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**Human Trafficking, Globalisation and Transnational  
Feminist Responses**

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## **Abstract**

This paper presents a historical overview of feminist frameworks for analysis and advocacy on human trafficking. It traces the major differences and similarities in the forms of knowledge produced since the Anti-White Slavery campaigns nearly two centuries ago. It highlights how institutional and moral considerations – especially concerning the treatment of the female body as an instrument – have played a role in shaping the conceptual possibilities and directions of politics for change. By tracing the epistemological and ethical tensions in the body of knowledge about human trafficking and the power relations involved in interpreting the question of human dignity and agency, the paper hopes to open new lines for debate and cooperation to address the varying interpretations of the use of force as well as the nature of human agency, decision-making and choice in the business of human trafficking. Attention is given to how, under the forces of globalisation, the unprecedented re-writing the human body, and sexuality (as a source of labour, sexual pleasure, and life itself) demands innovative ways for rethinking the relationship between “sex”, “gender” and “power” – both in theoretical terms and as regards transnational social action.

## **Keywords**

Human trafficking, transnational, global, international, gender, sexuality, prostitution, commercial surrogacy, governmentality, human rights, human dignity.

# **Human Trafficking, Globalisation and Transnational Feminist Responses**

## **1 Introduction**

Much of the debate in the last decades on the Trade in Human Beings has been conducted specifically within feminist frameworks of analysis and advocacy. Initially restricted to the internal and cross-border trade in human beings for the purpose of prostitution, the debate had been expanded to cover other areas such as reproductive care (internal and cross-border) in the form of services in domestic work and commercial surrogacy – the later involves the treatment of cells and tissues and not just the labouring body. To understand the differences in the reasoning and political agendas regarding the intrusion of market relations in the domain of sexuality and social reproduction, it is helpful to broadly discern feminist frameworks of analysis as follows: the global, the international and the transnational – each of them is embedded in a particular perspective on power relations and the meaning of emancipation.

The key contentious issues include the defining of treatment of the body as an instrument for pleasure and biological reproduction, the varying interpretations of the use of force, the nature of human agency, decision-making and choice. Global feminism tends to squeeze all forms of violence against women, including sex trafficking, into the concept of patriarchal culture as a single mould. International feminism highlights the politics between nation-states and emphasizes the role of gender as a structure and a process that together shapes the current global political economy of cross-border prostitution, sex trafficking and reproductive care services. Transnational feminism rejects the binary divisions between rich/poor, North/South, and male/female, problematizing instead “gender” as a locus of power through which other types of power (concepts of nation, class, race, sexualities) are articulated, how these interactions are linked to specific forms of economic exploitation of the body. The aim is to show the complexity of identity formation and the meanings of agency as produced by the interrelationships and interactions between, and among, actors. Different experiences in women’s lives – shaped by the positions they occupy within a given set of local/global relations – must be accounted for when trying to understand the meanings of “oppression” and “exploitation” in order to build relations of solidarity and resistance. Addressing the protection of the human rights of persons who are subject to cross-border treatment of their bodies and sexualities as instruments is ridden with many difficulties due to the incongruence between the normative understanding of the “ideal self” (as the foundation of rights) and the “perceived self” based on power/knowledge and its historical articulations.

This paper presents these feminist frameworks within the context of their emergence, noting the major shifts and changes in the lines of reasoning along with their relative positions in the structure of knowledge

about state, society and human rights where the treatment of persons is concerned. Specific attention is given to differences in interpretation and the consequences for understanding the situations those whose dignity is violated. At a time of growing interconnectedness in respect of nearly all aspects of human lives, it is important to emphasize that the commoditization of the human body and its parts reflects the erosion of extant moral barriers and the formation of new ones. This requires critical consideration of human agency and its complexity to find innovative ways for rethinking the relationship between “sex”, “gender” and “power”– both in theoretical terms and as regards social actions and their dilemmas.

The paper is divided into four sections. Following the introduction, section II examines the debate on sex trafficking, which began with earlier debates on “White slavery” and evolved into feminist actions towards establishing a global agenda on violence against women. The potentials and limits of this debate are discussed in the light of the interpretative tension between victimhood and agency and its meanings for social action. The third section discusses the contributions of feminist scholars using Foucault’s insights on knowledge and power. The section shows how an understanding of prostitution and sex trafficking is within the bounds of the disciplinary power of the state. The state’s surveillance mechanisms and maintenance of a social order is governed by a normalization of heterosexual morality, which is ambivalent towards race and ethnicity. The re-direction of emancipatory social action is highlighted. The rejection of what is considered an account of violence against women – one which reduces causal forces to sex, patriarchy and capitalism – in an attempt to include plural forms of violence based on gender identity now requires Human Rights campaigners to take into account the power of interpretation, which may include their own, and the accountability it entails. The fourth section bring into focus the significance of the reproductive side of the female body and the ethical reasoning governing cross-border commercial surrogacy, thus connecting the two side of sexuality as pleasure and as reproduction of the human species. Rooted in the history of slavery<sup>1</sup>the practice of commercial surrogacy has now re-emerges under market relations as a form of gestation service facilitated by Assisted Reproductive Technology (ART). Though cross-border commercial surrogacy is not comparable with sex or labour trafficking, their emergence on a transnational scale requires new perspectives on the interactions between the materiality of the human body and its changing symbolic representations. These interactions do produce new social meanings in the use of the human body – with consequences for classical definitions of the legal meanings of the person (Scheper-Hughes and Wacquant, 2003).

The conclusion underscores the deep intrusion of commercial interests into human bodies as such (a source of labour, sexual pleasure, and life itself). For historical and cultural reasons nation-states do not share the same

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<sup>1</sup> Under the system of slavery surrogacy was practiced in the form of stud farms to breed new slaves (Truong, 1990).

ethos regarding the human body; or there may be legislations lagging behind the current reality of developments in technology triggering new forms of trade in human beings. This intrusion is a gradual process no longer involving actors within a nation-state but those who are involved in cross-border arrangements and who play a significant role in forging transnational transactions in the trade in human bodies. When interpreting human agency and choice in respect of these issues a socially responsible theory can no longer afford to leave the field poorly chartered and must take serious consideration of unequal structures in the global order plus the diverse forms of social stratification and inequities. Neither the women-centred perspective on sexual violence, nor the specific perspective of the own-account “sex-worker” on pleasure and emancipation, nor that of the suffering body of the trafficked person are alone sufficient to understand the complex layering of social worlds in this trade. Likewise neither the perspective of stratified reproduction in the business of renting wombs nor the agency of own-account “commercial surrogates” is adequate. Reconstructing the principle of humanity requires a reconstruction of those values that protect human dignity at each layer of the transnational commerce involving the human body. This requires challenging the specific rationality that underpins and informs the way in which the sex trade and the trade in gestation services are governed in specific places to better resist forms of governance that are intolerable to the subjects in question.

## **2 Sexual Trafficking and Slavery: The Objectification of Women and Children as Subjects of Rights**

Classical studies of slavery generally connect the forms of enslavement through the last centuries with industrialization, the rise of capitalism and colonial expansion. Enslavement and debt bondage – including generational forms – have been explained in terms of the specific economic, institutional and technological aspects of a country or region (Sawyer, 1986; Miles, 1987; Plant, 1987). Since the anti-slavery movement beginning in Britain over two centuries ago, and the ensuing campaign against the “White Slave Trade”, feminist contributions to debates and advocacy have challenged the “Whiteness” of sexual slavery and sought to bring issues of gender, sexuality and race into new frameworks of analysis. The key issue emanating from the debate on the master-slave relationship continuously revolves around the relationship of objectification/domination and means of emancipation.

