

# Unequal Predation, Unequal Protection<sup>1</sup>

## NOW Woman of Vision Award Acceptance Speech

Minneapolis, 20 July 2019

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“Making law do something about women’s experience” – yes, Twiss, that’s it!

Wonderful and amazing as this award is, and as much as the recognition that it confers is deeply appreciated, I know that all you activists for women will understand that the real honor for decades of work opposing sexual violation as gender inequality—the real affirmation of the vision—is when others see it the way you see it and stand up against it. As a result of that, we are, finally, in the middle of the first mass movement against sexual abuse in the history of the world. Global #MeToo sprung from the law of sexual harassment, quickly overtook it, and is shifting law, culture, and politics everywhere, bringing down a lot of powerful men who have been violating a lot of us for a long time. It’s only getting up steam.

Framed as inequality, combining gender with every social inequality known to man through which it works—prominently race, immigration status, age, and

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<sup>1</sup> Some themes and locutions in this talk have previously appeared in op-eds published in the *Guardian* and the *New York Times*. Catharine A. MacKinnon, *How Litigation Laid the Ground for Accountability After #MeToo*, *GUARDIAN*, Dec. 23, 2017, <http://www.theguardian.com/commentisfree/2017/dec/23/how-litigation-laid-the-ground-for-accountability-after-metoo>; Catharine A. MacKinnon, *#MeToo Has Done What the Law Could Not*, *N.Y. TIMES*, Feb. 4, 2018, <https://www.nytimes.com/2018/02/04/opinion/metoo-law-legal-system.html>. Aspects of this material are also discussed in CATHARINE A. MACKINNON, *Butterfly Politics, Introduction to BUTTERFLY POLITICS 1* (2017), CATHARINE A. MACKINNON, *Preface to the Paperback Edition of BUTTERFLY POLITICS: CHANGING THE WORLD FOR WOMEN ix* (2019), and Catharine A. MacKinnon et al., *‘This Moment Turned Out to Be Fleeting’: Nine Reflections on #MeToo, One Year On*, *N.Y. TIMES*, Oct. 6, 2018, <https://www.nytimes.com/2018/10/06/opinion/me-too-weinstein-one-year.html>, and in an interview conducted by Brock Colyar, *The Ms. Q&A: Catharine MacKinnon Weighs in on the #MeToo Movement*, *MS. MAG. BLOG*, July 30, 2018, <http://msmagazine.com/blog/2018/07/30/ms-qa-catharine-mackinnon-weighs-metoo-movement/>. Obviously I disagree with the tone-deaf headline “this moment turned out to be fleeting.”

disability--sexual harassment stopped being something that women (or anyone) just had to live through. Sexual harassment law broke the age-old rule of impunity that the more power a man has, the more sex he can extract from those with less. And make no mistake: sexual abuse, because it is about power, is about sex, because sex in this system is about power, beginning with gender hierarchy. Building on decades of work, led actually by African American women, the combination of forty some years of discrimination law delegitimizing acts of sexual harassment combined with Trump's election (an election based in part on indifference, even approval of, reports of his sexual abuses), together with mainstream and social media, produced #MeToo. In other words, we are the backlash.

This movement is opening broader conversations, finally, about sexuality under conditions of inequality. The imperative to exchange sex for survival--or the possibility of survival being held out, carrot and stick combined, whether the survival is real or not--governs women's inequality, hence women's lives, worldwide. Sexual harassment unremedied—that is, the forced trading of sexual access for economic survival—makes all of women's real work into a form of prostitution, because that is what prostitution is. In its fundamental dynamics, sexual harassment turns real work into an arm of the sex trade, termed “serial rape” by its survivors, the money being the force, not the consent. In prostitution, virtually all of women's and girls' options are precluded by individuals or by social forces—typically white supremacy, poverty and misogyny combined—making her so-called choice of it almost always fraudulent and illusory, just as “sleeping her way to the top” usually is. The only distinction really between the issues of sexual

harassment and prostitution, frankly, is class: social class bias. Sexual harassment law, for all its inadequacies, did grasp that women do not consent to our inequality. Yet women with the fewest choices are routinely termed “consenting adults” when prostituted for the profit of third parties, pimped people amounting to an average of 84% of prostituted people worldwide.<sup>2</sup>

