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WELFARE REFORM AND THE USE OF STATE POWER IN THE PROSTITUTION OF POOR WOMEN¹

APRIL L. CHERRY²

In the short time we have together today I would like to talk about the connection between welfare reform “as we know it,” and the potential for increased state support for the prostitution of women.³ In particular, I would like to discuss the work requirements found in both federal and state welfare reform statutory schemes.⁴ I worry that these work requirements will sanction the prostitution of poor women, particularly poor women of color, lesbians, and other women with children who are already forced to live their lives at the economic and social margins of society. I worry that the work requirements found in the new welfare regime will encourage the state to push more women into prostitution or other forms of legalized sex-work under the guise of prostitution and other sex-work as “legitimate work.” In this essay, I would like to argue that one of the results of the restructuring of welfare is the institutionalization of the state as a pimp or as the procurer of women for prostitution. I know that this may seem like a bold statement to many of you, but I would like to try, in the few minutes we have, to flesh out my argument.

To this end, I would like to talk briefly about the structure of the welfare reform, it’s requirement that every “abled-body” adult engage in waged labor, and the stereotyping of poor women vis a vis their sexuality and their work ethic; I would

¹This essay is an expanded version of the speech that Professor Cherry presented at the Cleveland-Marshall College of Law Conference, *Re-Orienting Law & Sexuality*, on October 23, 1999. Because it is at its essence a speech, most of its speech-like characteristics have been preserved so as to maintain its authenticity.

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³Initially I thought that I would talk about the experience and the conditions of lesbians in heterosexual prostitution and other forms of “sex-work.” I wanted to understand the ways in which their struggles differ from the struggles of straight women who are prostituted. But alas, I could find no “data” on lesbians in heterosexual sex-work. I know that lesbians are prostituted – I have met some of these women. But as I tried to research the topic for this talk I discovered that, like everywhere else in our culture, lesbians are invisible. I shouldn’t have been surprised, but I was. I encourage historians, sociologists, and activists to do oral history projects; make these women visible. Since the date of the conference I have discovered a citation to a new documentary regarding lesbian “sex-workers,” entitled *Straight for the Money*, directed by Himaphiliac Productions 1994.

⁴On the federal level, welfare reform has taken the form of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereinafter “PRWORA”), Pub. L. No. 104-193, 1996 U.S.C.A.N., 110 Stat. 2105 (codified as amended in scattered sections of 7, 29, 42 U.S.C.). Some examples of welfare reform on the state level include Florida, *see* FLA. STAT. ch. § 444.065(1)(a)(1998); California, *see* CAL. WELF. & INST. CODE § 11322.6(a-q) (West Supp. 1997); New York, *see* N.Y. SOC. SERV. LAW TITLE 9-B § 336 (McKinney 1977); and Ohio, *see* OHIO REV. CODE ANN. § 5107 et. seq. (Anderson 1998) (all requiring welfare recipients to work as a prerequisite of receiving benefits).

like to discuss, again briefly, the structure of prostitution (and other sex-work) in this country, precisely I want to talk about the conditions under which prostituted women “work”; and finally I want to argue that prostitution isn’t “work”, and that by normalizing the idea that prostitution is “work,” we participate in pushing more poor women into the prostitution and sex-work industry through the vehicle of the welfare reform mandates.

So here goes ...