Papadaki’s (2007) careful reading of Immanuel Kant’s position on sexuality and objectification is very helpful to understand the controversies regarding women’s rights, sexuality and the human being as an end rather than a means – a persisting fundamental issue in the question of human rights. Kant viewed sex as nature (animal instincts for pleasure and procreation), and sexual objectification as a process by which a person becomes an object of the gratification of another’s desire (a means rather than an

end). Objectification in sexual relations can be eliminated when sex is socialized into a monogamous marriage (assumably heterosexual) based on “romantic love”; since this provides the conditions for mutual acceptance and reciprocity and avoids the reduction of a person to the level of an object-for-use. Kant saw woman who sells herself for money thereby reduced to an object and is herself to be blamed for the harm done to her humanity (Papadaki, 2007: 335).

Two waves of feminist activism have taken issue with Kant’s position. After the first wave on political reforms to achieve equal rights had subsided, the 1970s saw the re-emergence of vibrant debates on women’s rights related to the body, such as sexual slavery and bondage, domestic and intimate violence, and pornography. Rooted in the U.S. civil rights movement, the debate on sexual slavery is part of a broader debate on sexual politics initiated by Kate Millet (1970), set in terms of the master-slave relationship (dominance and subordination) to throw a political light on the relations between the sexes. Debates on sexual objectification span a spectrum of sex acts and their linkages. Barry (1979: 40-41) claims that pornography feeds into domestic violence and rape, rape provides social and political contexts in which victims are enslaved, especially in international traffic of women and prostitution. More broadly, these debates have led to the establishment of a global agenda on violence against women that includes the issues of sexual slavery in armed conflicts and rape as a tool of war (Meyer and Prügl 1999). The goal has been to document incidences of violence against women, to expose how the gendered nature of the institutions, practices, and discourses on sex and gender have contributed to the obliteration of such violence from public policy agendas. Following this is the demand for legal recognition of these acts so as to open up avenues for criminal liability – nationally and also in international human rights law.

By providing a synchronic account of female sexual slavery across cultures, Barry posited the thesis that that “female sexual slavery” in all its forms is the mechanism for controlling women through the sex-as-power ethic (Barry 1979, 194). Holding that women’s own acceptance of their “sexual slavery” should not be taken as given but a result of the absence of legal and social sanctions against its practice, she appealed to the authority to pay attention to the denial of rights to women living under sexual enslavement and to acknowledge the role of a sexual culture based on aggression – a position shared by the anti-pornography campaign (Leidholdt and Raymond, 1990). Though a step forward from earlier attempts at individual moral reforms focussed on women, common in the prohibition approach at the turn of the 20<sup>th</sup> century, the definition of sex-as-power ethic and its culture overgeneralises “sex” and gender as a binary construct of “male” and “female”, thus providing a synchronic view on various forms of “sexual enslavement”<sup>2</sup> without explaining their differing trajectories in time

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<sup>2</sup> Under the term sexual enslavement Barry includes prostitution (on the street or in brothels), marriage with battery, forced marriage, veiling and seclusion, incestuous family life, traditional genital mutilation, and the sanctioning of rape and

and place. This supresses the issue of diversity as regards the social experiences of women in the sex trade,

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pornography.

simplifies the meaning of the “masculine culture”<sup>3</sup> as well as the issue of female agency in prostitution. The Coalition Against Trafficking in Women (CATW), which Barry co-founded in 1988, used the human rights approach to launch an attack on trafficking and the sex industry and has played a central role in influencing the terms used in the drafting of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crimes (henceforth The Protocol) ratified in 2000 and signed by 176 states (Weitzer, 2007; Kim and Chang, 2007). The Protocol specifies the term “exploitation” as including, “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs” (UNODC, 2004, page 42). The consent of a victim of trafficking-in-persons is irrelevant to The Protocol.

In the process of implementing The Protocol several contentious issues on objectification and harm, women’s agency and choice have emerged. At one level many researchers have demonstrated how some anti-trafficking programmes have created a “rescue industry” whose practices conflate “prostitution” with “trafficking”, ending up with ascribing a victim status to people (mostly women) who have made conscious decisions to migrate (Law, 2000). These women are more concerned about their working environments, economic exploitation and violation of initial agreements (Breuil et al 2011). Some women do not consider themselves to be victims of trafficking but survivors at the margins of society (Agustín, 2007) – a position that also excludes them from reproductive health and HIV-AIDS services (Brussa 2009).

Those who have been “rescued” and placed in government-sponsored shelter have to bear with the anti-sex industry attitude of the “rescuers”, who not only “infantalize” their opting to migrate, but also pathologize them and classify their entry into prostitution as “deviant” behaviour. This in turn fosters surveillance practices, putting restrictions on the “rescued victims” in their communication with people outside the assistance system and thereby impacting their agency and ability to dissent and negotiate within the assistance programme framework (Brunovskis and Surtees, 2008). Evidence shows how a top-down fight against human trafficking, often seen as an “evil”, can end up placing the burdens of “being evil” on those enduring such practices. At the level of social assistance the prostitute continues to be held accountable for the harm done to her own humanity, despite the formal acknowledgement of gender inequality as a factor at the societal level. The conflation of “sex” and “gender” in The Protocol also oversimplifies both the process of “trafficking” as cross-border migration and its intersections with the provision of sexual services. To elucidate the controversies around consent, sexual exploitation, slavery and

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<sup>3</sup> In the years of my research I have come across many male clients who actually helped female victims to escape, showing an awareness of rights rather than objectification.

accountability, four positions articulated by the women in prostitution<sup>4</sup> themselves – with the support of their sympathisers – are summarized as follows.

The first is founded in, and focussed on, the US with the name of Women Hurt in Systems of Prostitution Engaged in Revolt (WHISPER). It claims that prostitution is not a victimless practice and endorses Barry's position, especially the systemic nature of the relationship between male violence in intimate relations and female entry into prostitution, and the multiple harms inflicted on women upon entry, during the time of practice and after exit. Feminist professionals (health, law, social care) who work with women in prostitution and are also members of CATW also support this position (Farley, 2004; Jeffreys, 2009). Based on accounts of multiple harms WHISPER rejects both the notion of sex as work and prostitution as a viable livelihood option for women. Apart from giving direct assistance to those being harmed by prostitution, the organization campaigns for decriminalizing *the prostitute* and for more effective legislation by which to track down the perpetrators and penalize them; it also engages in finding alternative options for those who exit prostitution, and in educating the public about the violence in prostitution (Bell 1994; Powell, 2005<sup>5</sup>).

The second position is that held by an organisation for sex workers' activism founded in 1973 with the name of Call Off Your Old Tired Ethics (COYOTE). Members consists of a mix of libertarian activists and people related to the sex industry in various ways: women in prostitution who claim the identity of "sex workers" and ex-sex workers; clients; social workers; health service providers. This organisation also supports the decriminalization of *the prostitute* and of *the act of pimping* by claiming that pimping law – which criminalizes all those who derive earnings from a prostitute – can affect a prostitute's dependents (who could be her own children), or prevent sex workers working together<sup>6</sup>. The organisation also calls for the elimination of social stigma placed on prostitution and the acceptance of sex work as an occupation, so that women in prostitution can be entitled to health care in a dignified way – especially for reproductive health and HIV-AIDs. Through international campaigning the organisation also contributed to the drafting of the World Charter for Prostitutes' Rights in 1985, demanding the recognition of the sex worker as a person with agency who sells her services, and of the act of selling sex as a financially and sexually rewarding option for them (Pheterson, 1989). Two inter-related principles are involved: reduction of the harm done by stigmatizing women

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<sup>4</sup> The term "women in prostitution" is preferred to avoid the stigma attached to the term "prostitutes", and also to acknowledge the diverse positions women may occupy in prostitution as a social institution.