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<sup>2</sup> M. Farley et al, *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039, 1041-2 n. 13 (2014) (“According to estimates from eighteen sources including research studies, governmental reports, and nongovernmental agencies, on average 84% of women in prostitution are under third-party control or pimped or trafficked.” The authors explain: “To calculate the number 84% as an estimate of those who were under third-party control, pimped, or trafficked we used either whole number estimates or whole numbers based on the midpoint of a given estimated range. In the United States, 80-90% of those in prostitution had pimps. See JACQUELINE B. HELFGOTT, CRIMINAL BEHAVIOR: THEORIES, TYPOLOGIES, AND CRIMINAL JUSTICE 301 (2008); Jean Faugier and Mary Sargeant, *Boyfriends, 'Pimps' and Clients*, in RETHINKING PROSTITUTION: PURCHASING SEX IN THE 1990S 119-34 (Graham Scambler & Annette Scambler eds., 1997). In New York City, a pimp estimated that “70% of women working in New York City as prostitutes are being compelled to do so by pimps who use beatings and drugs, and most importantly the threat of jail, to keep their girls in line.” *Prostitution-Legalize or Decriminalize?*, DAVIS2013.COM (July 30, 2012), <http://davis2013.com/prostitution-legalize-or-decriminalize/>. In Italy, the European Union estimated that 80 % of those in prostitution were trafficked. SCELLES FOUNDATION, SEXUAL EXPLOITATION: PROSTITUTION AND ORGANIZED CRIME 173 (2012), [http://www.fondationscelles.org/pdf/rapport-mondial/sexual exploitation prostitutionFondationScelles.pdf](http://www.fondationscelles.org/pdf/rapport-mondial/sexual%20exploitation%20prostitutionFondationScelles.pdf). In Poland, 90% of prostitution along the roads was assumed to be controlled by organized criminal groups. *Id.* at 233. In Amsterdam 50 to 90% of women in prostitution in the red-light district were considered likely victims of Turkish, Hungarian, Romanian, and Bulgarian human trafficking networks, including those working in legal clubs and brothels, according to the Dutch national police *Korps Landelijke Politiediensten* (KLPD). *Id.* at 211. In Spain, more than 90% of women in prostitution were victims of human trafficking. *Id.* at 268. In Bulgaria, RiskMonitor Foundation estimated that more than 95% of those in prostitution have pimps linked to organized crime. *Id.* at 64. In Germany SOLWODI estimated that 80% of women in prostitution are placed “under strong pressure and have no alternatives. This pressure may come from a partner or even their family, who send them abroad to work and send money back.” Eur. Consult. Ass., *Prostitution, Trafficking and Modern Slavery in Europe*, Doc. No. 13446, at 12 (2014). In Germany, policy analyst Barbara Yondorf estimated that 80-95% of women in prostitution have pimps. KATHLEEN BARRY, FEMALE SEXUAL SLAVERY 130 (1979). In San Francisco, 80% of women in prostitution interviewed by Marilyn Neckes and Theresa Lynch had pimps. *Id.* at 119. In Oregon, 84% of women who had escaped prostitution had previously been controlled by pimps. Susan Kay Hunter, *Prostitution's Cruelty and Abuse to Women and Children*, 1 MICH. J. GENDER & L. 91, 101 (1993). In Ireland, Ruhama estimated that 80% of women in prostitution were under third-party control. E-mail from Sarah Benson, CEO of Ruhama, to Melissa Farley (April 10, 2014) (on file with the Albany Law Review). In the United States, a study of women prostituted in hotels estimated that more than 80% were controlled by pimps. ROBERT PRUS & STYLLIANOSS IRINI, HOOKERS, ROUNDERS, AND DESK CLERKS 11 (1980). Kathleen Barry noted that 80 to 95 % of all prostitution is pimp-controlled. KATHLEEN BARRY, THE PROSTITUTION OF SEXUALITY 198 (1995). Ninety-five to 99% of women in German prostitution were under the control of others. Manfred Paulus, *Out of Control: On Liberties and Criminal Developments in the Redlight Districts of the Federal Republic of Germany*, PROSTITUTION RESOURCES (May 6, 2014), <http://ressourcesprostitution.wordpress.com/2014/05/06/m-paulus-out-of-control-on-liberties->

