
Materialism, Sex Work, and the Law: Doing Feminist Legal Theory Differently

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Abstract

This article places texts from Marxist feminist scholar Silvia Federici and feminist legal and post-Marxist scholar Catharine MacKinnon in conversation with each other. In doing so, it responds to Clare Hemmings's call for feminist scholars to do feminist theory differently by breaking free from staid tropes and narrative devices through which feminism has been historicised. Starting from a commitment to the rejuvenation of materialist feminist theory and my belief that it could play a bigger role in feminist legal scholarship, I juxtapose texts from Federici and MacKinnon, reading for continuities and links rather than discontinuities and breaks. What is revealed is a 'scaled-up' materialist methodology and politics that connects the *real essence* of capitalism and sexual domination to the *phenomenal appearances* of capitalism and sexuality. Both Federici and MacKinnon understand liberal law as part of domination's real essence *and* a phenomenal appearance distorting this reality. They centre women's *consciousness* on creating a class/sex for themselves and view law as a possible site for raising consciousness of the real essence of women's oppression. I end by reflecting on the difference that this reading of Federici and MacKinnon might make in contemporary legal research about sex work.

Introduction

Materialist feminism has received minimal attention in feminist legal theory in recent years (Conaghan, 2016) and barely any in feminist legal research about prostitution and sex work (Cruz, 2013, 2018, 2020, 2024). This absence has been picked up and apart by numerous feminist scholars. One critique diagnoses a neoliberal or political erasure in contemporary feminist legal scholarship that has moved away from materialist concerns (Conaghan, 2000; Fraser, 1995; Thornton, 2004). A second critique celebrates postmodern advances beyond materialist and structural feminisms. Janet Halley (2008) exemplifies this approach and charges, prosecutes, and convicts 'structural' feminists for wielding too much power in legal, political, and cultural institutions. A third, more meta critique observes that feminist

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scholarship has told a particular and linear story about itself that stresses breaks and ruptures (e.g., waves, decades, generations) that is inflected by a sense of progress or loss (Hemmings, 2005, 2011; see also Weeks, 2021). These are important points for understanding the seeming irrelevance of materialist feminisms to contemporary feminist legal theory. To delve into this absence, I respond to Hemmings's provocation to 'do feminist theory differently' (2005: 130) by 'stressing the links rather than the discontinuities between different theoretical frameworks, as a way of challenging the linear "displacement" of one approach by another' (131).

To this end, in this article, I juxtapose Silvia Federici, who is a Marxist feminist but not a legal scholar, and Catharine MacKinnon, who considers herself a post-Marxist feminist and is most definitely a legal scholar. As such, these scholars would likely be pitted against each other rather than read together. Based on this curation, I argue that what is revealed is a 'scaled-up' materialist methodology *and* politics (Weeks, 2021). This 'scaled up' methodology is a systematic analysis of the 'real' essence (Conaghan, 2019) of social relations of domination that exist between capital and labour and between the sexes that is organised institutionally, including through liberal law. This real essence is mystified by, and must be related to, the *appearance* of the economy, sexuality, and law, each of which has a liberal understanding of work and sexuality that makes the real essence of domination hard to spot, critique, and challenge. Liberal law constitutes regimes of capitalist and sexual domination while *also* appearing as separate from, and resolving, labour and sexual injustice. The politics is 'scaled up' because it centres structural critique and women's consciousness to imagine and enact a future beyond capitalist and sexual domination. Within this political horizon, law is viewed ambivalently as a resource to bring some immediate gains and as a possible site to be worked within or protested against in order to raise consciousness of the real essence of women's oppression. Having made this argument, I then illustrate the difference this different reading of feminism could make to feminist legal studies of sex work.

This article proceeds in four parts. In the first part, I outline Hemmings's provocation to do feminist theory differently by reading feminist texts non-linearly and for continuities and links rather than discontinuities and breaks. This disruptive strategy has encouraged me to read together two feminist theorists who are often considered to be, and indeed consider themselves to be, opposed.

In the second part, I focus on texts from the 1970s and 1980s and Federici's autonomist, Marxist feminist historical materialist analysis of women's un/paid (sexual) labour (2004, 2012). The real essence of women's labour under capitalism is revealed through politically and theoretically engaged consciousness-raising to be the expropriation,

exploitation, and alienation of women's labour to generate profit. This reality is obscured by the phenomenal forms through which we understand work, gender, and capitalism. Collective consciousness-raising, understood as socially situated reflection and activity, emerges as central to the process of understanding and challenging capitalist domination. Federici's position on law can be extrapolated from her historical materialist method. The law is viewed in a dual way: as part of the real essence of capitalism because it secures women's expropriation, exploitation, and alienation *and* as a phenomenal form that masks and mystifies gendered capitalist domination. Federici does not reject law as a site to return some immediate gains for women or for raising consciousness of and protesting its limits. Regarding the latter, the demand 'Wages for Housework', and more recently, a 'social wage', is perhaps most usefully understood as a demand that demonstrates the limits of law to speak to the real essence of women's oppression under capitalism (Cruz, 2013).

However, Federici rejects feminist analysis that resorts to male domination as the sole explanation of women's oppression (2012: 54-62) and MacKinnon, while celebrating 'Wages for Housework' (of which Federici was a co-founder) as the most sophisticated attempt to integrate Marxism and feminism, rejects this synthesis as the starting point for understanding women's oppression (1989: 63-80). I end part two with the following questions in mind: If Marxist and radical feminism were once closely aligned in the heyday of the Women's Movement, could they not be brought back into fruitful and mutually supportive dialogue? What happens if we reject the dominant trope in feminist history that stresses a split between these feminisms during the 'sex wars' of the 1980s? What happens when we read Federici and MacKinnon for continuities and links rather than for discontinuities and breaks?

In the third part, I respond to these questions. A key methodological commitment shared by Federici and MacKinnon is to 'scaled-up' materialist¹ accounts of the *reality* of the appropriation and alienation of women's labour/sex for the ends of profit/power that is contradicted by the dominant *appearance* of liberal economic and (hetero)sexual relations. I propose that, for MacKinnon, what resides below the appearance of legitimating liberal discourse and normal heterosexual relations is the real essence of cis-gender male sexual expropriation and alienation of heterosexuality's others (including women in prostitution). Like Federici, collective consciousness-raising, understood as socially situated reflection and

¹ Federici is a historical materialist but the same cannot be said of MacKinnon, whose work is quite ahistorical. Nonetheless, what they share in common is a materialist approach that focuses on the lived social relations between classes/sexes and how these are organised institutionally. I am grateful for my discussion with Joanne Conaghan which helped me clarify this point.

activity, emerges as central for MacKinnon to the process of understanding and challenging male sexual domination. MacKinnon's approach to law strongly resonates with Federici and other Marxist scholars. She does, however, add an important dimension or provocation, which is that liberal law *can* and *must* be used to speak to the essence of women's oppression (1989).

In the fourth and final part, I sketch out my use of this approach for researching sex work. Two aims animate this discussion. The first is to illustrate how this curation of materialist feminist legal theory can take us beyond some intractable debates in sex work research and activism that occur when we stay too close to the appearance of sex work, including in liberal law. The second is to demonstrate that materialist feminist legal engagement with the capitalist 'essence' of sex work need not, and should not, exclude concern with its sexual 'essence.'