WELFARE REFORM

In his 1994 State of the Union address, President Clinton promised to end “welfare as we know it.”⁵ He continued to make this promise during his 1996 re-election bid and in 1996 he fulfilled his promise and signed into law the Personal Responsibility and Work Opportunity (“PRWORA”) Reconciliation Act of 1996, a substantially Republican welfare reform bill.⁶ As we have discovered in the intervening years, PRWORA, and the new public benefit program for the poor that it created, the Temporary Assistance for Needy Families Program (“TANF”), has radically transformed the way in which federal and state governments respond to the basic, material needs of poor women and children. TANF gives block grants to states, with instructions to reduce welfare roles primarily by requiring that adults receiving assistance for themselves and their minor children, work in the paid labor market.⁷ Those states that are successful in this endeavor received additional benefits, cash, from the federal government for their efforts.⁸ Those states that are unsuccessful in reducing their welfare rolls and in increasing the number of welfare recipients engaged in paid labor risk losing a percentage of their block grant.⁹ For example, a state that does not meet the work requirements outlined in the statute loses five percent of its block grant in the first year; seven percent of its grant if it fails to meet the mandatory work goals in the second year; and may lose an additional nine percent of the grant in the third year.¹⁰ Given that each state stands to lose a significant amount of federal funds if it fails to meet the mandatory work goals set by the federal government, states have a very powerful incentive to push poor women with children into *any* job for which the woman may be qualified, despite the woman’s objections regarding the type of employment, the quality of the work, or any concerns she may have about the care of her children while she is at work. Hence, the legal and socially accepted definitions of “work” or “employment” take on added significance in the lives of these women.

⁵William J. Clinton, *The State of the Union Address*, WASH. POST, Jan. 26, 1994, at A12.

⁶PRWORA, Pub. L. No. 104-193 § 103(a)(1), 110 Stat. 2113 (codified at 42 U.S.C. § 601(a)(2) (Supp. II 1996)) (purpose of the statute is to end dependency by promoting job preparation, work, and marriage).

⁷42 U.S.C. § 602(a)(1)(A) (Supp. II 1996).

⁸HOUSE COMM. ON WAYS AND MEANS, 104 Cong., 2d Sess., BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, 1996 Green Book 1336 (Comm. Print 1996) (*hereinafter* 1996 Green Book).

⁹*Id.* at 1335; *see also* 42 U.S.C. § 607(a)(1) (Supp. II 1996).

¹⁰*See* GWENDOLYN MINK, WELFARE’S END 104 (1998) and accompanying notes (citing 1996 Green Book, *supra* note 8, at 1335).

The rhetoric surrounding the reform detailed plans for helping poor women to become self-sufficient, by providing limited job training and childcare benefits. The federal plan outlined that the vast majority of poor women could/would receive job training sufficient to make them independent from the state or federal government for subsistence within two to five years.¹¹ The “trick” is that even if the woman does not receive sufficient job training, even if the state does not appropriate sufficient funds necessary for job training, education or childcare, poor women with children will be forever barred from receiving welfare benefits.¹² Although the federal statute limits an adult recipient’s eligibility for benefits to 60 months, some states have reduced drastically the time period that poor women are eligible for benefits. For example, Ohio has reduced the number of years that an adult may receive benefits under its welfare program to three years.¹³

Another important piece of welfare reform concerns the way in which women who receive public assistance are stereotyped, both with regard to their sexuality and their work ethic. Although on its face, “welfare reform” is racially neutral, African American women and other women of color are primarily targeted by the new welfare regime. Underlying the welfare reform regime, its rhetoric, and its requirements is the image of the typical welfare recipient as a promiscuous African American teenage girl or woman, with little or no sexual self-control.¹⁴ For example, Charles Murray, a supporter of the new welfare reform regime, has consistently argued that Black sexuality, which is understood as improper in that it includes sexual intercourse outside of marriage, is at the center of the debate regarding the illegitimacy of poor children and the welfare entitlement of these children and their mothers.¹⁵ This discourse continues despite the fact that women who receive public assistance have on average the same number of children as women who do not receive public assistance.¹⁶ The African American community has long understood

¹¹PRWORA, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2113 (codified at 42 U.S.C. § 601(b) (Supp. II 1996)) (no legal entitlement); Pub. L. No. 104-193, § 408(a)(7)(A), 110 Stat. 2137 (codified at 42 U.S.C. § 608(a)(7)(A) (Supp. II 1996) (no assistance for more than five years)).

¹²*C.f.* Pub. L. No. 104-193, § 103; 110 Stat. 2133 (codified at 42 U.S.C. § 607(e) (Supp. II 1996)).