<sup>5</sup> Powell, M. (2005) "To Whisper or to Howl? Subjects of Prostitution Regulation Debate Oppression. <http://www.liberator.net/articles/Guest/ProstitutionPowell.doc> <Access date 6 June 2013>

<sup>6</sup> Author's notes made of the working sessions when drafting the World Charter for Prostitutes' Rights in 1985 in Amsterdam.

in prostitution, and the enablement of the voices of own-account sex workers – as subjects of rights – to be heard in the public sphere.

A major point of tension in the process of drafting this charter was the absence of the voices of migrant women in prostitution who held an irregular status and by virtue of their legal position could not take part. Decriminalizing the act of pimping can have negative implications for these women, since this can benefit the syndicates who are in the first place to organize their migration, place them in debt bondage and servitude within and across borders.<sup>7</sup> The issue of “agency” and the “organisation of sexual services” cannot be abstracted from the contextual power relations that define the conditions under which their sexuality becomes a source of sexual labour for enterprises (Truong, 1990). A hegemonic perspective on agency and voice regarding sex as work can privilege some positions and silence others (Kampadoo and Doezema, 1998).

The third approach is that of the Global Alliance Against Traffic in Women (GAATW), founded in 1994 by women’s activists at a meeting in Chiang Mai, Thailand. The emphasis was placed on understanding the diverse elements of trafficking from the perspective of the human rights of persons who have been victimized by actors functioning within local, trans-local and transnational networks of this trade. The aim is to use this understanding to improve the lives of trafficked women. The documented experiences of these women over two decades have revealed the realities of discrimination compounded by multiple relations of power (gender, racial and sexual identities, class, migrant status) and the ways in which such discrimination can span many different localities and jurisdictions where the women are subject to both prostitution law and migration law in the countries of origin, transit and destination (Skrobanek, Boonpakdi and Janthakeero, 1997). In other words, in the process of migration there are multiple dimensions of harm and accountability resulting from practices of facilitating the movement of persons across borders, which can intersect with those acts defined as trafficking (specifically using sexual labour for commercial purposes).

GAATW criticises the lack of precision in the interpretation of “sexual exploitation”, and proposes sex trafficking be legally treated as one category in the broader problem of labour trafficking, where the use of force (abduction, threat, deception and coercion) and abuse of authority, debt, bondage or fraud are involved (Kim and Chang 2007). Not all forms of prostitution are organized based on the use of force, and not all entry into prostitution is a result of the abuse of authority. The language of “the prostitution of others” in The Protocol does not allow for recognition of women’s autonomy in sex work in the absence of force and without abuse of

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<sup>7</sup> The author was part of this process but refused to speak on behalf of migrant women in prostitution, being aware of what McClintock coined as the racial geography of sex that maps the city and administratively partitions of the sex industry (see McClintock (1992) ‘Screwing the System: Sex work, Race, and the Law’, in *Boundary 2*, Vol 19:2.

authority. The Human Rights Caucus supported this position in view of the fact that in a globalized economy men, women and children are trafficked for a wide range of labour activities; the sex sector is just one among them, albeit the largest. A distinction should be made between adult and child to avoid a perspective that theoretically reduces women to the level of children in need of protection, and in effect can prevent them exercising their right to choose (Human Rights Caucus 1999).<sup>8</sup>

The fourth position is advocated by the Network of Sex Work Projects (NSWP) initially set up in 1990 as an informal alliance by a group of sex worker rights activists working within sex work projects around the world. It has grown into a global network of organisations whose work aims at resisting a criminal approach to sex work and trafficking by building up an actual leadership from the sex workers themselves to enable their positive contribution to policy processes that affect them – such as the formulation of policy guidelines in the global response to HIV/AIDS as well as human trafficking. Sex workers are of different genders (female, male and transgender) and, NSWP argues, by making sex work free from discrimination, persecution and violence – especially when holding that the health and human rights of sex workers are as important as anyone else – policy can ensure safety for all concerned. This position find resonance with GAATW's rights-based approach to trafficking, which places the needs and concerns of the people being subject to trafficking as the baseline from which to negotiate with governments and find solutions for them in respect of their basic right to self-determination. A point of divergence may be the claim by some members of NSWP that sex work should be considered as a “honourable occupation”(Doezema 2004). This is a subjective claim extending well beyond the principle of self-determination and right to choose one's trade, occupation or profession freely<sup>9</sup>.

While the defence of human rights is the prime motivation of all endeavours to prevent sex trafficking, the key divisive issue lies with the ways of thinking about sexuality within the humanist paradigm of the Enlightenment – being the intellectual motor of the human rights project. Liberal attempts at enabling the voices of women in prostitution have brought to the fore the diverse realities of prostitution, migration and sex trafficking as well as the plurality of meanings assigned to the exercise of sexuality and the varied identity of the sex worker. Mediated by so many institutions that occupy the space between the state and the individual, these realities also pose questions as to whether the principles of equality and reciprocity can be ensured given the social hierarchy within the sex trade, especially when its transnational dimension is taken into account. For this reason, and having in mind the large constituency of migrant women in

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<sup>8</sup> Human Rights Caucus, Recommendations and Commentary on the Draft Protocol to Prevent, Suppress, and Punish Trafficking in Persons (A/AC.254/4/Add.3/Rev.2), July 1999.

<sup>9</sup> Honour is derived from practising a profession with integrity, efficiency and satisfaction of all concerned; it should not be considered as a defining characteristic.

prostitution in many countries (Brussa, 2009; Kim and Chan, 2007), human rights advocates call on governments to give priority to addressing the immigration status of the persons who sell sexual services (Barnet, Casavant and Nicol, 2011). Some states in the region covered by the Schengen Agreement (Norway and Italy) have experimented with the treatment of migrant women with an irregular status as rights bearers but have made it conditional upon their leaving the sex trade. Results show that many women who have benefited from this treatment have returned to the sex trade on their own account in view of their financial burdens (Skilbrei and Tveit, 2011). The empirical contexts of women's agency, their variations and significance for theorizing "gender" as the operation of power cannot be omitted from the agenda of transnational debates on sex trafficking and migration.

### **3 The Sex Trade and Trafficking as a Social Construct and a Reality: Borders and Sites of Control**

A reappraisal of both the Kantian perspective and anti-trafficking strategies by Post-Modern scholars has opened up new ways for understanding the place of sexuality in trafficking. This reappraisal draws on Foucault's ideas about "experience" as something to be conceptualized in terms of an interrelation between knowledge, types of normativity and subjectivity in a particular culture at a particular time (Foucault, 1978, 1992). Such a view provides the possibility for a historical and place-specific reading of the exercise of sexuality, and can help differentiate the modes of understanding of sex trade practices and the cultural hybridity involved. The full consequences of this notion of "experience" for organizing and producing knowledge about sex trafficking are beyond the scope of this discussion. The main attempt here is to point to some innovative ways for rethinking the relationship between "sex", "gender" and "power" in an era of globalization – both in theoretical terms and as regards social actions and their dilemmas.