Before I begin, it will be helpful to reflect on two definitional matters. First, my deployment of the essence/appearance distinction (see also Cruz, 2020). Marx distinguished between the real relations of capitalist production (how things really are) and their phenomenal appearance (how things appear to be). The capital-labour relation *appears* from the perspective of capital, bourgeois political economy, liberal law, and liberal philosophical works as a free and equal exchange of labour for wages through freely entered into contractual agreements. From these perspectives, labour is also understood to be a detachable bodily property that is sold on the market in the same way as any other commodity (Cruz, 2020). *This is how things appear*. As Derek Sayer argues, however, 'phenomenal categories are ultimately inadequate in respect of their own historicity – which they only reveal on analysis' (1975: 785). Critical, historical, and empirical analysis attempts to explain the structural internal relations that need to be in place for labour to *appear* as a detachable commodity that could be equally exchanged for a wage. This is *how things really are*.

From a Marxist perspective, reality is the historically specific social relations and forms of organisation, including divisions of labour, use of technologies, and institutions that people enter to produce the necessities to meet their, once again, historically specific needs and interests. Within capitalist societies, workers are *expropriated* and so separated from the means of production for the benefit of capital. Having nothing but their labour to sell, they are *compelled* to enter a relationship with those who own the means of production to meet their subsistence needs. In the process, workers are reduced to a commodity, albeit a special one that produces *surplus labour* in the process of production that is appropriated by capital. This is capitalism's specific mode of appropriating and exploiting labour. It is made possible by the existence of a class of workers needing access to wages to subsist and a class of

capitalists who can employ workers to make commodities whose value exceeds the cost of reproducing the workforce. In this process, workers sell their body and mind, albeit within temporal limits, and are *alienated* from the positive objectification of their labour, meaning from what they produce, society, and their creative capacities (Cruz, 2020). Capitalist social relations are always *socially* organised, including in legal forms (property, contract, labour law, etc.) in ways that tend to mask this domination.² This is the reality or ‘real’ essence (Conaghan, 2019) of capitalist social relations. However, the appearance of things is not false; we can and do experience the buying and selling of our labour as an equal exchange.³ But it is a partial explanation of capitalism that should be socially situated, historicised, and connected to how things really are. For Marx, this ‘real’ essence was revealed through the process of critique and historical analysis of the position and perspective of the working class. Having *achieved* this perspective, Marx believed that workers would be able to organise and resist their domination, including through existing legal forms that can limit the commodification of labour within the confines of what capitalism will allow for.

Throughout this article, I argue that both Federici and MacKinnon view liberal law as constituted by, and constitutive of, capitalist and sexual domination (essence) *and* as a phenomenal form (appearance). Real essence is revealed through critique and collective reflection by feminists and women, including by observing a contradiction between what is and what appears. To illustrate, for Federici, equality laws (e.g. equal pay) have a limited positive effect on women’s lives. Equality laws make women’s oppression *appear* as formal equality between the sexes. However, the *reality* of women’s oppression is the lived experience of structural domination between labour and capital, from which men benefit, and of which these laws are a part. Equal pay laws reconstitute capitalist domination by seeking only to ensure that women’s wages are formally equal to those of workers of the opposite sex who do ‘equal work.’ Women’s day-to-day experience of work and feminist critical reflection reveal that these laws deny or distort the expropriation and alienation of women’s

² I therefore follow those who argue that it is a mistake to regard law as only a phenomenal form (superstructure) that distorts the reality (base) of capitalist social relations. Law is also part of the reality of capitalism but this reality is not immediately apparent to us. As Derek Sayer (1975: 221) remarked, in his discussion of the *Grundrisse* and *Capital*, ‘part of what Marx showed in these works was precisely the impossibility of abstracting “the economic” ... in Marx’s writings of the 1840s, the development of capitalism is apprehended as intimately bound up with wider social changes, in politics, law, culture, morality. Moreover, Marx exhibited an eminently historical grasp of these interlinked changes’ (see also Conaghan, 2016; Fraser, 2016; Ireland, 2002; Wood, 2007).

³ Sayer is helpful here. He argues that the appearance of things is how we immediately experience the world. These perceptions have to be true in some sense, so match our experience, otherwise they would cease to retain their explanatory validity. The point is, however, that they are a *partial* explanation that must be connected to the *whole* (1975).

unpaid labour that precedes women's entry into the labour market, the economic compulsion that structures their entry to work, and their exploitation therein. Equality laws are not, however, false; women do experience inequality at work in relation to male workers. And these laws were fought for by the women's movement, and they will benefit some women. However, they are a *partial* explanation of women's position in society and need to be related to the real essence of women's oppression. This is why Federici thinks that they are of limited use.⁴ Having revealed this reality, women workers are then able to collectively change it.

In sum, Federici and MacKinnon invite us to interrogate how law plays a role in (re)constituting the reality of capitalism, and how law's imbrication in this essence is masked by how it appears. They offer a hypothesis: that how things appear, including in liberal law and other modern liberal discourses, needs to be historicised by critical, empirical, and political reflection because this appearance might distort how things are, that is, the 'real' essence of women's oppression. We then must test this hypothesis historically, theoretically, empirically, and doctrinally (Kirk and Cruz, 2024). Like Marx, both Federici and MacKinnon understand real essence as the lived reality of women's labouring and sexual lives within the context of historically specific capitalist and patriarchal social relations. The point is to understand this reality and change it. They are not making essentialist claims about the necessary and universal conditions of women's oppression (on 'necessary essence', see Conaghan, 2019).

The second definitional matter relates to the modern liberal philosophical, legal, and politico-economic discourses that I discuss throughout this article. These have contemporaneously existed alongside economic and sexual relations of domination and, at the same time, appeared to have little to do with them. I am grouping together liberal ideals that describe and normatively justify distinctions between public and private spheres of life or concerns and the responsibilities, activities, and attributes of those thought to reside in each. Significant for the purposes of this article is that liberal legalism, shaped by liberal philosophies, regulates work or labour according to principles of equality of bargaining power, self-possession and property in the person, self-interest, and productivity, and regulates sexuality and sexual activity according to principles of privacy, mutual consent, and non-interference in matters of sexual morality and choice unless harm is caused. These

⁴ Ellen Meiksins Wood makes a similar argument about equality laws accommodating class inequalities, albeit she does not agree with Federici on the always already gendered nature of capitalism (2007). Sarah Boston's study of women in the trade unions in the twentieth century also concludes that the fight for equal pay 'did not alter the basic pattern of discrimination embedded in capitalist society' (1980: 284).

liberal discourses are both 'true' (they are often how things immediately appear to us) and 'false' (they need to be connected to the 'real' material relations that condition their possibility). Feminist and Marxist scholars have sought to excavate the relationship between these liberal discourses and capitalist, racial, and gendered domination (Pateman, 1988; Conaghan, 2016; Hunter, 2016). This article attempts a similar task in the context of Federici's and MacKinnon's work and applies these insights to legal research about sex work.

In the next section, I outline Hemmings's provocation to do feminist theory differently by reading feminist texts non-linearly and for continuities and links rather than discontinuities and breaks. This disruptive strategy has encouraged me to read together two feminist theorists who are often considered to be, and indeed consider themselves to be, opposed.

1. Doing Feminist Legal Theory Differently

I share Kathi Weeks's (2021) concern that, to rejuvenate structural and materialist feminist analysis and politics, the usual metaphors through which feminism has been historicised and categorised will not do. Such tropes abound in feminist theory and its legal variant, particularly the historical 'tradition' model (Weeks, 2021) that depicts development through discrete 'waves', stages, decades, or types (e.g., Socialist, Radical, Cultural). These discontinuous and incompatible phases are then inflected by an explicit or implicit sense of progress or loss for feminism (Hemmings, 2005, 2011). What Hemmings describes as the *progress* narrative consigns 'structural' feminism to an 'essentialist' past (the 1970s and 1980s are said to have essentialised women and sexuality) from which there has been advancement to a postmodern or poststructural present (the 1990s onwards) that is against 'grand theorising' and for 'difference' (Halley, 2008; Hemmings, 2005, 2011; Weeks, 2021).