Women who supposedly have rights, including equality rights in employment and education, are reduced to this floor of women's status when tolerance of sexual harassment, or sexual delivery in any form, from objectification to rape, is made a requirement of the paid labor force. This includes paid housework, where sexual predation is widespread, and women with the fewest options such as the undocumented and recent migrants and many women of color, work. It includes restaurants, where a majority of U.S. women work at some point in our lives, where tips are in many instances required to make more than \$2.40 an hour, and sexualization is required for those tips.<sup>3</sup> The same dynamics frequently apply in education or in career advancement. In other words, sexual harassment in its pure form, meaning prostitution, is precisely what is being widely rejected all over the world in the #MeToo movement today.

The legal approach that best fits what this movement is exposing is the Nordic model, also called the Equality Model, which penalizes the buyers (johns) and sellers (pimps and traffickers) of sex, and eliminates any penalties for the bought and sold, prostituted people.<sup>4</sup> In Sweden, where this concept was first made law in 1999, it has virtually eliminated sex trafficking and reduced prostitution by massive percentages by supporting prostituted people who want to exit, which

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and-criminal-developments-in-the-redlight-districts-of-the-federal-republic-of-germany/. Eighty-six percent of Nepali women delivered to brothels in India did not know they were going to be prostituted when they left home. LOUISE BROWN, *SEX SLAVES: THE TRAFFICKING OF WOMEN IN ASIA* 66 (2000). Cambodian Women's Crisis Centre found that 86% of women rescued from Phnom Penh brothels by police had been tricked or sold into prostitution. *Id.* at 89.”

<sup>3</sup> See Sarumitha Jayaraman, *FORKED: A NEW STANDARD FOR AMERICAN DINING* (2016)

<sup>4</sup> For discussion, see Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271 (2011).

internationally is an average of 89% of them.<sup>5</sup> This approach is now embraced in many countries (Norway, Iceland, Northern Ireland, Canada, France, you heard that right, I said France, the Republic of Ireland, and Israel), despite well-funded sex industry opposition and a massive campaign of blatant lies.

If requiring sexual use as the price of survival is a human rights violation when combined with all that real work, or in education other entitlement, as it is with sexual harassment, you would certainly think that it violates human rights when imposed all by itself, when it is the only thing a woman is permitted to be valued or paid for, even if her value approximates pond slime and the lion's share of the payment goes to other people.<sup>6</sup> Yet it is not effectively illegal to buy a person for sexual use in most places.

Prostituted people are not the criminals. Those who buy and sell them are. The well-funded moves for across-the-board decriminalization exploit this understanding, which highlights the harms of prostitution to prostituted people even as it aims to legalize those who inflict most of those harms: pimps and johns. Under legalization, every harm of prostitution escalates: sex trafficking goes through the roof and the violence against women that is endemic to prostitution, is sex in it, intensifies. Under the Equality model, the police have no power at all over prostituted people and the stigma of prostitution shifts with its penalties to those empowered largely rich white men who drive the demand for it.

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<sup>5</sup> Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRACTICE 33, 34, 51, 56, 65 (2003).

<sup>6</sup> Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039, 1042, 1042 n.14 (2014).

Like all good human rights work, and everything I have ever done, the work against prostitution has been based directly on the experiences, needs, and insistent demands of survivors. Some of the earliest and best work was pioneered here in Minnesota by leaders like Vednita Carter, who is here today. Her cogent writing powerfully connects prostitution with the sexual abuse of enslaved women. I would also like to recognize her brilliant organizing. Also here in Minnesota is the formidable Chris Stark, whose path-breaking research and creative writing have illuminated many a dark corner, including those in which Native women are systematically being sexually violated, trafficked, and murdered. Talk to the two of them, they are powerful resources on this subject. Among Minnesota organizers from whom I've learned a tremendous amount is also Evelina Giobbe. You can find all their work online. If you haven't read Rachel Moran's flat-out brilliant book, *Paid For*, centered on her own prostitution discussing all the issues, you really have to. My sister Andrea Dworkin, who is always with me, burned her life to make her magnificent work against sexual abuse, including prostitution, and paid for it. She wanted this movement more, I think, than life itself. These are my women of vision.