¹³OHIO REV. CODE ANN. § 5107.18(A) (Anderson 1998); *see also* Catherine Candisky, *Welfare Recipients Run Low on Time*, COLUMBUS DISPATCH, Oct. 1, 1999 at A1; Ken McCall, *Welfare Reforms: Rolls Shrink, Coffers Swell*, DAYTON DAILY NEWS, Sept. 12, 1999, at A1.

¹⁴April L. Cherry, *Social Contract Theory, Welfare Reform, Race, and the Male Sex-Right* 75 OREGON L. REV. 1037, 1040-42 and accompanying notes (1996). Other evidence of this underlying premise is that PRWORA, and hence TANF, is that the statute provides funds for abstinence training for minor recipients. *See* PRWORA, Pub. L. No. 104-193, § 912; 110 Stat. 2353-54 (codified at 42 U.S.C. 710) (Supp. II 1996)).

¹⁵Charles Murray, *Does Welfare Bring More Babies*, PUBLIC INTEREST (Mar. 1994) (also found at 1994 WL 13505737).

¹⁶MARIAN WRIGHT EDELMAN, *FAMILIES IN PERIL: AN AGENDA FOR SOCIAL CHANGE* 70-71 (1987) (average number of children in families receiving assistance under AFDC is 1.9); Bureau of the Census, U.S. Department of Commerce, *Household and Family Characteristics: March 1994*, in CURRENT POPULATION REPORTS: POPULATION CHARACTERISTICS (1995) (average number of children in two-parent families is 1.88). In addition, there is some

the ways in which negative sexual stereotypes about Black women are used in the welfare discourse.¹⁷

In the welfare reform discourse, poor African American women are also stereotyped as slothful and lazy.¹⁸ This image of the welfare recipient has been attached to the face and bodies of Black women even through “facts” would “explode” these myths.¹⁹ For example, in 1991, prior to the advent of welfare reform, African American families made up less than thirty-nine percent of the welfare recipient population in this country.²⁰ In fact, although women who receive public assistance are stereotyped as lazy and unwilling to “work,” that is in the paid labor market, women on welfare often work in the market in order to make ends meet. You see, the funny thing here is that many women (43 percent) either cycled between welfare and work, that is they worked when work was available (and as we know work has disappeared from the urban areas where many poor people live),²¹ or they have had to combine welfare and work in order to survive, in order to provide themselves and their children with shelter and food because welfare payments have never been enough to meet the basic subsistence needs of poor families.²²

evidence that women receiving public assistance actually have fewer children than women who do not. See Mark R. Rank, *Fertility Among Women on Welfare: Incidence and Determinants*, 54 AM. SOC. REV. 296, 298-300 (1989).

¹⁷As Marion Wright Edelman has asserted, “welfare” is a “forth generation code word for race.” Lucie White, *No Exit: Rethinking “Welfare Dependency” from a Different Ground*, 81 GEO. L.J. 1961, 1966 (1993) (quoting Marian Wright Edelman in Robin Toner, *New Politics of Welfare Focuses on Its Flaws*, N.Y. TIMES, July 5, 1992, at A6). Professor Gwendolyn Mink has also noted:

From the 1960’s forward, racially coded welfare politics stamped the Black welfare mother as unworthy and culturally deprived . . . Rooted in a priori assumptions about the Black welfare mother’s character, the racial mythology of welfare suggested solutions to “welfare dependency.” This mythology supplied liberal ruminations about how to return (Black) single mothers to marriage: to economic security through a potential wage and through reductive self-control.

GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE 1917-1942* 183 (1995) (citing WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* (1987) and DAVID ELLWOOD, *POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY* (1988)); see also Wahneema Lubiano, *Black Ladies, Welfare Queen, and State Minstrels: Ideological War by Narrative Means*, in RACE-ING JUSTICE, *ENGENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* 323, 332-33 (Toni Morrison ed., 1992) (discussing the stereotype of the Black “welfare queen”).

