

Sex and Work

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In a symposium on “Sex for Sale,” it seems natural and appropriate to examine the relationship between “sex,” on the one hand, and “work,” on the other. After all, “work” is perhaps the word most frequently used to refer to the sale of human labor and services in market-oriented societies. So it is fitting that Dr. Farley’s paper begins our inquiry today by asking: Is it acceptable to refer to prostitution as “labor,” “sex work,” or “a job”? It turns out that the panelists have different answers to this question.

Dr. Farley’s answer is an emphatic “No.” Much of her paper is devoted to arguing that, as a descriptive matter, prostitution is not the same as other activities that are known as “jobs.” For example, she asserts that most jobs are not as physically dangerous,¹ as emotionally damaging,² or as intrinsically racist, sexist and classist,³ as is prostitution. Farley goes on to argue that, as a normative matter, calling prostitution a “job” or “sex work” erases the distinctive harms of prostitution and makes them culturally invisible.⁴ In one notable passage, for instance, she asserts: “[D]escriptions of prostituted women as sex workers promote an acceptance of conditions that in any other employment context would be correctly described as sexual harassment, sexual exploitation, or rape.”⁵

At first glance, Farley’s statement seems unobjectionable, even correct. We are all familiar with the phenomenon of naming—the process through which the act of collectively referring to something by a particular label or frame calls into focus certain features of the phenomenon while simultaneously operating to suppress other features. Yet, even if we accept the power of naming, it may still be true that calling prostitution a form of “work” does not always or

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1. Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know to Keep the Business of Sexual Exploitation Running Smoothly*, 18 YALE J.L. & FEMINISM 109, 114-15 (2006).

2. *Id.* at 115-17.

3. *Id.* at 117-21.

4. *Id.* at 111-12 *passim*.

5. *Id.* at 141.

inevitably obscure the sexual violence and sexist abuse that often accompanies it. Instead, whether or not it is normatively harmful to call prostitution “work” may turn on the purpose for which the characterization is made.

Professor McGinley’s analysis suggests that, for purposes of making a legal claim, it simply isn’t true that to call prostitution work is to accept conditions of sexual harassment that are rejected in other forms of work. In fact, McGinley’s work shows that just the opposite is true—that it is *only* by labelling prostitution (and other forms of commercial sex) “work” that women can use employment discrimination laws to protect themselves against sexual harassment. Why would this be the case?

At the most basic level, Title VII of the Civil Rights Act of 1964⁶ (and our other laws prohibiting sex discrimination and harassment in employment) would not even apply to “brothel prostitution,” “exotic dancing” and the other forms of commercial sex analyzed by McGinley unless these activities can be characterized as “employment” and the people who manage them characterized as “employers” or “agents” of employers under the statute.⁷

Even more fundamentally, at a conceptual level, if we characterize the act of having sex or dancing nude for money as itself a form of “sexual harassment” or “rape,” then it becomes difficult to draw a line between the content of the transactions themselves—the having sex or the dancing nude—and the discriminatory, unwelcome sexism and abuse (both sexual and nonsexual) that are often heaped upon the women who engage in these activities. We simply lose the analytical and legal space necessary to call these abuses—which have not been explicitly agreed to and are not an inherent part of the “service” or “job” rendered—sexual harassment. McGinley’s analysis highlights, for example, that many exotic dancers do not see their job as requiring them to accept unwanted touching,⁸ or even to put up with sexist and derogatory name-calling. These activities have not been agreed to by these dancers as part of the job, they are not necessary to its performance, and these dancers find them objectionable.⁹ They aren’t just part of what it means to be an exotic dancer but are instead unwelcome and sexually discriminatory forms of abuse that have altered the “terms or conditions of the women’s employment.”¹⁰ In other words, they are harassment under Title VII.¹¹ Thus,

6. 42 U.S.C. § 2000e et seq. (2000).