Limoncelli's book (2010) on the divergence within the humanitarian approach to the control of prostitution and anti-trafficking campaigns in Europe at the turn of the 20<sup>th</sup> century is one of the most lucid historical analyses of the first international movement against the trafficking of women. Drawing from a wide range of historical data and secondary sources, she shows how the "experience" of campaigning for women's rights in trafficking and its trajectories emerged from an interaction between the knowledge about "sex" prevailing at that time (resonating Kant's view) and its social consequences during the colonial era.

In the early phase of colonialism, "going native" by conjoining with local women as the "other" through cohabitation was an acceptable way for colonial men to obtain sexual, domestic and care services. Their "native" partners could keep some degree of independence. As empire building intensified state officials became implicated in organising and institutionalising prostitution through the setting up of brothels in ports and

garrison towns for soldiers and colonial officials (see also Truong, 1990; Stoler, 1989). The movement of European women into the sex trade in the colonies brought about a new dilemma: though they were seen as necessary for the brothels, they were also expected to display exemplary morals of their nations and safeguard its imperial prestige. Miscegenation became a problem for the colonial authorities, seeking to contain sexual relations within racial categories.

Limocelli (2010) emphasizes how “race” as a construct became a policy by which to regulate and manage gender and sexual relations. Two types of policy have reflected how gender and sexuality were essential to the expression of whiteness. Anti-trafficking policy – built on the definition of trafficking as the abduction and transport of women for prostitution – sought to ensure the protection of white women from being trafficked to the colonies, though their migration for marriage would be accepted and encouraged. By contrast, regulated prostitution involving non-European women could ensure the satisfaction of extra-marital sexual needs of colonial officials and male labourers. The once independent “native” women who provided sexual services for gains became “common prostitutes” and were subject to hybridized forms of surveillance depending on the local reactions. The campaign against White Slavery showed an ambivalence between two different lines of thinking: a) the idea held by the International Abolitionist Federation (IAF) about protection as redemption for women and girls across global, racial, or ethnic lines; b) the notion of protecting “social purity” and “moral hygiene” held by the International Bureau for the Suppression of the White Slave Traffic (International Bureau) which emphasized criminalization of the act of prostitution for being immoral.

As Limoncelli (2010) has shown, IAF favoured the use of education to support women migrants (white and otherwise) who consented to prostitution to find alternatives; the International Bureau was opposed to prostitution, obscenity, and homosexuality. The International Bureau supported the state view on the exercise of sexuality only within heterosexual marriage as the norm of purity, and backed regulations against any expression of sexuality outside the norm. Working hand in hand with governments, the International Bureau helped governments to use anti-trafficking measures selectively to control women’s sexuality and their movement as a primary state interest. Yet the disciplinary power over prostitution was in many ways incomplete owing to resistance inside empires as well as in colonies themselves. Limoncelli remains ambivalent about the justifiability of either decriminalisation or abolition. In respect of today’s reality she endorses the usefulness of a perspective on a “gendered political economy” that places both trafficking and prostitution on a continuum of women’s formal and informal labour activities in migration, which may help elucidate the specific dimensions of women’s vulnerability in the global economy that drive them into sex work (Limoncelli, 2009: 266).

In recent years, knowledge of the local complexities of migration and its intersection with sex trafficking has gained prominence as the preferred approach to search for the means of redress. Doezema's work covers the same historical period as Limoncelli's plus the more recent rise of abolitionism globally linked to the adoption of the U.N. Protocol in 2000 and the subsequent passage of the US The Victims of Trafficking and Violence Protection Act (TVPA), which has had an impact on legislation worldwide.<sup>10</sup> Highly critical of feminist scholars who have been at the forefront in pushing "gender" as a social construct to the status of a new paradigm, Doezema (2010) charges that they have left out "the prostitute" as a construct to be scrutinized. Her work sets out to fix the record by contrasting the social construction of the prostitute in the White Slavery debate and its resurgence in contemporary negotiation on the legal meaning of human trafficking.

Using the image of the master and slave relationship, Doezema places those engaged in giving meanings to the term "the prostitute" in different fields (research, media, law and policy) in the position of the "discourse masters". Seen as being endowed with the privilege of fixing cultural definition and identity, Doezema argues that these actors took the liberty to define the "sex slaves", being the main object of their concern. In doing so they have simultaneously discarded the voices of sex workers and strategically used their own "knowledge" about women in prostitution to influence the process of codification of "victims of sex trafficking" during the entire consultative process of international law-making both in the past and today<sup>11</sup>. This is to be considered as an exercise of colonial and post-colonial power, or a practice by which an author "denies the subject the opportunity for self-representation" (Doezema 2005: 73).

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<sup>10</sup> The United States' Trafficking Victims Protection Act defines severe forms of trafficking in persons as "sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harbouring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery." The Department of State's Office to Monitor and Combat Trafficking in Persons uses The Trafficking in Persons (TIP) annual report as the principal diplomatic tool to engage foreign governments in the matter of human trafficking, with consequences for negotiations on foreign assistance. The report uses a three-tier system of classification: Tier 1 being countries whose governments fully comply with the minimum standards set by the Act; Tier 2 those which do not comply but are making significant efforts to bring their law into compliance with those standards; Tier 3 those who do not fully comply and are not making any significant efforts to do so.

<sup>11</sup> The consultative process was between governments and civil society organisations, from the Vienna conference on Human Rights in (1993) through to the Beijing Women's Conference in 1995 and the meetings leading up to the drafting and passage of the Protocols of the UN Convention on Organized Crime in 2000.

Doezema exposes the politics of myth construction of *the prostitute*, by showing how historically new myths have replaced old ones yet maintaining a similar logic of exclusion. To her “myth construction” is an outcome of the articulation of ideologies rather than the falsification of truth. A “myth” is something that appears in the form of a description of a reality while being actually an ideological narrative aimed at achieving certain effects (Haag, 1999; Barthes, 1973). Myths operate in sustaining relations of domination through the regulation and production of meanings in modern political cultures to support the hegemony of the ruling class; they naturalise what is contingent and historically produced into that which is timeless (Doezema, 2005: 64-67). The myths constructed about the woman who sells sex can be strategically used to shape the direction of policies in conformity with the dominant view on sexuality at the time.

The continuity of a moral panic as a common sentiment had been noted in the campaigns against White Slavery in the past and Sex Trafficking today. Doezema (2002) shows how in the previous era these myths were about the “innocent victims”, “the immoral prostitute”, those “with innate moral weakness”, “easy preys for White slavers” and “the recipient” of contagious diseases and filth. These lend support to the Kantian view the accountability of those who sell sex: they are to be seen as having inflicting harm on themselves rather than choosing marriage as the appropriate context for exercising sex. The degree of leniency towards the “fallen women” did vary according to age and degree of maturity, which then defined the means of redemption, or punishment. In the 1949 UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, prostitution was considered incompatible with the dignity of the person, and therefore in many countries the issue of consent has no licit place in the “apparatus” of surveillance. Abolitionist law in many countries prevents women in prostitution from working together given the clause on pimping, considers their attempts at union-forming as unlawful “promotion of prostitution” and bars them from legal redress in cases of violation of their labour and civil rights (Doezema, 2002). “Myths” about the prostitute have consistently portrayed her as a victim but at the same time made her accountable for the harm she experiences. Where appropriate humanitarian solutions could be found to deal with her as a human being, rather than a subject of rights.