¹⁸See, e.g., Martha Fineman, *Images of Mothers in Poverty Discourses*, 41 DUKE L. J. 279 (1991).

¹⁹MINK, *THE WAGES OF MOTHERHOOD* *supra* note 17, at 177.

²⁰STAFF OF HOUSE COMM. ON WAYS AND MEANS, 103rd CONG., 1st SESS., *OVERVIEW OF ENTITLEMENT PROGRAMS*; 1993 GREEN BOOK 708-09, table 36 (Comm. Print 1993).

²¹See generally WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* (1996).

²²MINK, *THE WAGES OF MOTHERHOOD*, *supra* note 17, at 177 (citing Heidi I. Hartmann and Roberta Spalter-Roth, *The Real Employment Opportunities of Women Participating in AFDC: What the Market Can Provide* (paper presented at WOMEN AND WELFARE REFORM: WOMEN’S

For example, in 1995, under the prior welfare regime, Aid to Families with Dependent Children, the average monthly cash assistance offered to a family of four (usually a woman and three children) was a meager \$377. That was the average. In some cases, benefits were much lower, For example in Mississippi, a family of 3 (woman with 2 children) received only \$120 a month.²³ Thus, even under the previous welfare system many poor women with children have had to somehow supplement their incomes with work – if they were lucky they could find a job “working off the books”, or they “doubled up” in homes with other families to reduce their housing costs.²⁴ If they were less lucky they were forced to engage in more clearly illegal activity to make ends meet, and in poor communities those activities are often drug or prostitution related.²⁵

So in the end, welfare reform is premised on negative sexual and personal characteristic stereotypes about poor women, and reformers have consistently resisted facts that would explode their stereotypes about women who receive public assistance. I am concerned about what will happen to more and more poor women in the welfare reform regime, which requires self-sufficiency while at the same time lacks the desire to provide adequate education, job training, and work which pays livable wages. What will happen in the new welfare regime to those women who are already stereotyped as sexually deviant and lacking positive moral virtues vis a vis work, when the public assistance time limits expire? Will we require that they perform any “service” for which remuneration is given? What will happen to more poor women when prostitution and other sex-work is understood or normalized as “work” in our post-welfare culture?

POVERTY, WOMEN’S OPPORTUNITIES AND WOMEN’S WELFARE – A POLICY CONFERENCE TO BREAK MYTHS AND CREATE SOLUTIONS, Washington, D.C., October 23, 1993)). A study performed by Kathryn Edin and Laura Lein found that out of 214 “welfare-reliant mothers” interviewed, only one recipient met all of her expenses with her welfare benefits. This recipient met her expenses by not spending any money on entertainment, cigarettes or alcohol, school supplies, furniture, transportation or birthday or Christmas gifts for her child. In addition her child often went hungry and did not have adequate winter clothing. KATHRYN EDIN AND LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW WAGE WORK 38-39 (1997).

²³MINK, WELFARE’S END, *supra* note 17, at 15 (citing Peter R. Kilborn, *The Nation: Welfare All Over the Map*, N.Y. TIMES, Dec. 8, 1996, at E3).

²⁴MINK, THE WAGES OF MOTHERHOOD, *supra* note 17, at 177.

²⁵TERESA L. AMOTT & JULIE A. MATTHAEI, RACE, GENDER & WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES 27 (1991) (“Outside of the formal labor market is the underground sector, where the most marginalized labor force groups, including many people of color, earn their livings from illegal or quasi-legal work. This sector contains a great variety of jobs, including drug trafficking, crime, [and] prostitution.”); see Jason DeParle, *States Replace Benefit System: Work is Theme of New Welfare*, N.Y. TIMES, June 30, 1997, at A1 (one welfare recipient noted that with welfare reform “you are going to see more women standing on the corner.”); Jason DeParle, *Getting Opal Caples to Work*, N.Y. TIMES, Aug. 24, 1997, at 33 (another welfare recipient noted that prostitution will increase due to welfare reform because “women gonna do what they gotta do.”).