7. Professor McGinley’s article deals with prostitution in Nevada, where it is “legal in counties . . . with a population of fewer than 400,000 people.” Ann C. McGinley, *Harassment of Sex(y) Workers: Applying Title VII to Sexualized Industries*, 18 YALE J.L. & FEMINISM 65, 68 n.15 (citing NEV. REV. STAT. ANN. § 244.345 (2005)). Nothing in the language of Title VII precludes its application to employment in activities or industries that are illegal. I could not find any case law directly addressing the issue. .

8. See McGinley, *supra* note 7, at 99-100, 104-05.

9. *Id.* at 104-05.

10. *Id.* at 104.

McGinley helps us see the harassment by clarifying the real core of the job of exotic dancing—which consists of sexy dancing, not putting up with sexual assault or name-calling—something she could never have done had she not looked at exotic dancing as a “job” at all.

Note that by creating this conceptual space, McGinley is even able to provide protection against sexual harassment for women engaged in what she calls “brothel prostitution.”¹² In her analysis, activities that aren’t negotiated and paid for up front by the customer as part of the contract are not a fundamental part of the “job.”¹³ Thus, rather than just being part of the prostitution itself, customers’ demands for extra sexual services, acts of physical violence or assault, and abusive language and behavior all become legible—and, in McGinley’s recommendations, actionable—as sexual harassment.¹⁴

Finally, as McGinley’s paper makes clear, being willing to call prostitution a form of work also allows her to place it on a continuum with other forms of work in which sexuality or sex appeal is used for business purposes. In McGinley’s analysis, prostitution is compared not only to exotic dancing,¹⁵ but also to cocktail waitressing¹⁶ and even to blackjack dealing¹⁷—the latter being a male-dominated job from which women were barred in Las Vegas from until the 1970s and in which they are still rarely found.¹⁸ So it isn’t just highly sexualized jobs traditionally performed by women that come under the microscope; male-dominated jobs that are not typically thought of as involving sexuality do, too.

Indeed, in Professor Bergin’s paper, we can even begin to see some links between prostitution and the legal profession.¹⁹ In her survey, it isn’t only prostitutes who trade on their sexuality in an attempt to succeed in the labor market. Some female lawyers also use what Bergin calls sexualized advocacy in an effort to curry favor with male judges, juries, clients, and colleagues.²⁰ When prostitutes are compared to blackjack dealers and even lawyers, we know that some line separating the good girls from the bad girls—whether based on gender, professional status, or middle-class respectability—has been crossed!

11. *Id.* at 108. See 42 U.S.C. § 2000e-2(a)(1) (declaring unlawful employment practices as those, *inter alia*, which “discriminate against any individual with respect to his. . . terms [and] conditions. . . of employment”).

12. McGinley, *supra* note 7, at 83-87, 105-06.

13. *Id.* at 105.

14. *Id.*

15. *Id.* at 78-82, 104-05. See *supra* notes 8-11 and accompanying text.

16. McGinley *supra* note 7, at 76-77, 103-04.

17. *Id.* at 74-76, 103.

18. *Id.* at 67.

19. Kathleen A. Bergin, *Sexualized Advocacy: The Ascendant Backlash Against Female Lawyers*, 18 *Yale L.J. & Feminism* 191 (2006).

20. *Id.*

This is another major theme of most of the papers, I would say: the continuing need to undermine, if not eradicate, the traditional “good girl/bad girl” dichotomy. McGinley expressly makes this point in order to argue for sexual harassment protection for women engaged in work in which sexuality is commercially exploited.²¹ But I also take the need to do away with the good girl/bad girl dichotomy as a major part of Ms. Hotaling’s paper and project.²² At SAGE, she and her colleagues have worked tirelessly and heroically to remove the stigmatization and shame and just plain blame our society historically has placed on women and even underage girls who have traded sex for money. SAGE is dealing with many different aspects of the problem, but a big part of the project is battling the condemnation of the women and girls involved in selling sex so that they won’t be blamed as bad girls, “criminals or ‘toss-aways’” who deserve their own misery and victimization.²³ As Hotaling argues, this shift allows women and girls to get access to the services they need in order to deal with the emotional and social problems that have led them to, and have been exacerbated by, their lives on the streets.²⁴ At peer-run “safe houses” like those run by SAGE, women and girls who have been victimized and who wish to escape prostitution can receive the love, services, and resources they need to deal with their problems and create better lives for themselves.²⁵