At the turn of this century – an age of deepening globalisation – sex trafficking becomes inevitably linked with other concerns, such as the ease of travel plus the growing movement of people across borders in respect of emerging regional economic blocs, the growing complexity of illegal markets and transnational organized crimes, the rise of Internet culture and its influence of sexual cultures with their affects on young people, and the HIV-AIDS pandemic. Set in this context the UN Convention on Transnational Crime and its Protocol on Human Trafficking are more far-reaching than sex trafficking and express deep anxieties regarding cross-border movements of specific categories of people (Kapur 2011; Truong 2011).

Doezema (2010) demonstrates the ways in which “sex” became set apart from other forms of labour trafficking. Some civil organisations have aligned themselves with state actors whose main concerns were with nationalistic worries about migration and the control of undesirable migrants in particular. A dividing line exists among civil society organisations involved in the consultative process on the UN Protocol. Groups upholding the perspective of law and order as primary stood firmly on one side. On the other side was a mixture of entities with conflicting interests, including: anti-globalization; anti-migration and anti-migrant; labour activism and anti-labour corporate lobbies; evangelical Christians and radical feminists both of whom shared the same view on “sex” and “gender” that underpins the position of “global feminism”. Within this mixture of entities, the deep ideological divide prevailed on the relationship between “trafficking” and “consent”; the evangelical Christians and radical feminists found common ground in defending President Bush’s position on “trafficking” as “a special evil”. This has triggered what Doezema calls the exhumation of the myth of white slavery to silence the voices of the sex workers, and to regain a dominant position at the negotiation table. By deploying the concepts of “human dignity” – the basic concept in human rights, and that of sexual violence (of which sex trafficking is one form) as an assault on human dignity, those endorsing the global feminist position has enclosed sex workers in a space unprotected by international law by denying their agency. This lays bare a persistent line of thought on prostitution, structured by a binary opposition between “purity” and “pollution”. However defined, prostitution continues to be placed in a category with “pollution”, incompatible with “purity” expressed through the notion of “the dignity of the person”.

The struggle for recognition thus involves an epistemic struggle to re-code the meanings of sexuality generally but specifically in its relationship with markets. Scholars who draw on Foucault’s ideas about neo-liberal “governmentality” – first introduced in 1979 – to connect analyses of micro power with the reordering of society at the macro level have provided important insights on the complex relationships between “thinking” and “ruling” (in respect of the sex trade). ‘Governmentality’ is “the semantic linking of governing and modes of thought” and consists of the systematic ways of thinking about how to govern, alongside what exactly shape subjectivities and notions of personhood (Lemke, 2007). Both facets are in constant interaction and therefore the social experience of the “governing of mentalities” over a particular domain is to be analytically treated as bound by both time and place. This perspective is especially important for analysis of migration, prostitution and sex trafficking.

In neo-liberalist thinking borders act as a method of categorising and stratifying labour (Mezzadra and Nielson, 2013) or a “triage” – a process of selecting those people endowed with vital skills and capital rather than those classified as representing a “threat” to economic and social wellbeing within a territory (Truong, 2011). Torpey (2000: 12-13) makes the point that identities must be studied not only in respect of the power of subjectivity but

also in regard to how they are anchored in law and policy, codified and institutionalized, before becoming socially significant. Under the on-going process of categorisation of non-nationals, residents, and migrants lies a process of labour control in multiplied forms which together shape an emerging transnational labour system enabling the matching of labour with volatile capital (Mezzadra and Nielson, 2013).

The transnational sex trade consists of an array of services. Its legal side rests within the leisure and tourism industry (entertainment, strip clubs, and escort agencies) and its illegal side consists of indoor services in private places and outdoor street soliciting. Truong (1990) made the point that governing the sex trade is inevitably directed by a variety of rationalities (financial benefit for the formal sector, social order, health, human rights protection). Given that states are themselves made up of networks of institutions with asymmetrical powers driven by different modes of thought and direction of interests, each of these rationalities can come into conflict with one another. Thus, despite the identity of the “sex worker” being non-existent in the variance of prostitution law (prohibition, abolition, legalisation, regulation) at the social level in countries where the right to health and self-determination is taken seriously the term is gaining currency among community workers and health professionals (Grover, 2010) alongside sex workers’ organizations<sup>12</sup>.

Cross-border migrants who are engaged in the formal section of the sex trade can gain entry by obtaining an entertainment visa (Williams, 1999). Others enter into contracts with people who will sponsor and assist their entry into a country where they expect to find work with higher earnings than in their home countries, or use the services of a broker to facilitate completion of documentation (Tyner, 2004). At the interface between law and society migrants involved in the sex trade are affected not only by the legal classification of identities which separates them from nationals and legal residents, but also by the social hierarchy of identities within the population of foreign sex workers –itself being formed by an interaction between their migration status (regular or irregular), ethnic, racial, sexual identities and economic relations (Scouler, 2010; Andrijasevic 2009). In addition, variant gender identity<sup>13</sup> has also emerged as an entity in the sex trade (Ocha, 2012). The interaction between law, economy and society in respect of prostitution is such that just as the “sex-worker” cannot be treated as a uniform category, so too the tasks performed by the worker and the nature of contracts between the worker and employers in sex work much depend on the context of migration given the temporal and spatial movements in this trade.

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<sup>12</sup> Recently the Australian Sex Workers' Association - known as Scarlet Alliance - is urging the Federal Government to expand the 457 Visa for skilled workers do the jobs Australians do not want to do.  
<http://www.news.com.au/national-news/foreign-prostitutes-wanted-on-457-skilled-work-visas/story-fncynjr2-1226660651907> (accessed 27 June 2013)

<sup>13</sup> Variant gender identities are emergent gender/sexual identities from sex change operations.

The functional redefinition of borders in different contexts also entails new configurations of power producing new relationships between socio-physical space and subjectivities in the sex trade. For example, the discourse prostitution in Amsterdam in the 1980s and 1990s in which the notion of sex workers' rights had been prominent (albeit only applicable to Dutch citizens) is now shifting to "public security" around and within the locales of prostitution (Outshoorn, 2012; Zuckerwise, 2012). Hubbard, Matthews and Scoular (2008) have observed in their comparative study that despite sharply different policy frameworks (prohibition [Sweden], abolition [UK] or legalisation [Netherlands]) there is a shared preoccupation with repression of street prostitution, stratified by race, gender, age, locale and migration status. Yet since sexual exploitation in prostitution extends well beyond the street – also involving indoor places – the hierarchically organized indoor systems of predation remain impenetrable. Hubbard, Matthews and Scoular conclude that while states may intervene in the markets of sex work at sites accessible to law enforcers in the name of tackling gendered injustice, they may also leave some inaccessible locales untouched. In so doing states are also perpetuating the geographies of exception and abandonment.

These findings point to the need to ground the study of migration and sex trafficking in specific contexts to understand how distinctive patterns of management of labour flows into the sex trade are being generated, and how the interactions between the law and social forces can shape the identities of migrant sex workers with consequences for human rights policy. Understanding how processes of categorisation and stratification are built from different types of borders (culture, morality, economy) and social spaces can generate new insights on the relationships between sex work and place-based subjectivity — something that at may help clarify the specific meanings of dignity and rights for particular groups.