THE CONDITION OF WOMEN IN PROSTITUTION

Many of the negative stereotypes regarding poor women who receive public assistance are used to describe prostituted women. Simply, like poor women on welfare, prostituted women are stereotyped as sexually deviant or sexually inappropriate.²⁶ This of course makes sense given our cultural taboos regarding non-marital sex, and that prostituted women have sex outside of marriage and with men they don't necessarily know. The negative stereotypes of prostituted women also make sense given that both the woman on welfare and the prostitute, in the public mind, are women of color.²⁷

And if you haven't yet noticed I **do** want to talk about prostituted women as victims of our society's hatred. I am not talking about these women as women who are immoral, who are sexual outlaws (I not even sure what that means anymore), and I am not talking about sexual shame. The angst of prostitution for me is not about morality. The angst for me is about the enormous and unacceptable level of violence these women are subjected to. Studies indicate that women currently engaged in prostitution are indeed victims of our violent misogyny even before they enter into prostitution. For example: thirty-one to sixty-six percent of women and girls in prostitution have been sexually abused by a father, step-father, or other father figure; sixty-five percent report that they had been raped prior to entering into prostitution; sixty to seventy percent had been sexually abused as children; and forty-five percent had be beaten regularly as children²⁸ The level of violence against these women and girls escalates once they enter prostitution. Women in prostitution get battered, raped, kidnapped, and murdered by johns, pimps, and the police with much frequency.²⁹ One oral history project demonstrated that of the women surveyed, seventy-nine percent had been beaten by their pimps; seventy-four percent had been beaten by johns, and fifty percent indicated that they had been raped.³⁰

²⁶EDWIN M. SCHUR, LABELING WOMEN DEVIANT: GENDER, STIGMA AND SOCIAL CONTROL 164 (1983).

²⁷Women of color, particularly African American women are over-represented in prostitution. D. KELLY WEISBERG, CHILDREN OF THE NIGHT: A STUDY OF ADOLESCENT PROSTITUTION 87-88 (1985).

²⁸Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH. J. OF GENDER & LAW 65, 67 n.3 (1993).

²⁹For a detailed account and analysis of the violence perpetrated against women in prostitution, see Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J. OF L. & FEMINISM 48 (1992); see also *Report of the Florida Supreme Court Gender Bias Study Commission*, 42 FLA. L. REV. 803 (1990) (reprinting of entire report); *id.* at 905-06 (rejecting the notion of prostitution as a victimless crime; prostitution understood as a form of gender discrimination, exploiting the isolation, physical and sexual vulnerability of abused women and girls). On this issue, Evelina Giobbe, the former executive director of WHISPER noted: "Prostitution is violence against women . . . it's the worst form of violence against women because you get abused by the johns, you get abused by the pimps, you get abused by the police. Society turns their back on you." Evelina Giobbe, *Confronting the Liberal Lies About Prostitution*, in THE SEXUAL LIBERALS AND THE ATTACK ON FEMINISM 80 (Dorchen Leidholt and Janice G. Raymond eds., 1990) (quoting WHISPER, *Prostitution: A Matter of Violence Against Women* (1988) (video)).

³⁰Giobbe, *Confronting the Liberal Lies about Prostitution*, *supra* note 29, at 73.

Notwithstanding the violence, or maybe as a result of the violence directed toward prostituted women, some of you in the room want to argue in favor of the decriminalization of prostitution.³¹ Some of you might want to argue that it is the criminalization of prostitution that causes the violence directed toward these women not to be recognized and remedied. And although I agree that I don't think that women who are victimized in prostitution should be held criminally liable for performing sex acts for money, I do think that the johns and the pimps, and police, as perpetrators of the violence, should be held criminally liable for the abuse that they inflict, including the abuse of the woman in being bought and sold. Unless decriminalization speaks to harms suffered by women in prostitution, then I'm not sure that the decriminalization debate actually gets us anywhere, particularly because it does not speak to the structure of the transaction: the sale of women.³²