Along with Dr. Farley’s paper, Ms. Hotaling’s piece emphasizes the degree to which adult prostitution is linked to underage prostitution and child abuse. According to the research they cite, many women who are engaged in prostitution as adults report that they were prostituted as children and adolescents.²⁶ Many were also victims of sexual and/or other forms of physical and emotional abuse as children.²⁷ Indeed, as both papers emphasize, it is these horrendous conditions that often drive youths from their homes and make them vulnerable to pimps or others who “recruit” them into prostitution.²⁸

Hotaling argues persuasively that we should stop treating these kids as criminal “child prostitutes” and instead treat them as the victims of statutory rape and sexual assault and child abuse that they are so that they can obtain the services they need and deserve.²⁹ Even more expansively, she argues that

21. McGinley, *supra* note 7, at 70-74.

22. See generally, Norma Hotaling, Kristie Miller & Elizabeth Trudeau, *The Commercial Sexual Exploitation of Women and Girls: A Survivor Service Provider’s Perspective*, 18 YALE J.L. & FEMINISM 181 (2006).

23. *Id.* at 183.

24. *Id.* at 183-85.

25. *Id.* at 189.

26. Hotaling et al., *supra* note 22, at 187.

27. Farley, *supra* note 1, at 111, 113; Hotaling et al., *supra* note 22, at 182.

28. Farley, *supra* note 1, at 111; Hotaling et al., *supra* note 22, at 185.

29. Hotaling et al., *supra* note 22, at 188-89. See also Katherine Wiltenburg, Consent in the Modern Age: An Exploration of the Legal Treatment of Juvenile Prostitution in New York State 30 (Jan. 13, 2006) (unpublished manuscript, on file with the Yale Journal of Law & Feminism).

policy makers have been working in crisis mode to respond to the problem, when instead they really need to focus on prevention.³⁰ In the name of prevention, she calls for

sustained attention to all the social causes of prostitution, including but not limited to: gaping problems in our social response to child abuse within families and communities; extreme poverty; outdated legal doctrines and practices; gender inequality; racial stratification; and the horrifying societal tolerance for the notion that prostituted individuals are without value or rights.³¹

She also calls for working with boys and men to inculcate respect for women and their sexuality.³² I couldn't agree with her more.

Here we come to an interesting point of agreement between the papers. Hotaling's analysis here—and, in fact, strands of all the other papers—suggests that, whatever one may think about whether the commercial sale or use of sexuality is *inherently* oppressive and degrading to women and should be eliminated (a point on which the panelists disagree), most of us can and do agree about the wrongfulness of and need to eradicate the underlying societal conditions of child abuse, gender inequality, racism, poverty and abusive working conditions that so often drive people into prostitution and make it an oppressive experience for many once they are there.

To elaborate on this point a bit, the papers for this panel discuss and emphasize three of these different sets of underlying social conditions. The first is child abuse, which I have just mentioned is a major focus of the Hotaling and Farley papers. Child abuse is a deep problem in our society, one that lies at the root of many of our social ills. Creating the conditions in which people can become good parents and everyone can have access to the knowledge, resources, and time they need to raise children in loving and healthy ways should be a major priority for any society; protecting children from abuse should be another.

The second set of background conditions, and one that is emphasized by virtually all the papers, is gender inequality. There are, of course, many different forms of gender stratification, but one of the most fundamental is the one early Second-Wave feminists referred to as the “sexual division of labor”³³—or, the consignment of women and men to different activities and forms of work, with women being assigned the least highly-valued and often objectively least desirable ones in the society. In the arena of employment and other work done for pay, the existence of such sex segregation both facilitates and justifies the undervaluation of the women's work and the degradation of

30. *Id.* at 189.