This narrative is also reversed to stress *regression* or *loss* in feminist theory, marked by the depoliticisation, prioritisation of 'cultural' over 'material' concerns, and a move away from collective feminist political strategies to improve women's lives that are said to characterise the 1990s onwards (Conaghan, 2000; Hemmings, 2005, 2011; Thornton, 2004). While I believe that the feminist loss narrative has some resonance with the present, the problem is that it stays tied to a historical model or teleology, albeit one that stresses regression. Taken too seriously, it is a melancholic attachment to a lost past (Brown, 2003) that risks diverting and alienating contemporary readers from the relevance and breadth of materialist and structural feminist theorising and its importance for understanding our present-day concerns.

Read through these interpretive lenses, Federici and MacKinnon could be caricatured as outdated Marxist and radical feminist essentialists from the 1970s and 1980s,

respectively, engaged in grand theorising about women, class, and sexuality, or lost objects of a much-lamented feminist past. Hemmings argues that feminist stories that stress discontinuity and rupture, and are overlaid by either progress or loss, can be disrupted by reading across and between feminist texts in a non-linear fashion for commonalities and affinities. For example, might, Hemmings asks, 'it be productive to think through ... reconnecting Gayatri Spivak with Luce Irigaray, so that the latter's consistent citation predominantly as object of postcolonial critique becomes more difficult to justify?' (2005: 131). A similar interruption of tropes is proposed by Weeks, who encourages readers not to treat feminist texts as artefacts of the past but as objects to be re-appropriated and recreated for our present purposes.

Hemmings's deconstruction of tropes in feminist theory and provocation to do feminist theory differently, and Weeks's insistence on the reappropriation of texts for present purposes, have encouraged me to place in relation to each other texts that I have long thought amplify each other's theoretical and political commitments.⁵ As such, and despite the likely protestations of Federici and MacKinnon, I read them not as opposed Marxist and radical feminists but as materialist feminist theorists closely aligned in method and politics. This reading reveals that they should not be consigned to an essentialist or longed-for feminist past and have much to offer contemporary feminist legal theory and politics. Indeed, as I have read and re-read MacKinnon, then Federici, then MacKinnon, and so on, I have been intrigued by what 'pops' when I put their work into *conversation* rather than *opposition*, by what is amplified in one by being positioned in relation to the other (Weeks, 2021). Over the course of the next two sections, this reading practice reveals that Federici and MacKinnon have a shared commitment to a 'scaled up' materialist methodology and politics (Weeks, 2021).

2. Silvia Federici: Capitalism and un/paid (sex) work

'Second wave' socialist feminism in the late 1970s, through the early to mid-1980s, was marked by debates about capitalism from a feminist standpoint. One way feminists did this was by placing women's unwaged reproductive work in the home in conversation with Marxist political economy (Weeks, 2007, 2011). To this end, feminists expanded the

⁵ A great example of a similar project in feminist legal theory is Kimberle Crenshaw's reading of, on the one hand, MacKinnon, and, on the other, intersectionality and Critical Race Theory for commonalities rather than differences. As we know, MacKinnon is often pitched as an 'essentialist' and intersectionality as its successor because of its anti-essentialist commitments. However, Crenshaw argues that her intersectionality project and critique of sameness/difference in anti-discrimination legal reasoning is in fact much indebted to MacKinnon's dominance theory (2013).

category of work or labour and insisted that unwaged reproductive work made productive, exploited work possible and, therefore, was part and parcel of capitalism. The focus on unwaged household work included cooking, cleaning, and child-rearing, but did not tend to expand to *unwaged sex* in the home, let alone waged or *paid sex* (Cruz and Hardy, 2021).

In contrast, two strands of feminism were integrating sex and sexual labour within a broader analysis of the unpaid sphere of the home and the paid sphere of the market: autonomist feminists and socialist feminist historians. Through the feminist politics of the time, Italian autonomist feminists unpacked the history of women's unpaid work, including sexual work, and its connection to their paid (sexual) labour (Cruz and Hardy, 2021; Dalla Costa and James, 1975; Federici, 2012; Fortunati, 1995; Mies, 1986). To this, socialist feminist historians added rich, historical, and empirical accounts of women's lived experience of paid sexual labour in the Victorian period (Cruz and Hardy, 2021; Stansell, 1987; Walkowitz 1980a, 1980b). In this section, I focus on Silvia Federici's publications from the 1970s and 1980s, which contain a 'scaled-up' historical materialist method that reveals the expropriation, exploitation, and alienation of women's un/paid (sexual) labour within capitalist societies, which is organised and secured through institutions, including modern liberal legal, moral, and philosophical discourses. This reality is also demonstrated to be distorted in these modernist discourses. Federici's 'scaled up' politics is women workers' collective experience and reflection to reveal *and* resist the essence of capitalist domination. Within this framework, the law is viewed as a tool to return some immediate gains for women within the limits of capitalist domination and as a site to protest the law's limitations for articulating the essence of women's oppression.

Expropriation, exploitation, and alienation for profit: The 'essence' of capitalist domination

In her 1975 essay, 'Why Sexuality is Work' Federici unpacks the expropriation of women's sexual labour for the benefit of capital (2012). Far from being the 'other' of work, sex *is* work because it is subordinated to the reproduction of labour power, constrained by the dictates of capitalist discipline (who, Federici asks, wants to have sex when paid work is knackered?) and only acceptable if expressed as heterosexuality and the fulfilment of male sexual desire. Heterosexuality is compulsory in this context not simply because men benefit from it, though they do, but because *capital* demands it for its reproduction; a gendered hierarchy, male control of female sexuality, and the subjugation of women's pleasure to procreation are in

the service of capital.⁶ Federici's argument that sex and sexuality are work needs to be placed in the context of her broader argument in another 1975 essay, 'Wages Against Housework' (2012). In this essay, Federici argues that women's unpaid domestic, physical, and emotional labour is appropriated for the benefit of capital and is a process that requires a gendered hierarchy from which men benefit. Furthermore, the expropriation of women's unpaid (sexual) labour is secured through bourgeois political-economic, state, and legal apparatuses that construct women's work in the home as a natural and fulfilling activity, as non-work, and as a duty for which some paltry social services might be given (2012: 16, 20).

In the process of capitalist production, workers are alienated from the processes and outputs of the objectification of their labour. Objectification has a positive meaning in Marxism (seeing ourselves and our capacities in the world and the things we create), which is distorted by capitalism because workers' labour and its product are taken away and put under the control of capital. Workers are alienated from their objectifications, and so from their innate creative capacity and labour (which is turned into an object/product) and from the objects/products that they produce for capital (Marx, 1844 (1978); Federici, 2004: 135). In Marxist inspired studies, alienation is particular to the process of commodification and exploitation through production. In this vein, Marxist feminists have considered how women's creative capacities and the products they produce are alienated in the context of commodified socially reproductive work, including care (Hochschild, 2011) and sex work (Holmstrom, 2014). Federici agrees with these feminist insights. But her unorthodox take is that the *expropriation* of women's unpaid (hence non commodified) labour also alienates women from what they 'produce' in the home and from their creative sexual and labouring capacities (2012: 19, 25).⁷ Federici once again argues that alienation is organised institutionally. Alienation is only possible because bourgeois political economy, morality, and even sexual liberation for women have ensured, or done nothing to challenge, it. For

⁶ In another essay from the same year, 'Wages Against Housework' Federici notes that under capital every worker is exploited and while that exploitation is ideologically mystified as fairness by the wage, the wage offers a point of struggle or contestation for workers over their exploitation. Housework, on the other hand, is mystified by capitalism as love, as women's natural condition, and the absence of the wage leaves women with no means to challenge capital's expropriation. Demanding a wage for housework was therefore a political tactic to demystify this work and bring unpaid labourers into working class struggle; it was *not* an attempt to revere or normalise this work but the first step in *refusing* it.