The post-modernist approach to the study of sex trafficking has produced a wealth of material. By providing diverse perspectives about prostitution as a social "experience" (à la Foucault) this approach has posed significant challenges to classical feminist theorizing on prostitution as being but one aspect of the more general debate on sexuality, sexual violence and patriarchal culture. It has shown how the literature about the persons called "prostitutes" has by and large reflected the views of the writers and prevalent political agendas, whereas the incorporation of the perspectives and voices of the women engaged with prostitution as a dynamic institution can help reveal the diversities extant. Neither the women-centred perspective on sexual violence, nor the specific perspective of the own-account "sex-worker" on pleasure and emancipation, nor that of the suffering body of the trafficked person are alone sufficient to understand the complex layering of social worlds in this trade. Scholars who address these issues from the perspective of "bordering" and "sites" of control have exposed: 1) the weakness of a purely discursive approach to subjective identities; 2) the pitfalls of an approach to human rights in prostitution based on a singular understanding of sex and gender. Human rights approaches

that are insensitive to local socio-cultural factors and their interactions with economic relations are less able to ascertain those micro-transformations within the migration and sex industries likely to eventually generate some shift in the dynamics of human trafficking – be it in a positive or negative direction. In this respect, feminist positions from all points of the political points need to reckon with the diversity of meanings and experiences of the act of selling sex.

#### **4 Globalization, Commercial Surrogacy and Transnational Mobility: Borders and the Multi-dimensional Character of Sexual/ Reproductive Labour**

The reproductive side of transnational migration has been studied mainly from the perspective of domestic work and commercially arranged marriage (Truong et al 2013). Commercial surrogacy is theme of research that have emerged recently due to the globalisation of health services, reproductive technology and the ease of travel which together allows seeking extra-territorial assistance to evade legal compliance. In view of the widespread use of Assisted Reproductive Technology (ART) breaching many ethical barriers, the term “surrogate motherhood”<sup>14</sup> and its practices have met with many controversies in recent years from the standpoint of the service seekers as well the providers of services, involving professionals in many fields as well as the women to lend their bodies to gestate at a fee.

Since this technological revolution in the late 1970s enabling conception by in-vitro fertilisation (IVF) the total number of births using the technology has reached five million<sup>15</sup>. A recent estimate of the monetary size of the market for international surrogacy cites an annual worldwide figure of six billion dollars annually worldwide (Mohapatra, 2012: 2). Factors contributing to the growth of extraterritorial ART services may include limited access to gametes due to restrictive regulations affecting the size of the “pool”, or simply legislative bans. In addition, barriers to access based on social identity, such as marital status (single, cohabiting couple) and sexual orientation (same-sex couple) also play a role. The legal framework for ART is anchored in the morality of the patriarchal heterosexual family. Those who do not conform to the patriarchal ideals of motherhood must seek ART services extra-territorially (Shenfield et al 2010)<sup>16</sup>.

From a technical perspective surrogate pregnancy under ART may be defined as the process by which one woman, chosen by an infertile

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<sup>14</sup> Surrogate motherhood – bearing a child for an infertile couple, or breast-feeding (wet nursing) the child of another woman who is unable (or has chosen not) to lactate the infant is an old phenomenon (See: Grieco and Corsini, 1991).

<sup>15</sup> Daily Mail Online 2 July 2012;

<http://www.dailymail.co.uk/health/article-2167509/Number-IVF-babies-passes-5m-worldwide-demand-techniques-rising.html> (access date: 25 June 2013).

<sup>16</sup> Shenfield, F. et al, 2010, “Cross border reproductive care in six European countries”, *Human Reproduction*, Vol.25, No.6 pp. 1361–1368.

(biologically or socially) couple, carries and delivers a child for the couple with the support of the new reproductive technology. A common form is assisted insemination using the sperm of a partner, or through actual sexual intercourse. The surrogate mother is usually a family member who altruistically volunteers to provide her gestational service. A major drawback of this form is the fact that the genetic relationship between the surrogate and the intended child can become a legal complication since the surrogate is provided with parental rights and can claim the baby following delivery should she change her mind about the pre-pregnancy agreement. The other form is gestational surrogacy involving the method of in-vitro fertilization and embryo transfer to the uterus of a surrogate mother. Though a complicated process involving higher cost, this latter form of surrogacy ensures the genetic link between both parents and the child and can avoid dispute on parental rights with the surrogate mother. Both forms of surrogate pregnancy can be based on altruism, though coverage for medical expenses for the surrogate mother (fertility treatments, medical examinations, pregnancy and delivery) is the responsibility of the intended parents. When the agreement between the intended parents and the surrogate involves a payment for services above the pure medical costs the contract is considered as commercial surrogacy<sup>17</sup>.

Advances in information and medical technologies and the globalisation of health care services have permitted transnational arrangements for medical care known as the “medical tourism complex” in which cross-border arrangement for commercial surrogacy is nested (Cohen 2013). The role of intermediary companies has recently become an issue of public concern. These companies bring together donors, parents, surrogate mothers and fertility clinics together and make the necessary legal arrangements. Yet the lack of both clarity in law (inter-jurisdictional arrangements and immigration rules) and professional standards can place the surrogate, the commissioned parents and the babies in vulnerable positions (Mohapatra, 2012). Though cross-border commercial surrogacy is not comparable to sex tourism, for which there are clear laws and international cooperation to fight the sexual exploitation (especially of underage people) there is no such thing for commercial surrogacy. The issue of forced commercial surrogacy has been raised for the first time in 2012 as a practice that falls within the scope of human trafficking.<sup>18</sup>

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<sup>17</sup> The cost of a single surrogate pregnancy in the United States can run up to \$100,000 including medical expenses, of the surrogate gets a sum between \$20,000 and \$10,000. In the US law the form of contract signed by the commissioning couple and the surrogate mother requires the surrogate mother (and usually her partner) agree to abstain from intercourse for a number of months, submit to regular and extensive medical exams, and agree to transfer parental rights to the couple once the child is born (Bryn Williams-Jones, Commercial Surrogacy and the Redefinition of Motherhood, 2 J. PHIL. SCI. & L., February 2002 [http://www6.miami.edu/ethics/jpsl/archives/papers/comsur\\_williamsjones.html](http://www6.miami.edu/ethics/jpsl/archives/papers/comsur_williamsjones.html). (access 1 July 2013).

A parallel may be drawn between the different perspectives on sex trafficking and commercial surrogacy, namely: 1) the Kantian view on human dignity as treatment of the human being as end rather than means, thus protecting the moral worth of heterosexuality and opposing its objectification, especially through commodification; 2) the feminist view on unjust differences of power and wealth and the intersections of race, class and gender in the commodification of sexuality transnationally; 3) the post-modernist view regarding the plural identities and subjective experiences of surrogate mothers and ART-assisted parents, and the need for a more inclusive approach to diversity in sexual relations and family forms.

The prevailing Kantian objection to the trade in organs is applicable to commercial surrogacy, based on the treatment of the human being as an end. Additional reference to the notions of parenthood and the family is also relevant in the case of surrogacy. Sandel (2000) points to the genetic link between the child and the surrogate mother which makes her renouncement of her parental rights equivalent to the act of baby-selling. More broadly, the compensation that the surrogate receives for her service provision leads to its association with the commoditization of reproduction, the corruption of moral goods and social norms associated with pregnancy, child bearing and parenthood. Surrogacy treats women's bodies as factories – a means, not an end. Furthermore, by requiring the surrogate mother to repress her feelings of parental love for the child, the surrogacy contract can be considered as converting the woman's labour into a form of alienated labour (Anderson, 1990 cited by Sandel, 2000: 82-84).