31. *Id.* at 188.

32. *Id.* at 190.

33. See, e.g., RUTH ROSEN, *THE WORLD SPLIT OPEN: HOW THE MODERN WOMEN'S MOVEMENT CHANGED AMERICA* 122 (2000).

their working conditions. Think of the work performed by secretaries, waitresses, housekeepers, or food service workers. These are all jobs done mostly by women for low pay and little recognition, often under conditions of limited autonomy and sexist forms of authority—to say nothing of the gender stereotyping and gendered demands that are often imposed upon the women in these positions. Little wonder that, for over four decades, feminists have been trying to improve the lot of women working in traditionally female jobs, to attract men into them, and to open up other employment prospects for women.³⁴ Sex segregation results from, and perpetuates, sex discrimination.³⁵

Prostitution and other forms of commercial sex work can be viewed through the critical lens that a focus on the sex-segregated character of these activities provides. Just as we don't have to believe that administrative work or housekeeping or serving and preparing food is *inherently* sexist or degrading work, we don't necessarily have to believe that prostitution and other forms of commercial sex are inherently sexist or degrading in order to be concerned about the fact that it is women who are overwhelmingly involved in selling sex and men who are almost universally involved in buying it. Or to be concerned about the low pay, low status, limited autonomy, poor working conditions, abusive authority, and sex discrimination that attend so many activities performed mostly by women, and especially women of limited means, for pay.

There are many angles from which to work on the issue of prostitution and sex for sale, but here I want to suggest that one line of attack is to ask: Why is it that women are the ones who so often provide sex for money and men the ones who so often buy it? If we follow McGinley's lead and look beyond prostitution to other forms of work that involve the use of sexuality, a focus on the background condition of sex segregation might lead us to ask: Why is it that many employers hire only women for jobs such as exotic dancing or cocktail waitressing or other sexualized jobs? Why is it so taken for granted that it's appropriate or necessary for women—but not men—to engage in these “sexualized” activities?

Just as McGinley's analysis showed that calling these activities “work” can create the space to challenge some of the forms of sexism and abuse surrounding them as sexual harassment, it seems to me that characterizing the activities as work can also open up the conceptual space to challenge the fact that these activities are often reserved only for women and, in so doing, challenge the underlying system of sex segregation that is so fundamental to gender inequality. Under Title VII, generally speaking, an employer cannot hire only women for a position unless it can be shown that the essence of the

34. See, e.g., *id.* at 70-81, 268-71 *passim* (detailing the priorities of the modern feminist movement with respect to work).

35. I elaborate this link at more length below. See, e.g., my discussion of Rosabeth Moss Kanter's work, *infra* note 42 and accompanying text.

business and the job—as described in gender-neutral terms—would be undermined by hiring men.³⁶ Following this reasoning, early courts refused to allow Pan American Airlines to justify sex segregation by characterizing the flight attendant job as one that required nurturing that only women could provide;³⁷ nor did later courts allow Southwest Airlines to justify such segregation by describing their version of the flight attendant job as one that involved selling “female sex appeal” that only women possess.³⁸

Although some judges have speculated that hiring women only might in fact be defensible for jobs that more expressly involve sexual titillation (here one court cited the Playboy Bunny position),³⁹ I think we should ask: Why should that be so? Even if the law allows businesses to create jobs that involve selling sex appeal, why is it that so often women alone are perceived to have that sex appeal? Aren't men capable of sexual titillation? One answer that is frequently given is that the business caters to heterosexual men, who are only attracted to women. But, why should that be a justification? Law firms aren't allowed to hire only white lawyers on the ground that most of their clients are white and would prefer to work with lawyers of the same race, and I doubt that the courts would allow that excuse if any other racial or ethnic group were involved.⁴⁰ So why not apply the same reasoning to sex and sexual services? The upshot would be that, if a business wanted to exploit sexuality, the employer would have to hire men to be sex(y) workers, too, and to contemplate both women and men of various sexual orientations as the customer base. It might be objected that such an approach would only result in a leveling-down effect in which men are also sexually exploited. But that's not necessarily so. Perhaps employers wouldn't try to profit from their employees' sex appeal quite so often if they also had to do this to men; perhaps male workers would join with women in challenging the system and its abuses. At a minimum, such a system would challenge the taken-for-granted notion that women are always those who sell sex, while men never are. I wouldn't want to rest too many hopes on this sort of strategy, but I do think it would be an innovative way to

