an abolitionist approach to sex work. In 2001, for example, the Coalition Against Trafficking in Women (CATW) made the following progress report to its members:

The Coalition Against Trafficking in Women has influenced anti-sex industry and anti-trafficking legislation in the Philippines, Venezuela, Bangladesh, Japan, Sweden and the United States; and regional anti-trafficking legislation such as the new SAARC [(South Asian Association for Regional Cooperation)] Convention in South Asia. The Coalition campaigned for the definition of trafficking that is now part of the new UN Transnational Crime Convention's *Protocol to Prevent, Suppress and Punish Trafficking in Persons*, especially Women and Children. CATW also organized the International Human Rights Network (IHRN), a coalition of more than 100 NGOs, to successfully advocate for this definition of trafficking that protects all victims, not just those who can prove that they were forced. Many

⁹⁰ Janice Raymond, "Legitimizing Prostitution as Sex Work: UN Labour Organization (ILO) Calls for Recognition of the Sex Industry" online: CATW <http://action.web.ca/home/catw/readingroom.shtml?sh_itm=74a83456040edbd5bb2c9450e7e66161>.

⁹¹ *Supra* note 1 at 277.

of the measures to prevent trafficking, protect victims, and punish perpetrators were also initiated by CATW.⁹²

Radical feminists assert that consent is irrelevant, that prostitution willingly entered into is as damaging as forced prostitution. Nevertheless, it is much easier to justify a crusade to rescue victims of forced prostitution, and in radical feminist discourse all Third World sex workers become victims of forced prostitution. The operating assumption is “that although choice is possible in the West, economic oppression in Asia [and elsewhere in the Third World] is so all-encompassing that the very possibility of choice or agency is negated.”⁹³ If Western women are victims of prostitution, Third World women are victims plus.⁹⁴ Thus, radical feminists have embarked on an international crusade to save powerless victims, women of men, and Third World countries of Western, capitalist nations.

In so doing, are radical feminists operating from a legitimate premise that sex workers in the Third World are in fact subject to worse material conditions than those working in the United States and Canada? Or have Anglo-American radical feminists gone international in a search for grateful, compliant victims at a moment when they face fierce objections to their project from sex workers in their own countries?

Radical feminist discourse on the international sex trade appears to be a complete flip of the “white slave” hysteria, in part fomented by their social purity feminist foremothers at the turn of the century.⁹⁵ Previously, the victim to be rescued was cast as a young, white, innocent girl preyed upon by non-white men. Now, the prototypical victim is a poverty-stricken Third World woman preyed upon by white Western men via sex tourism. At first glance, this shift seems like an enlightened recognition of the realities of racism, colonialism, and imperialism. Looking deeper, though, the new narrative, nevertheless, plays into racist and colonial stereotypes of the patriarchal nature of Third World societies and the subordinated status and passive nature of the women who dwell within them.

⁹² MacKinnon, *Feminist Theory*, *supra* note 7.

⁹³ Kapur, “Victimization Rhetoric”, *supra* note 89 at 26.

⁹⁴ In adopting this turn of phrase, I am borrowing from Angela Harris who has stated: “The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: ‘racism + sexism = straight black women’s experience,’ or ‘racism + sexism + homophobia = black lesbian experience.’” See Angela Harris, “Race and Essentialism in Feminist Legal Theory” (1990) 42 *Stan. L. R.* 581 at 588.

⁹⁵ Jo Doezema, “Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women” (2000) 18 *Gender Issues* 23 [Doezema, “Loose Women or Lost Women”].