Kerstein (2009: 149) made the point that though opponents to the commerce in human body parts and in surrogacy have aptly appealed to Kant's principle of humanity, their argumentation is less helpful than it might be because they do not specify clearly what dignity is, or what measures are necessary to ensure the respect of it. The wrongness of an agent's treating another person merely as a means should be assessed by first clarifying conditions under which this treatment occurs. This is a

<sup>18</sup> Trafficking in human beings for the purpose of the removal of organs and forced commercial surrogacy (2012)

<http://www.dutchrapporteur.nl/reports/organ-removal-forced-commercial-surrogacy/> (accessed date June 30, 2013).

Once example of human trafficking for commercial surrogacy is the case of the Bangkok-based Taiwanese-owned company (Baby 101) raided by the Thai police in February 2011 for allegedly offering commercial surrogacy services. Thirteen Vietnamese women from the Mekong Delta, aged between 19 and 26, were kept in confinement as gestation surrogates, seven of them already pregnant. These women were recruited for work described as "compatible with their health" and brought to Bangkok without work visa and kept inside the clinic against their will. Their passports were withheld upon arrival. They were well fed and were promised US \$ 5000 per baby born. They would receive US \$ 1000 for each delivery, the remaining amount would be send to their family in Viet-Nam after successful delivery.

[http://www.bbc.co.uk/vietnamese/vietnam/2011/02/110225\\_viet\\_surogate\\_bkk.shtm](http://www.bbc.co.uk/vietnamese/vietnam/2011/02/110225_viet_surogate_bkk.shtm) ml access date 2 July 2013. Access date 2 July 2013.

context-dependent empirical question in regard of the behaviour of each of the agents: the provider of the service, the state, the broker, the medical institution, and the service-seeker.

When assessing the right and wrong of commercial surrogacy from the perspective of dignity (as the respect for the worth of a person's humanity), aspects of consent, mutual respect and reciprocity present in the entire reproductive process must be taken into account – from the pre-pregnancy agreement through to conception, gestation, delivery and post-natal care. Yet so far much is left to be desired, for even the representation of cross-border commercial surrogacy in media, research and public opinion can be offensive to the dignity of the parties involved.

Matorras (2005), the President of the Spanish Society of Fertility, objects to use of the term “reproductive tourism” introduced by Pennings (2004) to refer to those seeking extraterritorial ART services. To him the term “tourism” implies travelling for pleasure whereas for infertile patients travelling across borders to obtain seeking ART services is a dire necessity – given they cannot access the services in their home country. The term also predisposes the reader against infertility problems and stigmatizes the subjects living with infertility, and possibly also the children born from commercial surrogacy. Matorras proposed “reproductive exile” as an alternative – a patient-centred concept considered to be more politically correct. The likening with “political exile” invites a reader to think about the importance of recognizing the individual right to decide on pro-creation and the personal consequences of political obstruction. Casper (2011) adds that using the term “tourism” for global reproductive transactions misrepresents the human agency driving these practices and the significant consequences that result – reducing all women's choices, life histories, embodied realities, desires and hopes, fears and regrets to either financial gain on the side of the surrogate or potential parenthood for the commissioning party. Concerning the consequences for those born through the means of commercial surrogacy, Mohapatra (2012) documented many cases of babies “lost” in legal limbo due to the differences between national laws on surrogacy, and inconsistencies regarding laws on citizenship. Furthermore, the term reproductive exile may not be appropriate in all cases since people seeking ART services today are not only those who are biologically infertile. Infertility can be a result of social reasons: the choice of identity and lifestyle (same-sex coupling; heterosexuals choosing to have someone else bear their child for reasons related to their career, or other preferences).

Though the term “cross-border reproductive care” (CBRC) is clinical, descriptive and apolitical it is the more commonly accepted because it is free from insinuation about any particular social group. The term CBRC puts ART services in the domain of reproductive care (abortion, sterilization, contraception) which has a long history of extraterritorial practice given the ever prevalent control some states have over women's bodies and their procreative capacity. It can be said that CBRC acknowledges the right to reproductive care as well as connects ART services with the on-going

liberalisation of health care services across the world. The term “cross-border” throws light on the relations between nation-states, the systems of commerce adopted and regulatory frameworks giving rise to the transnational networks organising commercial surrogacy as a business. Beyond and above the relation between the gestation surrogate and the commissioning parents, this opens the framework of analysis to include scrutiny of the standards of practice among health entrepreneurs across borders. Where there is no effective law these health entrepreneurs make the rules, usually going by market competition and leaving ethical questions to the state.

The representation of surrogates recruited by agents working for hospitals and clinics offering ART-services is no less controversial than that of commissioning parents. Because most of the surrogates belong to low-income groups (whether being women of colour resident in rich countries, or citizens of a low-income country) emphasis has been given to their becoming a social class in the global division of reproductive labour, a domain neglected by economists and sociologists. Borrowing from studies in industrial relations in a globalized economy, terms such as “outsourcing pregnancy”, “rent-a-womb

business” and “assembling the global baby”<sup>19</sup> have been used to depict the sale of reproductive labour in an increasingly competitive global market. The commentator of the film *The Google Baby* puts it succinctly when suggesting that taking sex out of making babies “turns the miracle of life into an international ethical quagmire”<sup>20</sup>.

Drawing a parallel with migrant domestic work, Twine (2011) uses the concept of “stratified reproduction” to show how gestation surrogacy is embedded in a transnational capitalist market structured by racial, ethnic and class inequalities, and by national regulatory regimes which do not recognize this work. Under “stratified reproduction” only the elite can afford this service. For the service provider, the gestation surrogate, there may be substantial financial benefit above the wage they could otherwise earn in the period required, but once the contract ends they themselves must meet any consequential health-care costs<sup>21</sup>. Representations of surrogates in research and media, while their intention is to draw public attention to the ethical complexities of this commerce, could re-enforce the view about them being a means – often at the expense of their own sense of dignity (personhood, and embodied knowledge about their labour and subjectivity).

In a similar treatment of surrogacy as labour – therefore likely to be susceptible to exploitation as are other forms of labour – Pande’s (2010) ethnographic study of surrogates in India deals with both the women as critical agents and the environment (the dormitory attached to the clinic) in which their work is embedded. To study aspect work from an organisational perspective she uses Foucault’s concepts of power (self-discipline and internalized surveillance in an enclosed space) to explicate the details of a process which produces the perfect docile mother-worker. The formal rules of the dormitory – where the women stay during nine months of gestation as workers and watch is maintained – mirror surveillance techniques to ensure successful embryo transfer and gestation. Pande brings out two distinct types of (self-) surveillance: the disciplinary techniques of producing a “modern mother” as the “normalizing power” in reproduction, and reproductive-health-related discipline to produce the “perfect baby”. Regarding the normalizing power, the women also are taught the skills to relate to future international clients through the Internet – thus bolstering the image of the clinic as a respectable place with skilled reproductive workers able to do anything to produce “a perfect baby”.

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<sup>19</sup> Audi, T. and Chang, A. (2010) “Assembling the Global Baby”, *The Wall Street Journal*, December 10.

[http://online.wsj.com/article/SB10001424052748703493504576007774155273928.html?mod=WSJ\\_hp\\_MIDDLENexttoWhatsNewsSecond](http://online.wsj.com/article/SB10001424052748703493504576007774155273928.html?mod=WSJ_hp_MIDDLENexttoWhatsNewsSecond)

<sup>20</sup> <http://www.telegraph.co.uk/culture/tvandradio/8548100/Google-Baby-More4-Lead-Balloon-BBC-Two-review.html> Access date 2012.