⁷ In 'Wages Against Housework' Federici argues that the strategy of demystifying women's work through the WFH perspective may mean that women can 'rediscover what is love and create our sexuality, which we have never known' (20). This quote could be read for or against Federici having a commitment to a vision of innate, non-alienated, non-corrupted sexual capacity. My reading of it in the context of Federici's work as a whole is that she is minimally committed to a vision of non-alienated sexuality and labour; it is simply a *creative capacity* or *potential* that is only possible outside compulsory conditions of class and sexual domination (2012: 11, 24, 55).

example, bourgeois morality that dictates heterosexuality and procreation ensures that women's activities in the home (sex, cooking, and cleaning) are for the benefit of capital and that their sexual creative potential remains underexplored (2012: 24-25).

The processes described in these essays are given depth by Federici's history of gendered expropriation. *Caliban and the Witch*, originally published by Federici and Maria Dalla Costa in 1984, historicises and denaturalises the sexual division of labour and the expropriation of women's unpaid (sex) work. Federici genders Marx's description of primitive accumulation or expropriation to tell the bloody history of women workers, who, like men, were divorced from the land and forced to rely on wage labour to survive, but unlike men, were divorced from their previous labours, ways of living, and forms of knowledge and forced into the home to perform the necessary reproductive work of raising and nourishing their husbands and a family of future workers (2004: 74-75). Federici's account of the expropriation of women's labour for the benefit of capitalism pays specific attention to the criminalisation and destruction of female knowledge relating to procreation through the torturous Witch hunts across Europe.

Caliban and the Witch details not only the expropriation of women's unpaid labour but its connection to women's *exploitation* in productive paid labour, including paid *sexual* labour, from the sixteenth to nineteenth centuries. In sixteenth and seventeenth century Europe, working class women found themselves restricted to paid work coded as 'feminine' or 'women's work', including domestic work and wet nursing, which was paid at a lower rate than 'male' occupations and only acceptable to support their husbands. The outcome for women was 'a condition of chronic poverty, economic dependence, and invisibility as workers' (Federici, 2004: 75). Federici argued that against this backdrop of women's economic and social degradation and increased 'double' dependence on men and employers, there was a 'massification of prostitution' across Europe (77, 94). She draws from historical research to demonstrate a drastic increase in prostitution in France, England, and Spain, which offered an alternative to other, less well compensated forms of 'women's work' (94). Women also found themselves expelled from work that had been their prerogative, such as midwifery, and excluded from 'male' occupations, such as craft work. At the same time, in a bid to force women into the role of unpaid reproducers of labour power, and so to heterosexuality, and into restricted forms of paid work, prostitution, which had previously been tolerated as a 'necessary evil', was criminalised, and women were subject to severe state-sanctioned penalties and violence.

Federici's 1970s/80s texts were written before the mass commodification (hence exploitation) of work coded feminine – care, domestic, sexual – but she was clear that as women gained 'liberation' and so some measure of distance from the expropriation of their

labour by entry to the paid workforce, they would do similar work, only now also in conditions of *exploitation*. As she put it in 'Wages Against Housework' in 1975: 'The second job not only increases our exploitation, but simply reproduces our role in different forms' (2012: 20).

Once again, Federici points to the institutional organisation and mystification of exploitation through law. 'The wage gives the impression of a fair deal: you work and you get paid, hence you and your boss get what's owed; while in reality the wage, rather than paying for the work you do, hides all the unpaid work that goes into profit' (2012: 16).

(De)naturalisation of profit: Appearance and Essence

Throughout her work, Federici demonstrates how modern liberal discourses that *appear* to be disconnected from capitalism are a core part of its essence. We find, then, woven throughout Federici's work, a discussion of the discourses that *appear* to explain women's position under capitalism. These include liberal ideals of the home as a private site of love, care, and affection; morals about proper heterosexual relations and the criminalisation of socially unacceptable and harmful sexual conduct; liberal feminist and legal narratives of paid work as freely chosen and providing a fair wage for a day's work, and liberal political and scientific discourses that frame the body as acceptable if 'productive' (as alienable property, subjected to work discipline) and unacceptable if 'unproductive' (sexually transgressive, hostile to work discipline).

For Federici, these modernist discourses are not, à la Foucault, simply rationales for population-level management; they are also part of capitalism and its gendered modes of subjugation (2004: 16). They are also not simply 'false' ideological representations. Women do experience the world through these modernist abstractions, but they are partial explanations of women's position in society that must be connected to their social conditions of existence. This, for Federici, reveals they are core processes organising the expropriation, exploitation, and alienation of women's (sexual) labour. As I have argued in the previous section, Federici maintains that from the dawn of mercantile capitalism to the outer fringes of state-managed capitalism, the expropriation, exploitation, and alienation of women's un/paid (sexual) labour have been organised and secured by the very same legal, moral, and philosophical discourses that *appear* to have nothing to do with capitalism.

To give an example, Federici's history of the subjugation of labour to a commodity and its gendered dimensions (including the segregation of women to procreation and the home) can be read as deploying the essence/appearance distinction to engage in a scaled-up institutional critique of capitalism. Federici's *Caliban and the Witch* details the emerging liberal modern scientific and philosophical discourses which, through the deployment of reason and scientific inquiry, came to define the body as a useful, productive, and disciplined

machine. These philosophical ideas were embodied in state processes that disciplined, controlled, and criminalised bodies that exceeded this function, including “unproductive” forms of sexuality and sociality’ (2004: 137, 133-162). On the one hand, these discourses and practices *appear* to be scientific paradigm shifts that facilitate social cohesion and individual betterment, and hence to have little to do with capitalism. Again, these appearances are not false, which Federici recognises (2012: 139). However, Federici argues that these discourses and practices are more fully understood when viewed in relation to their material conditions of production, and hence the social relations between women and the emergent capitalist mode of production. Viewed in this way, they are the scaffolding that justified and endorsed the disciplining and reduction of women’s bodies and labour to a machine for procreation and production (2012).

Finally, it is important to note that, for Federici, the real ‘essence’ of capitalism is not fixed and unchanging; it is a historically contingent (and so definitely *not* inevitable) arrangement of social, economic, and sexual affairs that can be upturned through the process of class struggle.

Consciousness, class struggle, and the state

Federici’s approach to consciousness, class struggle, and the state can be deduced from her historical materialist method. Consciousness is a collective, critical standpoint that is achieved through understanding women’s location within and experience of capitalism and its gendered division of labour. This necessarily involves collective experience of these conditions, which is inseparable from categories of thought, including theory. An excellent illustration of this approach is the ‘Wages for Housework’ (WFH) movement. This political perspective and practice were *achieved* through a movement of direct experience and reflection upon capitalism emerging from Marxist, feminist, and anti-colonial movements in the 1960s and 1970s. At this time, women immediately experienced their lives as naturally doting, loving caregivers and wives who had freely entered marriage contracts. But to experience their lives in this way, Federici wrote, ‘Capital had to convince us that it is a natural, unavoidable, and even fulfilling activity’ (2012: 16). This naturalisation was contradicted and challenged by the political perspective of WFH, which saw the home and marriage as the abode behind Marx’s hidden abode, as the prior expropriation upon which the exploitation of commodified workers relies. Far from being conceived as hush money to reward women for the work they are naturally suited to, WFH was an effort to, first, denaturalise women’s assumed role and to see it instead as socially constructed for capitalist domination, and, second, to politicise the wage by opening it up to critical scrutiny,

including its use by capital as a tool to undermine solidarity across the working class (2012: 15-22).