Looking once again at the victim and the villain, the victim is depicted as young, poor, illiterate, disease-ridden, and incapable of agency. Jo Doezema points out that distinctions between child and adult are blurred in order to encourage the view of the 'trafficking' victim as young and helpless. "A UNICEF report states that the majority of 'girls' 'trafficked' from Burma to Thailand 'are between 12 and 25 years old.' No indication is given as to what percentage of these 'girls' is actually under 18."⁹⁶ Barry and Raymond similarly blur the line between childhood and adulthood in their descriptions of trafficking in various regions.⁹⁷

Long, sometimes titillating stories are told, almost invariably about Asian women, thereby trading on racial stereotypes of passivity.⁹⁸ Barry puts forward the story of fourteen-year old Sanu as "a typical case of trafficking that goes from fraudulent job promise, transfer, to arrival and seasoning."⁹⁹ Sanu left Nepal to seek a higher paying job in a carpet factory across the Indian border. When she arrived at what she thought was the carpet factory, she was told by the proprietor to take a bath. When she emerged, her clothes had disappeared and she was given a loose-fitting nightgown to wear. She soon realized, to her terror, that she was held captive in a brothel and that she would not be allowed to leave until she repaid a sum of money that had been given to her parents. After a week of "seasoning," she "grew apathetic and no longer resisted the men who were sent to her." Her story has an ending that is unusual (she escapes) but nonetheless utterly conventional (she marries her liberator).¹⁰⁰

Turning now to the villain in the radical feminist tale, he is not always the white Western man simultaneously standing in for the twin evils of patriarchy and capitalism. The villain may be identified as organized crime, frequently classed as "other," working in collusion with corrupt foreign governments to traffic Third World women into Western nations. For example, in a recent Toronto case in which police shut down a "trafficking ring" that had smuggled Thai "sex slaves" into Toronto and kept them captive there, media accounts laid the blame at the feet of "Asian gangs."¹⁰¹ By colluding in the creation of such narratives, radical

⁹⁶ *Ibid.* at 35 [footnotes omitted].

⁹⁷ Barry, *supra* note 1; Raymond, *supra* note 90. There is a definite irony in the consignment of teenage and twenty-something women to the status of children by the very feminists who fought so long and hard to have the word "woman" used in place of "girl."

⁹⁸ Doezema, "Forced to Choose", *supra* note 74 at 42.

⁹⁹ *Supra* note 1 at 175.

¹⁰⁰ *Ibid.* at 174.

¹⁰¹ Doezema, "Loose Women or Lost Women," *supra* note 95.

feminists play into the fear of the “other” that feeds racist immigration policies.

Frequently, it is the family of the sex worker that is cast in the villain role. For example, Barry asserts that “[i]n Nepal some parents sell their children to brothels, and some make periodic visits to Bombay to collect their daughters’ earnings. This is particularly common among the poor, indigenous communities of Nuwakot and Sindhu Palchowk to the west and northwest of Kathmandu.”¹⁰² She is careful to state that the practice of selling daughters is not attributable to the backwardness or ignorance of these families but to “the power relations of marital feudalism” that prevail in such countries.¹⁰³ The implication is that the practice is attributable to the backwardness and ignorance of whole nations.

This sort of analysis treats Western societies as more advanced than their Third World counterparts. Barry asserts, “[s]exual exploitation is differently shaped according to the economic development of each region, which determines how sex is constructed and deployed to subordinate women.” She describes four “historical stages in the deployment of sexual exploitation,” which overlap and coexist, but which “also constitute progression, one leading to another with economic development and prosperity.” She locates “trafficking in women” in the first stage, which she describes as “prevail[ing] in pre-industrial and feudal societies that are primarily agricultural, where women are excluded from the public sphere [and] women’s reduction to sex is a fact of their status as the property of their husbands.”¹⁰⁴

In constructing this hierarchy of development, Barry evokes precisely the picture of Third World women and societies for which Third World feminists have repeatedly criticized Western feminists. Kempadoo explains:

The Third World/non-western woman is positioned in this discourse as ‘ignorant, poor, uneducated, tradition bound, domestic, family-oriented, victimized etc’ and is conceptualized as leading a ‘truncated’ sexual life. She is not yet a ‘whole or developed’ person, but instead resembles a minor needing guidance, assistance and help. The construct stands in opposition to that of the western woman who is believed to have (or at least has the potential to have) control over her income, body and sexuality: the emancipated, independent, post-modern woman.¹⁰⁵

¹⁰² *Supra* note 1 at 183.