<sup>21</sup> A hospital in the US arranges for cross-border commercial surrogacy charges between \$35,000 to around \$68,000, as compared to \$200,000 for an arrangement in the US\$. Of the \$35,000, the hospital keeps around \$3,600. Another \$5,000 goes to the egg donor, plus another \$3,000 or so for travel expenses. The surrogate gets \$8,000. The rest, around \$15,000, is paid to the clinic (Audi and Chang 2010).

To study the surrogates' resistance Pande introduces the concept of "sexualised care work" to describe commercial surrogacy, which she considers as being similar to existing forms of care work except that it is stigmatised in the public imagination particularly because of its parallels with sex work (Pande 2009a). The narrations by surrogates bring out their covert resistance against public opinion that depicts them as women who sell their body and their baby. Distancing themselves from the term "prostitution" and from the thought of being someone who would give away their own child, the surrogates describe their gestational labour as involving a great deal of emotional effort defending themselves against rhetoric which reduces them to a vessel, a rented-out womb, or a one-off contracted worker. These women see the baby they carry as a product of their own "blood", and use their own cultural norms to draw a parallel between the relinquishment of the new-born to giving a daughter away at marriage (Pande 2009b). Their choice does not necessarily imply enhancement of their personal autonomy, but is linked to the desire to give their "own" children – born within a heterosexual marriage – a better future. Their sense of dignity retains the notion of a "good mother" – an ideological cornerstone underlying women's dignity. Pande's findings call for greater scrutiny of the subjective experiences of the surrogate mothers and the general relationship between mothering and dignity. Some women have rejected the term surrogate, preferring "gestation mother" as more dignified (Kirkman 2010).

Research on ART services and commercial surrogacy has opened new windows on the multi-layered meaning of human dignity for workers in the domain of reproduction – the intimate "Other" of production (Truong, 1990; 1996). Though seemingly different, transnationally organized forms of sexual and/or reproductive labour need to be put together in the framework for analysis in regard of the globalization of reproduction as a macro-social phenomenon so as to reveal the technologies of political power wielded over the workers involved at the micro level. The moral boundaries established between the sexual and social aspects of reproduction have created various concepts ("sex worker", "sexualized care worker", "surrogate mother", "gestation mother", "domestic worker") linked under a stratified system of globalized social reproduction, which calls up new attitudes towards the body, and result in new skills among these women in smoothly handling detailed aspects of their service. Though these workers are becoming part of the landscape of transnational transactions they are not visible to the public eye as "workers" because of an epistemology that sets their activities in the private domain. The general moral imperative which disallows the exercise of sexuality and some forms of "care" outside the confines of the family – and views its pursuance under market relations as aberrant – has produced subjectivities arising from context-dependent interactions between these workers and local forms of power. Given that their workplace is physically, morally and socially enclosed, individual workers draw on their own moral resources to justify their thinking, their desires, and utilisation of their own bodies. Because of this enclosure their resistance, in the majority of cases, is limited to being an individualized affair. The challenge to the feminist

political agenda is to acknowledge the dividing line between different feminist frameworks of knowledge, to treat these as outcomes of the wider politics of gender transformation and find new ways to weave together insights in order to defend the rights and dignity of these workers effectively.

## **5 Conclusion**

This chapter has discussed the commoditization of the human body and its transformation in the context of the neo-liberal order and the implications for transnational feminist politics. The background has been given which resulted in a body of knowledge *in re* the conditions for the emergence of sex trafficking. Initiated by feminist scholars and advocates in the late 1980s this awareness has extended to cover human trafficking in other forms of trading human bodies. As certain ideas in the body of knowledge on sex trafficking began to affect policy-making and provide guidelines for administration of justice in the late 1990s, they intersperse with growing knowledge about cross-border migration through the means of brokerage for other economic sectors that had adopted practices similar to sex trafficking. These intersections of ideas have produced new understandings of gender, sexuality, agency and enslavement in migration. The marketization of health care services combined with advanced reproductive technologies has resulted in ways of commercial surrogacy organized transnationally, involving the provision of labour for biological reproduction parallel with sexual labour for pleasure.

The deep intrusion of transnational commercial interests into the human body as such (a source of labour, sexual pleasure, and life itself) is unprecedented and the current commerce of the human body are re-writing the body, conceptually dividing it into parts, organs and cells. This reveals the ambiguity of “humanity” as a political entity and pose great challenges to the classical construct of the “body” and “self” as timeless and unchanging. The female body, her sexuality and reproductive capacity carries the legal and social brunt of this re-writing owing to multiple layers of transactions being negotiated within unequal structures of diverse power in a new global order. Newly formed transnational feminist knowledge must build bridges between different epistemological positions to deepen understanding about the emerging structural contradictions in the human trafficking business. So far, transnational feminism has argued for democratization in representation of “humanity” as a political entity to be governed, and the utilisation of new tools to undo the rationality behind the mode of governance that affect those without voice so as to more effectively resist tyranny. What seems necessary in an era of globalisation is the defining of the notion of political responsibility that can span across different locales that connect various actors and the reformulation of rights that mirrors the contextual reality of structural vulnerability to violation.

Both the Kantian and Foucauldian approaches need revising to reconceptualise rights and resistance. Kant's premises on objectification in the domain of sexuality is limited in place and time whereas Foucault's parameter requires the specification of the place and time in which networks of power are routed before establishing a parameter of judgement. Doing so, he also provides a much deeper meaning of corporeality (as historically produced) than the notion of the "natural" body in Kant's thinking. By giving voice to those whose dignity is being trampled on, Foucault and followers show the importance of understanding dignity in contextual terms, meaning those meanings defined by the historical interaction between the state and its subjects. By rejecting the Kantian range of choice in the exercise of sexuality (which is framed in terms of a naturalization of heterosexuality and the institution of marriage), post-Modernist feminist scholars have turned to Foucault's techniques for use in de-constructing the "apparatus of knowledge" on sexuality and the family. This "apparatus" is to be understood as an ensemble of various institutional, physical, legal and administrative mechanisms and knowledge structures about sexuality and the family, which maintains and enhances discipline over the individual body through inculcating social and political beliefs and values that shape choice and agency. Resistance means validating gender and family diversity, and sexual pluralism. Choice is considered to be an open struggle for recognition of different sexual subjectivities. The ensuing notion of dignity means the ability of the individual to choose a course of self-realization through his/her own action as a moral subject.

Kant drew a clear boundary limiting the market and commodification of the body. Foucault and followers left this area open to the responsibilities of individuals to plough through the machineries of power. Yet when trying to connect the transnational industrial complexes of commerce in leisure, health and reproductive care driven by capital flow some key moral dilemmas have emerged on the question of agency. At one level state liberalization of markets has facilitated the formation of transnational networks of commerce which vet suitable sexual and reproductive labour for their undertakings. States should not be allowed to "abdicate" from moral accountability. At another level beyond some micro transformations of their lives, those persons placed in subordinated positions are separated and enclosed in their own realities cannot make significant changes, other than rationalizing their choice on the basis of their individual subjective experiences. Redirecting emancipatory social action towards the reality of life as lived by the subjects of concern must go hand in hand with setting new limits on markets to redress the collusion between diverse forms of power (state, capital, technology), as well as equalizing power in the domain of interpretation. Reconstructing the principle of humanity requires a reconstruction of those values which protect human dignity within the multiple layers of transnational commerce involving the human body.

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