For Federici, then, unpaid (sexual) workers are clearly part of the working class, involved in working class struggle as they attempt to make visible and challenge capitalism's real 'essence.' As I have stressed throughout this section, Federici views law and the state as both part of this essence *and* a phenomenal appearance. Where does this leave concrete engagement with the law in the here and now? Federici is clear that she is not against formal equality. Rather, she 'is against concentrating all our energies on fighting for a law that at best can have a limited effect on our lives' (2012: 61). The limited effect is because women's formal equality to men in employment masks the prerequisites for this experience, which include the subjugation of labour to the status of a commodity that can be exchanged for an equivalence and the devaluation of women's second 'job' as no job at all. It is in challenging the preconditions of equality laws, and not in the fight for them, that women (sex) workers will be liberated. However, Federici also views the state as an arena in which to raise consciousness, and, so, to fight for a wage for housewives (or more recently, for wages for commodified care work and for a 'carer's income', 'social wage' or 'guaranteed income') (2012: 12). Indeed, the demand for a carer's income or social wage might be best understood as a protest or provocation that demonstrates the limits of the law (family, social security, and labour) to deliver this substantive good because of its internal connection to capitalist logics of expropriation and exploitation. In any case, Federici thinks that the law is 'limited' and much of her energy is now focused on the cultivation of anti-capitalist protests and alternative 'commoning' practices (2012: 115-149).

3. Catharine MacKinnon: Sexual domination and prostitution

Catharine MacKinnon's work could be read as opposed to, or even as an inversion of, Federici's texts. MacKinnon's work is not historical; it centres male sexual domination and indeed explicitly parts ways with Federici on this issue; it is self-consciously 'post-Marxist'. This 'opposition' becomes even more stark when we turn to the issue of sex work and prostitution. Whereas Federici considers sex work to be exploitative and alienating *work*, MacKinnon considers it to be a dense site of male *sexual domination* (Cruz and Hardy, 2021). It is tempting to indulge in this opposition, particularly given the fractures within feminism on the question of prostitution and pornography. In the 1970s and 1980s, a rift emerged between radical feminists, socialist feminists, sex radicals, and liberals on this analysis of sexuality and power and strategies for addressing it. Relevant for my purposes is a split that emerged between radical and socialist feminists about whether pornography was always a site of sexual domination (literally and symbolically) or whether it could also be, for

women, a site and practice of rejecting sexual repression and hypocrisy (Cruz and Hardy, 2021; Willis, 1993). Less often have the practices disputed in the 'sex wars', that is, commodified sex, been viewed through the lens of the *common concerns* of radical and socialist/Marxists feminists.

In this section, I argue that what unites MacKinnon and Federici is a materialist commitment to 'scaled-up' institutional accounts of the *reality* of the expropriation and alienation of women's labour/sex that happens in tension with the *appearance* of modernist philosophical and legal discourses about capitalism and sexuality. Applied to sex work and prostitution, they draw attention to the spectrum of sexual and economic power of command that is exercised over sex workers, produced by capitalist and sexual powers of domination, and both exercised through, and obscured by liberal norms, values, and institutions. According to this reading, sex work and prostitution are manifestations of domination: capitalist domination (and its ally gendered hierarchy) and sexual domination (and its ally economic exploitation and poverty). As with Federici, collective consciousness-raising, understood as socially situated reflection and activity, emerges as central to the process of understanding and challenging the 'essence' of male sexual domination. MacKinnon's approach to law strongly resonates with Federici, but she adds an important dimension or provocation, which is that liberal law *can* and *must* speak to the essence of women's oppression.

Expropriation and alienation for power: The 'essence' of sexual domination

MacKinnon began her 1989 text *Toward a Feminist Theory of the State (TFTS)* with a recognition of the parallels between Marxism and feminism. 'As work is to Marxism, sexuality to feminism is socially constructed yet constructing, universal as activity yet historically specific, jointly comprised of matter and mind' (1989: 3). Hegemonic relations of work and sexuality expropriate and alienate our labour/sex for the benefit of capitalism and its quest for profit and male sexuality and its quest for power. As MacKinnon put it, 'the major advantage men derive, dubious though it may seem to some, is the process, the value, the mechanism by which their interest itself is enforced and perpetuated and sustained: power' (1989: 94). For MacKinnon, it is this dynamic that defines women as a gender, and the central process by which our sexuality is expropriated and alienated is *sexual*

objectification.⁸ This, then, is the process of ‘having’, ‘owning’, ‘thingifying’, and ‘mastering’ women’s sexuality. And for MacKinnon, the actual sex/gender of those who inhabit the sexual domination side of sexual relations is not always (though very often is) cis-gender men.

The parallels with Federici are therefore strong. Women’s sexuality, like workers’ labour under capitalism, is treated like a ‘thing’, a commodity, that is bought and sold on the market; and women, like workers, experience a prior expropriation and alienation from that which is most their own, their labouring and sexual creative *potential*; of which women, like workers, can only achieve ‘truly rare and contrapuntal glimpses’ in conditions of capitalist and sexual domination (MacKinnon, 1989: 153). And whereas a gender hierarchy is an ally of capitalist domination for Federici, poverty and class are a close ally of sexual domination for MacKinnon. ‘Although some of its abuses (like prostitution) are accentuated by poverty, it does not vary by class, although class is one hierarchy it sexualizes’ (1989: 151, see also 130). MacKinnon, like Federici, but more meticulously, demonstrates that this domination is institutionally organised through the law. Indeed, the third section of TFTS is dedicated to this mapping. As she bluntly puts it: ‘The way the male point of view frames an experience is the way it is framed by state policy’ (167). A simple example would be that in sex discrimination law, ‘men’ or ‘maleness’ is the measure of entitlement to being treated equally, which effectively maintains sexual inequality while appearing to transcend it.

However, MacKinnon is often accused of essentialism for reducing sexuality to a transhistorical and natural desire for sexual domination and for reducing sexual domination to brute force and violence. I think that this is a misunderstanding. Such a reading suggests that, for MacKinnon, sexuality has a ‘necessary’ essence (Conaghan 2019), a set of core characteristics without which it would cease to have meaning. As I read her, MacKinnon’s understanding of essence is rather different from this, and more like Federici’s. Sexuality as

⁸ Readers might, at this point, counter that MacKinnon’s understanding of women’s oppression is *post-Marxist*. It could be said that in a bid to stress continuity with Federici, I am misreading or misrepresenting MacKinnon. This might be the case. However, my reading of MacKinnon’s departure from Marxism is that it is unconvincing for the following reasons. MacKinnon parts ways with Marxism because women are not alienated from what they have created, or could create, in the world. This is because women are *objects* or *products* and, as such, have not authored objectifications (created anything in the world) from which they could be alienated. On this basis, MacKinnon rejects Marxists’ positive view of objectification as the foundation of human freedom. However, Marx, like MacKinnon, believed that workers are objects or products under capitalism (they are *commodities*, and they are *produced* by capitalism), and for Marx this did not preclude workers from creating objectifications from which they are alienated (1844 (1978); see also Miller et al. 1984). My perspective is that MacKinnon’s assertion that alienation is not a useful concept is both inconsistent with her own comments (that we have known a non-alienated sexuality, it is ‘most our own’, that women ‘often begin alienating themselves...’ (1989: 145)) *and* is based on a spurious reading of Marxism.

sexual domination is a historically specific mode of organising sexuality that is revealed through bottom-up theorising and so through feminist reflection and women's lived experience (1989: 151). In other words, the 'real' essence of sexuality/labour is the lived reality, experience, and institutional organisation of social relations between capitalists and producers and between the sexes, which, within capitalist and patriarchal societies, are organised by male heterosexual desire for *power* and capitalist need for *profit*.