36. 42 U.S.C. 2000e-2(e)(1) (defining what has come to be known as the bona fide occupational qualifications (“BFOQ”) defense as encompassing “those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise”). See also *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971); *Wilson v. Southwest Airlines Co.*, 517 F. Supp. 292 (N.D. Tex. 1981).

37. *Pan American*, 442 F.2d at 388.

38. *Southwest Airlines*, 517 F. Supp. at 303.

39. *Id.* at 301 (citing dicta from *St. Cross v. Playboy Club*, Appeal No. 773, Case No. CFS 22618-70 (N.Y. Hum. Rts. App. Board 1971) and *Weber v. Playboy Club*, Appeal No. 774, Case No. CFS 22619-70 (N.Y. Hum. Rts. App. Board 1971)).

40. The BFOQ defense is not available in race discrimination cases; however, it is available in claims regarding national origin, just as it is with respect to sex. 42 U.S.C. 2000e-2(e)(1). In general, the courts have not allowed claims of customer preference to justify a BFOQ defense. See, e.g., *Pan American*, 442 F.2d at 389.

try to break down the historic linkage between sex segregation and discrimination, on the one hand, and sexuality, on the other.

This discussion leads me to Professor Bergin's fascinating paper, which, perhaps even more directly than the other pieces, raises complex questions about the relationship between sex segregation and discrimination, on the one hand, and sexuality, on the other. Bergin asks what's wrong with female lawyers trading on their sex appeal, and her answer is that women's overt use of sexuality on the job promotes gender stereotyping in a way that ultimately redounds to women's detriment.⁴¹ Bergin, of course, skillfully marshals social research and reasoning to support this proposition. Yet, what's interesting to me is that both the research Bergin cites and other sociological research with which I am familiar suggests that, even more fundamentally than sexuality, it is sex segregation and the predictable sex stereotyping that accompanies it that disadvantage women in most work settings. After all, women are perceived as less competent than men in connection with many work roles even when they *aren't* trying to use sex appeal on the job. As Rosabeth Moss Kanter has shown, the more male-dominated the job setting, the more likely the women who enter the field will be subjected to sex stereotyping that exaggerates their difference and marks them as inferior.⁴² Or, as lawyers would put it, women who work in these segregated job settings are more likely to experience hostile work environment harassment, often in the form of attacks on their competence and capability.⁴³

Furthermore, some research suggests that both horizontal and vertical forms of sex segregation matter; these forms of segregation can affect not only how women are viewed and treated by their male supervisors and co-workers but also how women themselves perceive and behave toward one another. One important study found that in a law firm that had few women partners, female associates were more likely to see each other in sex-stereotyped terms, to compete with one another in negative ways, and to trade on their sexuality to curry favor with male partners than were women in firms with a higher percentage of women partners. In firms with more women at the top, sex stereotyping lost some of its iron grip and the female associates felt freer to express their sense of themselves as women and their sexuality as they saw fit.⁴⁴

In discussing this research, I am not trying to deny Bergin's suggestion that women's use of their sexuality can prime sex stereotyping. But I am trying to suggest that there may be something even more fundamental at work here. Law, as a profession, remains sex-segregated and stratified along gender lines.

41. Bergin, *supra* note 19, at 212-221.

42. ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 208-209 (1993).

43. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683 (1998).

44. Robin J. Ely, *The Effects of Organizational Demographics and Social Identity on Relationships Among Professional Women*, 39 ADMIN. SCI. Q. 203 (1994).