¹⁰³ *Ibid.* at 184.

¹⁰⁴ *Ibid.* at 51.

¹⁰⁵ Kempadoo, “Sex Workers’ Rights”, *supra* note 83 at 11 [footnotes omitted]. Kempadoo is here drawing upon the work of Chandra Talpede Mohanty. See Chandra Talpede Mohanty, “Under Western Eyes: Feminist Scholarship and Colonial Discourses” in Chandra Talpede Mohanty, Ann Russo &

Moreover, in this endeavour, radical feminists often import a culturally-bound definition of sex into other contexts, setting it up as universal. Kempadoo observes,

[s]ubaltern understandings and lived realities of sexuality and sexual-economic relations, such as found in various African or Caribbean countries, for example, where one can speak of a continuum of sexual relations from monogamy to multiple sex partners and where sex may be considered a valuable asset to trade with, are ignored in favour of specific western ideologies and moralities regarding sexual relations.¹⁰⁶

On a practical level, radical feminist law reform strategies rooted in the victim status of Third World women invite protectionist responses from states and international bodies that rarely promote the interests of those women. Kapur illustrates this point with the example of restrictions imposed by the government of Nepal that prevent women under the age of thirty from travelling outside the country unless in the company of a husband or male relative.¹⁰⁷ Rather than operating to protect victims of forced prostitution, such anti-trafficking measures prevent women from engaging in voluntary migration.

B. *Sex Radicalism*

Sex radicals were not as quick as radical feminists to dive into debates surrounding the international sex trade. Having learned important lessons from critical race and Third World feminist theory, they were loath to put forward a vision of sex-work in the international arena that could feed into “histories of the oversexualization of non-western women in western cultures and the colonial legacies of the rape and sexual abuse of indigenous and other Third World women.”¹⁰⁸

But the problems with staying out of the fray quickly became apparent. To do so cedes the field to the radical feminist approach, maintaining pleasure, agency and resistance as privileges of the West and, given the legal successes of radical feminists and their conservative allies, leaving Third World sex workers to the mercies of the protectionist measures those successes spawned.

Lourdes Torres, eds., *Third World Women and the Politics of Feminism* (Bloomington: Indiana University Press, 1991) 51. See also Vasuki Nesiiah, “Toward a Feminist Internationality: A Critique of U.S. Feminist Legal Scholarship” (1993) 16 Harv. Women’s L.J. 189.

¹⁰⁶ Kempadoo, “Sex Worker’s Rights”, *ibid.* at 12.

¹⁰⁷ Kapur, “Victimization Rhetoric”, *supra* note 89 at 6.

¹⁰⁸ Kempadoo, “Sex Workers’ Rights”, *supra* note 83 at 13-14.

Once sex radicals ventured onto international terrain, worries remained about adopting an approach “whose subtext sees Western women as having a patent on feminism,” whereby “the benevolent Western feminists provide theory that is useful for ‘Third World’ practice, that rescues ‘Third World’ women.”¹⁰⁹ To what extent does or should sex radical theory travel?

To presume that the insights of sex radicalism have no application in the realm of Third World sex workers once again plays into the development narrative that links the dichotomies modern/postmodern, Third World/First World, victimization/agency.¹¹⁰ Kapur adds to this list, writing, “pleasure, desire and agency are assumed to be associated with the West while the third world subject is constructed almost exclusively through the lens of violence, victimization and impoverishment.”¹¹¹

One way for sex radicals to avoid participating in the entrenchment of these binaries would be to adopt the approach advocated by Brenda Cossman in the context of feminist comparative legal studies.