So again, when I talk about prostitution, I am speaking about an institution that victimizes women. Now I know that talking about women's victimization is increasing frowned upon in liberal society. In the liberal tradition, we want to believe that adults are autonomous beings, people who choose freely and act freely. As a result, in liberal discourse, women's economic and sexual vulnerability is explained away as by-products of the particular woman's stupidity or part and parcel of group pathology. Professor Margaret Baldwin notes these failings of liberal discourse in discussing possible legal claims of prostituted women against the state. She states:

women's destitution and sexual vulnerability can be explained away as products of bad choices or of the "culture of poverty" or as evidence of

³¹For an analysis of arguments in favor of decriminalization see, e.g., Carol Leigh, *A First Hand Look at the San Francisco Task Force Report on Prostitution*, 10 HASTINGS WOMEN'S L.J. 59-62 (1999); Micloe Bingham, *Nevada Sex Trade: A Gamble for the Workers*, 10 YALE J. L. & FEMINISM 69, 77-79 (1998). In addition to the usual arguments made in favor of decriminalization, Angela Davis has argued:

In my opinion, the continued criminalization of prostitution and the sex industry in general will feed the further development of this prison industrial complex. The dismantling of the welfare system under so-called welfare reform law will probably lead to further expansion of the sex industry as well as the underground drug economy. The continued criminalization of the sex industry will therefore help to draw more and more women into the prison industrial complex. There is a racist dimension to this process, since a disproportionate number of these women will be women of color.

Interview with Angela Davis, in Siobhan Brooks, *Sex Work and Feminism: Building Alliances Through a Dialogue Between Siobhan Brooks and Professor Angela Davis*, 10 HASTINGS WOMEN'S L.J. 181, 183 (1999).

³²Giobbe and Carter have argued :

Legalization and decriminalization are social experiments that have repeatedly failed. They have not made a significant difference in prostituted women's lives. They have not kept prostituted women out of jail. They have not reduced the social stigma attached to sex work. They have done nothing to ameliorate the inherent or ancillary harms of prostitution: economic exploitation by pimps, violence by johns, and the trauma that results from both. . . . Ultimately, decriminalization or legalization proposals merely protect some men's right to cheap, easily accessible sex and pimps' ability to earn a damn good living by getting women to do it.

Vednita Carter and Evelina Giobbe, *Duet: Prostitution, Racism, and Feminist Discourse*, 10 HASTINGS WOMEN L.J. 37, 49-50 (1999).

greedy character. If politicians and policymakers chose to abandon needy young mothers, and forfeit the needs of children for intimate parenting, what hope is there for the claims of prostituted women?³³

In addition, we should all be cognizant that the language of autonomy and freedom is often hollow and incongruent with the experiences of women, particularly those who live at the margins, who make choices, but whose choice are often double bind choices.³⁴ So I am not arguing that prostituted women have no agency, rather I am arguing that many prostituted and many poor women live in the same world other oppressed peoples live in, a world where choices are often so limited as to sometimes be meaningless. Hence I believe that prostitution can not be viewed as a “victimless crime.” Nor can it be viewed as a job. The beatings, the rapes, and the murders of prostituted women attest to their victimization and should counter any inclination we have toward describing it as work.

Now I know that some of my colleagues in the audience are shaking their heads. They want me to consider that there may be situations in which prostitution is not exploitative. Well, my response is that perhaps there are circumstances under which prostitution is not exploitative and not physically dangerous, but those circumstances don’t exist here on the ground. Those situations don’t exist in the world my sisters and I live in. Maybe I lack imagination. Perhaps the next millennium holds for us a drastically different society. But given the current conditions on the ground, given the current reality of the lives of prostituted women, I hold little hope for such dramatic change in my lifetime.