Women are less likely to work in large law firms, in the most highly paid areas of specialty, and among the ranks of partners in these firms, as well as in prestigious judgeships and law school professorships; women were historically excluded from the practice of law and the legal profession still has to go a long way to rectify that history of discrimination.⁴⁵ In such a context, it isn't surprising that women are viewed through the biased lens of sex-stereotyping as being less competent in many legal settings, regardless of whether the women consciously attempt to use their sexual appeal. In fact, as part of that same process, it is almost predictable that the women will be perceived as somehow behaving more sexually and even being more "sexual" than the men *regardless* of the actual behavior of both groups. In many work settings, this is simply part of what sex stereotyping entails: perceiving women's behavior and personae as somehow inherently sexual—and therefore, less professional and less competent—while perceiving heterosexual men's as more appropriately asexual. In the context of the American tradition of organizational rationality that regards sexuality as inappropriate and out of place in the workplace,⁴⁶ being viewed as sexual can be a big disadvantage indeed.

This analysis doesn't imply, of course, that women actually trade on their sexuality any more than men do. Many heterosexual men do use sex appeal to their advantage, as anyone who's ever seen many successful male trial lawyers in action can attest. And they don't always use their sexuality to impose their will or project an image of dominance over other people. Instead, like anyone else who is in the supplicant position of trying to persuade or to obtain something from someone else who has a needed resource, men can and do use their sex appeal in a more winsome way to cajole witnesses, charm juries and judges, and court favor with the news media and the larger public on behalf of their clients or causes. (Think of how far Senator John Edwards's dazzling smile and winning ways have taken him in politics.) Yet heterosexual men who use their sex appeal are rarely seen as trading on their sexuality; they're simply seen as *skillful*. Meanwhile, for women in professional settings, it's the kiss of death to be seen as sexual because, for women, sexuality is seen as the opposite of skill and competence.

Given these dynamics, it is little wonder that most women lawyers—including the majority of the women who responded to Bergin's survey—try to downplay their sexuality. Yet an understanding of the full scope of the problem opens up some additional strategies. For one thing, women might challenge the notion that heterosexual men are always asexual. The truth is that sexuality is a part of every human being, and most people invariably call on that part of

45. For more on the under-representation of women in the higher ranks of the bar, the bench, and the legal academy, see Sari Bashi & Maryana Iskander, *Why Legal Education Is Failing Women*, 18 YALE J.L. & FEMINISM (forthcoming Dec. 2006).

46. See Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2061-62, 2072-74, 2087-2136 (2003).

themselves at least in subtle ways while they're at work, just as they do with other aspects of their personhood. The social science literature on work is filled with examples of men and women who use emotional energy, expression—and even genuine mutual affection—that might be characterized as sexual in order to create solidarity, enliven their jobs, and face down death and disaster every day.⁴⁷ If heterosexual men, too, use their sexuality, and if it doesn't always detract from their perceived skill, doesn't this suggest that there's nothing about sexuality per se that inherently detracts from work competence? And if so, perhaps the very tradition of defining skill or competence in opposition to sexuality is part of what needs to be challenged. Doing so could help break down pernicious processes of stereotyping not only for women, but also for sexual minorities, who, like women, tend to be seen as walking embodiments of sexuality.⁴⁸ Finally, of course, I believe we must continue to challenge segregation in all its forms, for, as I've argued, segregation lays the foundation for harmful stereotyping and helps perpetuate inequalities in wages, status and working conditions.