Instead of understanding the flow of the comparative analysis as unidirectional, the hegemonic discourses of the West might begin to be displaced if we insist that the flow of comparative analysis be multidirectional. Recent cultural studies and postcolonialism have emphasized and examined the transnational and multidirectional flow of culture, traveling theory, and the syncretism and hybridity in contemporary mass culture. Borrowing these insights, we might be able to deconstruct the monolithic categories of Anglo-American legal feminism by turning the gaze of comparison back on itself.¹¹²

Thus, the goal would not be for Anglo-American sex radicals to import their theory wholesale into other jurisdictions, but to engage in an exchange that has the potential to revamp the theory as well as to give insight into practice on both sides of the border in question. This makes particular sense in light of a focus on the international sex trade. Here, we are literally talking about traffic—not straightforward traffic between one nation and another, but global traffic involving multiple populations in multiple regions moving in multiple directions: east, west, south, and north.

A related danger for sex radicals is associated with the postmodern edict to focus on the local. If Anglo-American sex radicals restrict their analyses to their local contexts and these local investigations dominate the

¹⁰⁹ Nesiah, *supra* note 105 at 208.

¹¹⁰ Rajan, *supra* note 82 at 130.

¹¹¹ Ratna Kapur, “Law and the Sexual Subaltern: A Comparative Perspective” (2000) 48 *Clev. St. L. Rev.* 15 at 15 [Kapur, “Law and the Sexual Subaltern”].

¹¹² Brenda Cossman, “Turning the Gaze Back on Itself: Comparative Law, Feminist Legal Studies, and the Postcolonial Project” (1997) *Utah L. Rev.* 525 at 536.

field, the particular comes to stand in for the whole. Sex radicals become essentialist in spite of themselves. Kempadoo speaks of the indirect “creation of a hegemonic western script about prostitution” through the proliferation of collections of sex worker writings with an exclusively North American and Western European focus.¹¹³

This script perpetuates the misperception that sex workers movements are solely a North American and Western European phenomenon.¹¹⁴ Many people are aware of the existence of COYOTE (founded in 1973 in San Francisco) and of the general strike staged by French sex workers in 1975,¹¹⁵ yet few people have heard of the Ecuadorean sex workers group founded in 1982 or of the general strike that they staged in 1984.¹¹⁶

As a consequence, the perceptions and demands of North American and Western European sex workers eclipse the often very different perceptions and demands of sex workers from other parts of the world. A prime example is the reliance on a civil rights paradigm with an emphasis on negative rights—freedom from, rather than freedom to—that is poorly suited to achieve the demands of many sex workers’ groups. For example, it is difficult to imagine the civil rights paradigm accommodating the demands of the Mahila Samanwaya Committee for free education for the children of Indian sex workers.¹¹⁷

As previously noted, sex radical views are much more complex than the libertarian approach with which they are often conflated by critics. Nevertheless, many of the stands that sex radicals have taken to date tilt toward a free market, anti-state regulation approach. It is troubling to hear activists who have never uncritically embraced a free market in anything else, advocating for a free market in sex, as if the play of market forces is likely to be less oppressive in this context than in any other.

¹¹³ Kempadoo, “Sex Workers’ Rights”, *supra* note 83 at 12.

¹¹⁴ See *supra* notes 85-88 and accompanying text.

¹¹⁵ Priscilla Alexander & Frederique Delacoste, eds., *Sex Work: Writings By Women in the Sex Industry* (London: Virago, 1988).

¹¹⁶ Members of the group described the strike thus: “We closed down the brothels, cut the telephone lines, padlocked the rooms and made sure that those who profited from our work were unable to do anything during those days, from the boys who fetched water, to the cleaning staff, to the taxi drivers. There was full radio coverage during the strike. Authorities were held hostage in the place where the association operates until the demands were met.” Angelita Abad *et al.*, “The Association of Autonomous Women Workers, Ecuador, ‘22nd June’” in Kempadoo & Doezema, *supra* note 74, 172 at 173.