What is revealed is that sexual power is organised via the appropriation and alienation of women's sexuality through a spectrum or continuum of behaviours where 'violence is seen as occupying the most fully achieved end of the dehumanization continuum on which objectification occupies the least express end' (1989: 145). Male sexual domination, then, much like capitalist domination, expresses itself as a spectrum of powers of command over women/(women) workers. 'Pressure, gender socialization, withholding benefits, extending indulgences, the how-to books, the sex therapy are the soft end; the fuck, the fist, the street, the chains, the poverty are the hard end' (1989: 136, see also 93). This chimes with Federici's comments in her 1975 essays considered above. Capitalist domination of women mediated by gender hierarchy (2012: 18) expresses itself as direct plundering and domination, but also through processes within which women consent, including, of course, norms about gender, reproduction, and productivity.⁹

The upshot is that it is not a stretch to read MacKinnon and Federici for continuity, and that both can be read as committed to an analysis that focuses on the expropriation and alienation of women's labour/sexuality under historically specific conditions of sexual and capitalist domination.

(De)naturalisation of power: Appearance and essence

In the 'Method' section of *TFTS* MacKinnon rails against a broad range of liberal scientific and philosophical deployments of objectivity as masking *and* explained by women's sexual subordination. Her targets range from John Stuart Mill to Carol Gilligan, Western science, and, most importantly for my purposes, liberal legalism. The critique uniting these disparate thinkers and phenomena is that they are not uninterested or a-perspectival reflections of the real. Rather, each in their own way distorts the social reality that helps to explain their emergence and existence. They are claims about the reality of heterosexual relations as equal, private, natural, and ahistorical, packaged as objective claims reflecting reality.

⁹ I therefore understand the more subtle forms of control, mixed with elements of consent, as a mechanism by which capital/men extract women's work and sexuality. There are, then, a continuum of tactics.

However, MacKinnon argues that these appearances *mystify* the reality of gender as a (socially constructed) relation of sexual domination; the latter (male sexual domination), in fact, helps us to explain the former (the phenomenal form).

Take the example of Carol Gilligan. MacKinnon argues that Gilligan's observation that women have a different register of morality – an ethic of care – is not untrue. However, this is a partial explanation that distorts the social determinants of women's ethical viewpoint. 'Women may have an approach to moral reasoning', hence Gilligan is not making a false claim, 'but it is an approach made both of what is and of what is not allowed to be. To the extent materialism means anything at all, it means that what women have been, and thought is what they have been permitted to be and think' (1989: 51). In other words, women may very well experience themselves as caring and as morally reasoning in this register, *and* this can be explained as a voice that is not their own in conditions of male sexual domination and its quest for control over women's sexuality.

MacKinnon consistently discusses liberal law as a phenomenal form that is a partial explanation of women's reality that cannot be understood without an understanding of its conditions of existence. We can use MacKinnon's reading of the law, pornography, and prostitution to illustrate this point. Put simply, the phenomenal forms through which women involved in pornography and prostitution live are, in the US, as actors choosing to engage in constitutionally protected free speech and as criminals choosing to sell sex. MacKinnon argues that these laws need to be contextualised. By doing so, it becomes clear that they exist because 'the state protects male power through embodying and ensuring existing male control over women at every level' (1989: 167). These laws exist because they allow men to control women's sexuality; they allow men to make pornography and to punish women for being 'whores'. Even when the law steps in to protect women, it will only do so by 'cushioning, qualifying, or de jure appearing to prohibit its excesses when necessary to its normalization. De jure relations stabilize de facto relations' (1989: 167).

MacKinnon's method sounds remarkably close to Federici's historical materialist method. However, MacKinnon is again clear that her method for making male sexual interest visible is *post-Marxist*. It seems to me that this is because she equates a Marxist method for demystifying capitalist forces with a scientific Marxism, and therefore an asocial, abstract, and theoretical approach removed from the everyday experience of those relations. She is not departing from Marx's distinction between essence/appearance, but what she understands to be his scientific and detached method of critique (1989: 8, 83). This then allows her to argue that feminism is Marxism's 'ultimate critique' because it begins with 'consciousness raising', defined as 'an intrinsically social situation, into that mixture of thought and materiality which comprises gender in the broadest sense' (1989: 83).

Consciousness raising then emerges as The Feminist Method that will reveal the 'essence' of male sexual domination.

Again, I think that this is a questionable reading of Marx and other Marxist scholars, including Marxist feminists like Federici, whose method MacKinnon engages with in the first third of *TFTS*, but to which she does not return. Marx and strains of Marxist feminism, including Federici, have a similar definition of collective consciousness raising (see next section), and its role is demystification, which MacKinnon seems to recognise in at least one place (1989: 108). Perhaps MacKinnon's critique of Marxism needs to be situated historically as reflecting a critique of the predominant strain of structural, scientific Marxism in the 1980s, which would seem to fit this characterisation (Wood, 2007). In any case, it is a shame that she did not explore the relationship between her own method of critiquing the dominant appearance of sexual relations and that found in the strains of Marxism she briefly mentioned as 'more hospitable to feminism' (1989: 108).

I therefore read her approach to denaturalising male sexual power as compatible with Federici's, but quite obviously with a square focus on male sexual domination.

Collective consciousness, sexual struggle, and the state

In the preceding section, I argued that MacKinnon places consciousness-raising front and centre as The Feminist Method for demystifying contradictions between the essence and appearance of heterosexual relations, including their manifestation in law. I argued that Federici does the same in the context of critiquing capitalism (see also Thompson, 1963 (1966)). In this section, I focus on the continuities between MacKinnon's and Federici's approaches to collective consciousness raising and the role of law as a possible site thereof. We see that MacKinnon has a dubious reading of Marxist approaches, which cannot ground her claim to have developed a 'post-marxist feminism of social transformation' (1989: 160). MacKinnon's method is broadly consistent with Federici's and that of other Marxist scholars. However, what she adds is an important addition, which is that liberal law *can* and *must* be used to speak to the 'essence' of women's oppression.

For MacKinnon, consciousness is a collective, critical standpoint achieved through understanding women's 'essential' location within relations of sexual domination. This is a necessarily social inquiry that involves collective experience (1989: 7) of these conditions and is inseparable from categories of thought, including theory (1989: 83). This method 'approaches its world through a process that shares its determination: women's consciousness, not as individual or subjective ideas, but as collective social being' (1989: 83-84). 'Consciousness-raising' is an incredible chapter of *TFTS*. Like Federici's texts on WFH and sexuality, MacKinnon relays the initial and shared impulse that brings women

together, of the 'barely submerged discontent that in some inchoate way women relate to being female ... Restrictions, conflicting demands, intolerable work' (1989: 85). These impulses give way to more thoroughgoing critique of work and sexuality as women explore the contradiction between the appearance and lived reality of heterosexual relations. MacKinnon is extremely careful to stress that women live in a dual reality of sexual domination. Male sexual domination is real, and women live it; they do not have false consciousness. What consciousness raising reveals is that male sexual domination 'is just not the only reality, as it claims to be. Male power is a myth that makes itself true. To raise consciousness is to confront male power in its duality: as at once total on one side and a delusion on the other' (1989: 104). Using Marx's own language about the revolutionary potential of proletariat consciousness, MacKinnon's method is one in which women collectively describe 'a fact of male supremacy, a fact of sex "in Itself"', which is 'a necessary step for women to become a sex "for itself"' (1989: 104-105). This brief outline of MacKinnon's approach to raising consciousness should also dispel another 'essentialist' critique of MacKinnon, which is that she thinks women labour under 'false consciousness' and have no agency to change their conditions.