The deplorable and often coercive circumstances in which many poor people around the globe must sell their labor as a condition of survival comprise the final set of structural conditions that our panelists rightly suggest must be taken into account when considering prostitution and other forms of sex for sale. As the panelists suggest, these conditions are attributable to a complex set of circumstances, including the history of colonialism and slavery, corruption and the failure to engage in adequate redistributive policies, the grinding poverty, racism and sexism pervading many societies, and the deeply subordinate position of low-wage workers almost everywhere (but especially in developing nations). These labor conditions are especially well highlighted by Professor Parreñas's paper.⁴⁹ Engaging in fieldwork as a "hostess" in Japan, Parreñas reports from the front line about the abusive labor practices that surround this position, which, she finds, may or may not include having sex.⁵⁰ What it does include, Parreñas shows, is something very close to forced labor. As she chillingly explains, a hostess must sign a contract with her Filipino manager to work for five six-month terms; she must sign a similar contract for the same time period with a Japanese promotion agency. Both contracts require her to pay an exorbitant fee for quitting, and, if she doesn't serve out the entire contract period, the agency will go after her family for the fee; the manager

47. See, e.g., Kirsten Dellinger & Christine Williams, *The Locker Room and the Dorm Room: Workplace Norms and the Boundaries of Sexual Harassment in Magazine Editing*, 49 SOC. PROBS. 242 (2000); Ely, *supra* note 44; Leslie Salzinger, *From High Heels to Swathed Bodies: Gendered Meanings Under Production in Mexico's Export-Processing Industry*, 23 FEMINIST STUD. 549 (1997).

48. See, e.g., JAMES D. WOODS & JAY H. LUCAS, *THE CORPORATE CLOSET: THE PROFESSIONAL LIVES OF GAY MEN IN AMERICA* 65 (1993).

49. Rhacel Salazar Parreñas, *Trafficked? Filipino Hostesses in Tokyo's Nightlife Industry*, 18 YALE J.L. & FEMINISM 145 (2006).

50. *Id.* at 151, 161-62, 165-66.

threatens her with prison.⁵¹ A hostess is forced to work long hours to meet strict quotas; some hostesses feel pressured to go out on *dohan* and even to have sex with clients in order to meet their quotas, or else risk more fines and penalties.⁵² A hostess doesn't receive any wages until the end of her contract period, literally when she's leaving the country at the airport.⁵³ During her time in Japan her manager retains her legal documents, making it nearly impossible for her to flee.⁵⁴ Underage hostesses use forged passports, which puts them at risk of immediate deportation if they complain to the authorities about their situation.⁵⁵

For Parreñas, these conditions of indentured servitude and debt bondage that so often surround migrant labor are truly horrifying, modern-day forms of slavery that must be redressed. From this perspective, she is concerned about anti-trafficking initiatives that equate trafficking with prostitution or commercial sex alone, or emphasize that selling sex for money is inherently coercive and degrading to women. In her analysis, such an emphasis obscures the multiple forms of labor coercion suffered by women who engage in sex work and other forms of work, such as domestic labor, as migrant workers.

At this point, it bears observing that, highlighting and condemning the oppressive labor conditions surrounding activities such as hostessing is much more difficult, perhaps impossible, without characterizing and analyzing these activities as forms of work. And so we return to the question of whether it is appropriate to refer to prostitution and commercial sex as work or a job. For some purposes, perhaps, the answer might be no. But for other purposes, including some of which have been explored so helpfully by the papers in this symposium, it seems clear that the answer is yes. Acknowledging that prostitution is work doesn't mean denying that it is often performed under conditions of exploitation, physical danger, emotional abuse, health degradation, racism, sexism, poverty, and human immiseration. After all, many jobs and forms of work, both at home and abroad, are exploitative, dangerous, emotionally damaging, health-destroying, misery-inducing, and suffused with racism and sexism and abuses of authority. I worry that if we insist that prostitution and other forms of commercial sex are not work, we perpetuate the myth that work is always uplifting and freely chosen and deny the reality that work and those who do it are often burdened by underlying structural conditions of inequality, poverty, and abuse. Many of our panelists today have correctly battled the same persistent myth about sex, pointing out that, all too frequently, sex is neither uplifting nor freely chosen. Beneath their observations

51. *Id.* at 153-58.

52. *Id.* at 160.

53. *Id.* at 156.

54. *Id.* at 153.

55. *Id.* at 152-53.

and mine lies a deeply held belief that all human activities—including *both* sex and work—should be as meaningful and as freely chosen as possible.