¹¹⁷ Minu Pal *et al.*, “The Wind of Change is Whispering at Your Door: The Mahila Samanwaya Committee” in Kempadoo & Doezema, *supra* note 74, 200 at 203.

In a case study of the sex trade in Thailand, Ryan Bishop and Lillian Robinson found they had to work through several layers in an attempt to come to grips with the political economy of the industry there.¹¹⁸ The stock narrative points to a decline in rural agricultural economies, which leads to mass-migration to urban centres where young men and women enter the sex trade to meet the demand created first by the presence of U.S. soldiers and later by the rise of the tourist industry. Bishop and Robinson do not deny the validity of this account, but deem it incomplete because it fails to take account of the complex array of factors that underpin and overlay the story. On the domestic front, they point to changes in patterns of land ownership, manipulation of irrigation policies, denial of credit to family farms, and deforestation. On the international front, they highlight the important role played by development planning, international lending agencies, and transnational corporations.

An uncritical, or even a by-default embrace of the “free market” in this scenario would seem to have all kinds of consequences for sex workers, few of them liberatory. Sex radicals must take care to attend to the complexity of political and economic forces at work at the sites of their interventions, lest they invite neo-liberal co-optation.

VII. CONCLUSION

In the clash of Anglo-American feminist discourses about the international sex trade, numerous parallel binaries are produced: victim/agency, danger/pleasure, Third World/West, modern/postmodern, poverty-stricken streetwalker/high-priced call girl, material/discursive, economic/cultural, and so on. Does radical feminism line up on one side and sex radicalism on the other?

“Sex-work” confounds the binaries. At first glance it seems that “work” clearly lines up with the material, the economic, the modern: the Western streetwalker or the Third World sex worker who is doing it just for the money. In a parallel analysis, “sex” lines up with the discursive, the cultural: the Western sex workers’ rights activist who is making a claim to pleasure.

Yet radical feminism, a modernist, materialist theory, rejects the term “sex-work” because in its analysis, prostitution is never about work, only about sex, and its construction of “sex” is resolutely materialist. The sex of prostitution is about danger not pleasure, victimization, not agency. Sex radicalism, a postmodern theory with an affinity for discursive analysis,

¹¹⁸ Ryan Bishop & Lillian S. Robinson, *Night Market: Sexual Cultures and the Thai Economic Miracle* (New York: Routledge, 1998) at 92-100.

embraces the term, emphasizing the “work” aspect of “sex-work” in its activist efforts, but refusing to restrict its analysis to one side or the other. For the sex radical, sex-work is always both sex and work, inextricably intertwined; it is about pleasure *and* danger, agency *and* victimization.

The monolithic character of the radical feminist analysis of prostitution contributes to the construction and perpetuation of the series of binaries. There is no scope in its theory for transcending them. Sex radicalism is not radical feminism’s opposite pole. It does not shore up the opposite side of the binaries. It does not always succeed in transcending them, but transcendence, or perhaps transgression of the boundaries that divide them, is always the sex radical goal.

Kapur invites consideration of “ways in which we can create a space especially for the sexual subaltern subject in pleasure, who exists in both our worlds [West and Third World] though she expresses herself in culturally specific ways.” She asserts that:

[t]his subject can shatter any claim to a universal sexual or cultural truth, as the sexual subalterns are diverse and pluralistic. Emphasizing the pleasure of this subject does not deny the violence and exploitation that surround her life, but serves to challenge the representation of her exclusively as a victim, of according her partial agency.¹¹⁹

Radical feminist discourse denies pleasure and agency to the sex worker, particularly to the Third World sex worker. Sex radical discourse has its own pitfalls. But, in its embrace of sexual and theoretical pluralism, sex radicalism holds considerable promise for contributing to the creation of space for the “sexual subaltern subject in pleasure,” and thereby opening the possibility of exploring the full texture and complexity of the lives of sex workers across the globe.

¹¹⁹ Kapur, “Law and the Sexual Subaltern”, *supra* note 111 at 22.