I hope that I have been able to convince you all that we must take seriously prostituted women’s claims of victimization, and find a way to end that victimization. But describing or conceptualizing of prostitution as work does not work to end the victimization that I am concerned about. So on that note, I want to talk a little about why I reject the notion of prostitution as work.

PROSTITUTION ISN’T WORK

Prostitution isn’t work. It isn’t that prostitution doesn’t share some characteristics of “work.” As Professor Baldwin has noted:

Not all women are prostituted, and that is a good thing. Not all women, that is, turn tricks for money, five times a day, thirty-five times a week, with two thousand men a year, along with suffering at least the usual incidence of incest, rapes, beatings, and sexual harassment that are the conditions of living a woman’s life. The prostitution is on top of that. Many women get away with only pieces of prostitution. Many women endure unwanted sex from men who objectify us, but not typically from two thousand a year. . . . Many women receive money from a harassing boss in the form of a paycheck, but not typically combined with demands

³³Margaret A. Baldwin, “A Million Dollars and An Apology”: *Prostitution and Public Benefit Claims*, 10 HASTINGS WOMEN’S L.J. 189, 223 (1999).

³⁴Philosopher Marilyn Frye describes “double-bind choices” as “situations in which options are reduced to a very few and all of them expose one to penalty, censure, or deprivation.” Marilyn Frye, *Oppression*, in *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY* 1 (1983).

that we perform some additional form of “work.” Each of these transactions shares something in common with prostitution but none of them *is* prostitution.³⁵

Hence, it’s not that the transaction between the wife and her husband, and the female employee and the sexual harasser-employer don’t share something in common with the transaction between the prostituted woman and the john – it just isn’t prostitution.

In a job, the worker usually produces a commodity, a cog, a car, a meal, a conference paper, or the worker delivers services, such as delivery of those commodities, but in prostitution the commodity is the woman.³⁶ In prostitution “the prostitute is present to the john literally and solely as a thing that produces an experience of sex for him, as he wishes it.”³⁷ The john is in some ways both the “owner” and “consumer” in the transaction.³⁸ The transfer of money from the john to the woman (or the pimp) confirms his entitlement to treat the woman in any way that he wishes. Hence situating himself in the role of “owner.” As owner of the commodity (the woman) he writes all of the possible scenarios for the transaction – these scenarios can and often do include rape, battery, kidnapping, or murder.³⁹ The status of the john as the owner of the woman also allows the john to fix the meaning or who the woman is and who the woman is not.⁴⁰ So it is not surprising that women who are prostituted are subject to high rates of rape, battery, kidnapping and murder. So unlike work – prostitution is predicated on ownership and hence unconditional sexual access to the body of the woman who has been purchased. And as Evelina Giobbe argues, pimps and johns “who sell (and buy) women’s bodies and steal their souls” can not “turn child sexual abuse, rape, and battery into a job by throwing money at their victims.”⁴¹

Another piece of evidence that for me speaks to my claim of denying that prostitution is work is the compelling narratives of the oral history projects done with women in prostitution and women trying to leave prostitution. The women

³⁵Margaret A. Baldwin, *Strategies of Connection: Prostitution and Feminist Politics*, 1 MICH J. GENDER & L. 65, 67-68 (1993).

³⁶See Baldwin, *Split at the Root*, *supra* note 29, at 107.

³⁷*Id.* at 108.

³⁸*Id.* at 109.

³⁹*Id.* at 110. Whenever I hear the song *Private Dancer*, by Tina Turner I think of how the john controls the transaction and constructs the woman to his particular needs (“I’m your private dancer, dancer for money, do what you want me to do. . .”). Tina Turner, *Private Dancer*, on PRIVATE DANCER (Capitol Records 1984).

⁴⁰See *id.*; see also EDWIN M. SCHUR, THE POLITICS OF DEVIANCE: STIGMA CONTESTS AND THE USES OF POWER 113 (1980) (prostituted women depersonalized and converted into commercial objects). Some published accounts of the violence suffered by women in prostitution can be found in Testimony form Public Hearings on the Ordinance to Add Pornography as Discrimination against Women, in MAKING VIOLENCE SEXY: FEMINIST VIEWS ON PORNOGRAPHY 48-62 (Diana H. Russell ed., 1993).