Like Federici, MacKinnon does not write off the state and law as sites of struggle and potential change for women. Law is, on the one hand, a phenomenal form whose 'legitimizing norms, forms, relation to society, and substantive policies' tend to mask the fact that it 'sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender' (1989: 161-162). Federici has a similar understanding of the law, as a phenomenal form that delivers formal equality, and as shaped by the interests of capital. This leads Federici to argue for a strategic engagement with the law to improve women's immediate lives where possible and a discourse of protest and agitation to demonstrate the law's limits to speak to the essence of women's oppression under capitalism. MacKinnon no doubt believes that law should be engaged in to return any immediate gains. However, she also argues that feminists *must* use law to consciousness-raise and redefine sexual equality from the substantive standpoint of women, to articulate the essence of women's oppression: 'On the level of the state, legal guarantees of equality in liberal regimes provide an opening ... From a perspective that understands that women do not have sex equality, this law means that, once equality is meaningfully defined, the law cannot be applied without changing society' (1989: 242). We can use prostitution as an example. Sexual equality for women in prostitution entails curtailing men's 'right' to use, access, and abuse women, and though not explored in *TFTS*, MacKinnon would do this through a reinterpretation of criminal and civil rights laws to bring those who sexually dominate the sex industry to justice (1993, 2011).

Unlike Federici, however, MacKinnon thinks that it is not possible to engage with the law, let alone in the fashion she endorses, from a Marxist perspective. As she puts it: 'Marxism applied to women is always on the edge of counseling abdication of the state as an arena altogether – and with it those women whom the state does not ignore or who are in no position to ignore it' (1989: 160). This is because, MacKinnon argues, Marxists view the state as a determined reflection of economic interests, hence impenetrable and of little use for challenging capital's 'essence.' Any legal victory will only ever be in line with the prevailing social and economic order that it expresses (1989: 240-241). Because MacKinnon believes that women cannot ignore the state and that Marxists do, she is left advocating for a post-Marxist feminist approach. Again, I think that this is a misreading of Marxist approaches to the state and law. It conflicts with Federici's allowance for strategic engagement with the law and its use as a site of protest. It also conflicts with Marxist approaches that view the law as a site of direct and ideological coercion *and* a limited space of freedom within the confines of capitalism (Thompson, 1975 (2013)).

But MacKinnon goes further. However, I think that in doing so, she is in conversation with Marxist approaches rather than moving past them, particularly when considering my comments throughout this section about the resonances between her method and historical materialism. MacKinnon, as noted above, believes that the law can *substantively speak* to the 'essence' of women's oppression. Marxists, including Federici, believe that liberal legal forms *cannot* accommodate capitalism's core 'essence' but that, at the same time, it should be engaged with to deliver wins for workers within the confines of what is possible and to protest the law's limits.

What can we take away from this debate on the possibility of law to speak to essence? I believe that Federici and MacKinnon would agree that liberal legal forms are a potent source for protesting the *inability* of law and the state to speak to the essence of women's domination. I read much of MacKinnon's work in this way. Regarding reforming liberal legal forms that can be shown to mystify women's subordination to speak the 'essence' of women's oppression, MacKinnon does have an optimism that Federici and other Marxists do not share. I am not, in principle, against such an endeavour, but only if it is in dialogue with, and not inconsistent with, anti-capitalist feminist struggle. As will become apparent in my discussion of sex work in the following and final part of this article, the fact that aspects of MacKinnon's approach are inconsistent with anti-capitalist struggle in relation to sex work presents some problems.

4. 'Scaling Up' Sex Work and Prostitution

Federici and MacKinnon tell us sex workers' labour and sexuality are expropriated, objectified, exploited, and alienated for the benefit of capitalist profit and male sexual power. These structures of domination manifest in the exercise, by bosses, clients, and many others in society, of economic and sexual command over sex workers. These powers are arranged institutionally in modern discourses and practices, including, notably for my purposes, liberal law, which does not make this domination immediately apparent. This, then, is the real 'essence' of sex work and prostitution. The job of theoretically and empirically engaged, 'scaled-up' materialist feminist legal critique of sex work is to explore how these 'essences' morph into new forms dependent upon changing hierarchical social relations between classes and genders and to trace their expression *and* mystification in liberal law. Viewing sex work, capitalism, sexual domination, and law in this way can yield important theoretical insights and empirical tools that are always included in socio legal research on sex work.¹⁰ In this section, I highlight some of the gains of 'scaling-up' sex work research while recognising that my discussion is necessarily a sketch of a much larger project that I am undertaking.

Materialism, sex work, and the law

The immediately apparent ways that sex work and prostitution are experienced and conceptualised are as an economic exchange between an equal seller and buyer or as an immoral or harmful act on the part of the seller and/or buyer. The dominant liberal legal forms expressing this are contract (and sometimes labour, depending upon whether sex work is decriminalised to some extent) and criminal law. The first thing to say is that sex workers *do* experience sex work through these concepts, and they are *not* labouring under 'false consciousness' when they do. Much socio-legal sex work research and sex worker rights activism and advocacy take place at this level of phenomenal forms, and reforms are framed according to this logic (e.g. Amnesty International, 2016). This is not a critique of sex worker rights activism and advocacy. Sex workers and activists are not idiots for living through abstractions. They (like all of us) must, day to day, live in the world as it immediately appears. What is more, some gains have been made through these abstractions. Voluntary sex work for adults has led to sex workers being increasingly decriminalised in some jurisdictions, which, in turn, has pushed back on the immorality and deviance appearances of sex work. And some intractable debates and tensions have emerged. Sex workers have

¹⁰ Notable exceptions are O'Connell Davidson who has brought Marxist and feminist literature (particularly Pateman's work) into conversation to move beyond liberal and radical feminist stalemates (1998, 2002), and Fannon who is bringing Marxist feminist literature into conversation with MacKinnon and theories of sexual domination in their research on sex work as (in)decent work (2025).

been framed as vulnerable victims of harm caused by others or to themselves, who do not consent to the exchange (and hence should be protected as victims of a crime). This has conflicted with the view that sex work is a consensual sexual activity that should be viewed and protected via contractual (service or employment) obligations.

What happens when we position these abstractions vis-à-vis their social determinants? What internal social relations need to be in place for sexual labour to *appear*, for example, as a detachable commodity that could be equally exchanged for a wage? The first point to mention is that sexual labour is far more commodified in 2025 than it was in the 1970s and 80s. Sexual labour within hierarchically gendered capitalism, therefore, takes us primarily onto the territory of *exploitation* rather than expropriation (Cruz, 2018). That said, expropriation does shape the sex industry in two ways; one is familiar to Federici, and the other is perhaps a more recent phenomenon. First, women's incorporation into sex work is shaped by their responsibility for unpaid socially reproductive labour, including care for their families and children, which is an argument made by sex workers and activists with staggering consistency (Cruz, 2013, 2024; Hardy, 2016). Second, while many women in sex work will (preferably) be exploited, others will have their sexual labour *expropriated*. There are structural reasons why capital will and does resort to the expropriation of unfree (sexual) labour. To put it simply, expropriation is often cheaper than exploitation because the latter involves a cost that the former does not, which is labour power and its reproduction (Fraser, 2016). The process of alienation of sex workers from their labouring and sexual creative capacities has not received much attention in recent sex work scholarship, but sex workers are, like all other workers and women, alienated from these lived capacities to varying degrees (Cruz, 2020; Holmstrom, 2014). These processes of exploitation, expropriation, and alienation are organised institutionally via discourses that do not immediately make this apparent. For example, the expropriation and confiscation of women's sexual labour are constituted by legal regimes that designate certain sex workers as non-citizens and without a legal status that, while not delivering freedom, would ensure that they are 'free' and hence their labour is exploited and economically compelled rather than expropriated. These legal discourses – immigration, asylum, and anti-trafficking law – tend to mystify their role in reproducing the expropriation of sex workers' labour (Cruz, 2018).