⁴¹Evelina Giobbe, *Surviving Commercial Exploitation*, in MAKING VIOLENCE SEXY: FEMINIST VIEWS ON PORNOGRAPHY 37-41, 41 (Diana H. Russell ed., 1993).

themselves don't describe prostitution as work.⁴² In addition these women tell a story of their life which includes that they had to learn how to disassociate their minds from their bodies as a condition of the sex act.⁴³ In addition Giobbe and Carter argue that disassociation is not simply a result of being prostituted, but rather disassociation is a bona fide occupational qualification. They write:

The process of becoming a prostitute entails the compilation of values lifted from the texts of various ideas, beliefs, feelings and desires which are replaced with a unique and personal identity. She is empty space surrounded by flesh into which men deposit evidence of their masculinity. She does not exist so that he can. Prostitution done correctly begins with theft and ends with the subsequent abandonment of self. What remains is essential to the job: the mouth, the genitals, anus, breasts . . . and the label.⁴⁴

No other job seems to require that.

While reading some of these histories I was reminded of a mantra of my childhood. When my mother taught my siblings and me about slavery, she would always say that "they (meaning white folk) enslaved our bodies, but they couldn't enslave our minds." On some level my mother was speaking to the level of disassociation needed in order to survive slavery – that Black folk had to disassociate from the battery, rape, and enslavement of their physical bodies in order to survive the pain, humiliation, and degradation of slavery. Women in prostitution engage in a fair amount of disassociation. In order to survive the trick, the rape, and the beatings, women in prostitution must sometimes leave their bodies in order to survive, with the hope that their bodies will still be alive when it is safe for them to "return home" to them. As a result, I would argue that slavery not "employment" is the proper analogy to prostitution.

CONCLUSION: WELFARE REFORM AND THE COERCIVE USE OF STATE POWER TO
INDUCE THE PROSTITUTION OF POOR WOMEN

The work requirements of the new welfare regime are premised on the belief that those women with children who are not working at paid employment should be made to do so. And that they should be made to work at whatever jobs are available, regardless of whether the job will actually lift the woman and her children out of poverty, and really without regard to whether jobs are really available. So with respect to the conceptualization of prostitution as work, or the cultural normalization of prostitution as work, I worry about what will stop the state from requiring women to take jobs in the legal sex industry. What mechanisms will prevent caseworkers from suggesting to women, poor women of color, that they should or must take jobs in the stripping and pornography industries. We know that there are always stripping jobs, porno movies to be made, phone sex jobs, and jobs at Hooters. And then there is the implicit requirement. What happens when the states and the federal government write the last check for the woman who has been unable to find other

⁴²Giobbe, *Confronting the Liberal Lies about Prostitution*, *supra* note 29, at 79.

⁴³Carter and Giobbe, *Duet*, *supra* note 32, at 46.

⁴⁴Carter and Giobbe, *Duet*, *supra* note 32, at 46.

“work”? Won’t there be a cultural expectation that the woman will, in order to feed and shelter her children be willing to take on the “job” of a prostitute, since, its only a “job,” and “women are gonna do what they gotta do.”⁴⁵ And given our stereotypes about poor women’s sexuality, isn’t prostitution a perfect job?

I know that I don’t want to go there. I don’t want to be part of a system, or member of a culture that sends more women down the river, into “work” where their lives are literally meaningless. And finally I want to reiterate a question asked by my friend and colleague in struggle, Meg Baldwin: should prostitution “be the price that women are expected to pay for being homeless, unloved, jobless, and afraid?”⁴⁶ I sure hope not.

⁴⁵DeParle, *Getting Opal Caples to Work*, *supra* note 25, at 33 (quoting Opal Caples).

⁴⁶Baldwin, *Strategies of Connection*, *supra* note 35, at 72.