However, it seems quite impossible to make this essence visible in labour law, tort law, criminal law, human rights, and social welfare law. This is because it would require a radical redrafting of laws that would negatively impact profit margins and would be ideologically opposed by employers, the government and parliamentarians, the Bank of England, and those private lenders of UK government loans, including pension funds and banks, to name but a few. Take the example of employment status in the UK, which sex

workers in legal sectors are organising to secure (Barbagallo and Cruz, 2021; Cruz, 2024; Cruz and Herrmann, 2024). It is now possible to argue that precarious self-employed workers are ‘workers’ based on a purposive approach to legislation that focuses on subordination and control.¹¹ However, this approach is based on a court interpreting an individual contractual relationship as embodying sufficient subordination and control to find employer obligations. It is not an approach that presumes sex workers who personally provide labour are entitled to protection because they are structurally subordinate and so exploited and alienated from their labour and face a prior economic compulsion to sell their labour to survive. Nor does this approach do anything to politicise the fact that labour law is a phenomenal form internally related to, and masking, this structural oppression, and hence is a limited tool for addressing it.

On the other hand, MacKinnon’s US substantive approach to sexual equality for women in prostitution is that it is a strict liability criminal offence to purchase sex on the basis that prostitution is sexual domination. It presumes women should have protection from men because they are in a structurally subordinate position and, as such, have their sexuality expropriated and alienated. It is grounded in a political argument that US criminal and equality law is a phenomenal form that distorts this oppression by framing women in prostitution as criminal and immoral actors and by treating men involved as simply equally culpable, or by only criminalising those who manage prostitution when a certain threshold – e.g. slavery – is proven. For at least these reasons, MacKinnon’s sexual equality approach to prostitution voices its sexual essence.

But is MacKinnon’s radical strategy challenging the essence of sexual domination for women in prostitution? Perhaps we cannot yet know. What we do know is that cis gender men continue to buy sexual services and that the strategy of criminalising buyers of sex has added strength to male sexual domination’s phenomenal appearance. In other words, it has been welcomed by conservatives and moralists who would like women’s sexuality to remain tightly controlled by men and who champion ‘family values’ (Bernstein, 2012; O’Connell Davidson, 2003). And while clearly part of a larger political feminist project in law, the sexual equality approach to prostitution has materialised as a somewhat singular focus on substantively reshaping (inter)national criminal law that has not developed alongside a thoroughgoing critique of the latter as a site for justice or engaging with prison abolition debates. This is a strand of argument made by those who tend to reduce MacKinnon to a

¹¹ *Uber BV and others v Aslam and others* [2021] UKSC 5.

'carceral' or 'governance' feminist. I do not wish to engage in this debate other than to say that I share the concern that carceral sex work strategies are producing negative consequences for sex workers, are melding with reactionary forces, and are taking shape under neoliberal economic conditions (Bernstein, 2012; O'Connell Davidson, 2003; Munro and Scoular, 2012; Taylor, 2018). Even if criminal law could, at some more satisfactory level, speak to the sexual essence of women's oppression in prostitution, and if it had some positive symbolic effect for women, such as rocking the patriarchal foundations of prostitution, it is not, as I argue in the next section, a strategy that materialist feminists concerned with sex work and sexual subordination should straightforwardly endorse. However, this does not, as I will also argue in the following section, mean that materialist feminists should reject MacKinnon's sexual equality vision.

Materialism and sex worker rights activism

Sex workers are aware of the real 'essence' of sex work. Since 2008, I have been organising with and supporting sex worker rights activists as they challenge police repression, criminalisation, the use of public law powers to close their workplaces, and their lack of rights at work. They argue that sex work is work, which sucks, is economically exploitative, is by and large a service for cis-gender men, sometimes organised along patriarchal lines of a 'family' that distracts from the fact it is work, and that their exploitation depends upon a prior expropriation of their unpaid (sexual) labour (Barbagallo and Cruz, 2021; Cruz, 2013, 2024). I believe that many sex workers know that while sex work appears as a natural expression of heterosexuality, it is in fact sexual domination and objectification (Cruz, 2024). Sadly, voicing this essence is not something that sex workers will do because they are concerned with making their immediate lives and work a bit better. The consequences of saying anything negative about sex work have, in recent years, been used to argue that it must be abolished and that this must be done by criminalisation of clients, pimps, and traffickers, and by closing legal venues, such as strip clubs (Cruz, 2024).

Women will do sex work, and cis-gender men will buy it, while capitalist and sexual domination remain intact. And while this remains the reality of sex workers' lives, criminalisation of sex work will continue to make their lives more difficult. Sex workers are themselves campaigning for decriminalisation globally, *and* they are politicising the gendered, capitalist conditions that produce the criminalisation of sex work (Smith and Mac, 2018). This is why I am in favour of decriminalisation. It is not because sex work is a great job, but because criminalisation makes an already tough job much tougher, and it makes access to the discourse of, and protections available through, labour law more difficult. Some sex workers are, however, campaigning for labour rights, *and* they are politicising the

structural conditions that they hope labour law will mitigate, as well as the narrow reach of labour law and its failure to adequately compensate women's un/paid labour (Cruz, 2013, 2024). It seems to me, then, that sex workers are engaging with law in a kind of organic historical materialist fashion. They are working within the law to get what they can, while exposing its conditions of existence and limits. It would be good if they were finally accepted into the feminist and trade union movements (Cruz, 2024; Cruz and Herrmann, 2024).

Sex workers want to be free from sexual harassment and abuse while they work. These are well known occupational hazards. This, rather than the criminalisation of clients, is where I see the strength of MacKinnon's substantive sex equality law reform agenda for sex workers. If the law, and this is a big if, can speak to the sexual essence of prostitution, it should do so to extend sexual equality to sex workers *at work*. And this must be done in a way that makes clear that sexual domination produces these legal wrongs and how their reimagining will produce sexual equality for sex workers. Whether such reform of the law is possible or desirable is at the forefront of ground-breaking and recent feminist scholarship (Conaghan, 1996; Conaghan and Russell, 2023; Godden-Rasul, 2015; McGlynn, 2011). The possible benefit of the law for addressing the essence of sex workers' sexual domination and oppression is a focus for future work. It would, however, have the strong advantage of not conflicting with the continued need to work in sex work and giving sex workers access to labour law and supportive legal forms, including tort, criminal, social welfare, and human rights law. Federici and MacKinnon would then, I hope, agree that sex workers need certain substantive goods – housing, education, income – and liberal law can function as a site of critique or dissensus by demonstrating its limits via certain 'utopian demands' (Cruz, 2013, 2015). Again, sex workers' campaigns are useful here. The campaigning material of Sex Workers United, a branch of the Bakers Food & Allied Workers Union, demands that the use of criminal and public law powers to close workplaces due to a concern for women's welfare be replaced with a basic income, disability and mental health support, and affordable childcare.¹² This shifts debate and discussion, in a materialist fashion, to *why* legal powers exist to remove a much-needed source of income and not to enable women to have meaningful choice over their lives. Delivery of such goods is clearly needed by all those who are dominated, and receipt would make (perhaps more than) a dent in capitalist and

¹² Danielle Worden, 'Women Face 'Serious Harm' As Local Councils Move To Ban Strip Club. Available at: <https://eachother.org.uk/women-face-serious-harm-as-local-councils-move-to-ban-strip-clubs/> (accessed 28 April 2023).

patriarchal structures. It is unclear to me whether, in such conditions, women would be quite so compelled to participate in sex work/prostitution.

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