The day that buyers of people for sexual use call forth revulsion and rejection when sexual harassment's dynamic in its pure form—prostitution—is exposed; and when those who report it—women and girls, boys, men, transpeople, including transwomen, disproportionately indigenous women and all other women of color, —are no longer stigmatized, shamed, and blamed as their violators are vaunted, defended, and kept invisible; when this form of unequal predation and unequal protection is seen as the opposite of freedom, and those who outright buy

other people for sexual use are unmasked as the predators they are—let’s say we call it #NotSexNotWork—this will be the transformation that the present one has prepared.

#MeToo is at the same time also beginning to expose gender as an inequality in its conceptual and lived links to the sexual abuse of children. Let’s peel back to this underlying layer for a minute. Sexual harassment is like sexual abuse in childhood in manipulating trust and dependency and in institutionally betraying those who report. Sexual abuse of children, I think, is the foundational practice of the entire gender system, ground zero of sex inequality. Andrea Dworkin called incest “boot camp” or prostitution.<sup>7</sup> Sexual abuse in childhood is the practical foundation of prostitution and sex trafficking, in that most people used in prostitution, which is the destination of sex trafficking, were sexually abused as children and entered prostitution as children. Pimps, who know what they are doing, select formerly sexually abused children on purpose.

Sexual abuse in childhood is about what rape and sexual harassment and prostitution are about: sex forced on those with less power by those with more, made definitive of masculinity and femininity. This is also the dynamic pornography sexualizes. And many, if not most, rapists were sexually abused as children. To escape this being done to them, a choice they are given socially, many men become masculine, sexualizing power over others. To survive under this system, girls are taught to acquiesce in femininity, sexualizing power over us, sometimes calling it “agency,” or “empowerment,” even liberation.

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<sup>7</sup> Andrea Dworkin, *Prostitution and Male Supremacy*, 1 MICH. J. GENDER & L. 1, 4 (1993).

Sexual abuse in childhood explains more about the gender system, that is, more about male violence, meaning violence, and more about sexual politics, meaning politics, than any other single thing does. If you put the best studies together, sexual abuse in childhood affects about half of girls today in the U.S. in contact forms before we reach the age of majority,<sup>8</sup> and at least a quarter of boys.<sup>9</sup> Although some valiant steps have been made against it in some institutions (churches, residential schools, schools period), virtually nothing is being done about it in any realistic proportion to its occurrence, despite laws against it. Blackstone said, “better ten perpetrators go free than one innocent accused suffer,”<sup>10</sup> as if these were alternatives. With sexual assault, we have both. You’re

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<sup>8</sup> This is a conservative extrapolation derived from combining Diana E.H. Russell, *THE SECRET TRAUMA: INCEST IN THE LIVES OF GIRLS AND WOMEN* 62 (1986) (finding that 38 percent of subjects in a study conducted in San Francisco in 1977 had been sexually abused by physical contact before the age of majority), with Linda Meyer Williams, *Recall of Childhood Trauma: A Prospective Study of Women’s Memories of Child Sexual Abuse*, 62 *J. CONSULTING & CLINICAL PSYCHOL.* 1167, 1170 (1994) (reporting that 38 percent of women studied did not recall “sexual abuse that they experienced in childhood and that had been documented in hospital records”).

<sup>9</sup> See David Finkelhor, *Boys as Victims: Review of the Evidence*, *CHILD SEXUAL ABUSE: NEW THEORY AND RESEARCH* 150 (David Finkelhor ed., 1984) (presenting evidence showing that 2.5 to 8.7 percent of adult male subjects had been sexually victimized as children); Stefanie Doyle Peters et al., *Prevalence*, in *A SOURCEBOOK ON CHILD SEXUAL ABUSE* 15 (David Finkelhor ed., 1986) (reviewing studies finding prevalence rates of child sexual abuse among boys ranging from 3 to 31 percent). For illuminating comparative data on the lifetime prevalence of sexual abuse in children of both sexes, see Amy Young et al., *Alcohol-Related Sexual Assault Itemization Among Adolescents: Prevalence, Characteristics, and Correlates*, 69 *J. STUD. ALCOHOL & DRUGS* 39 (2008) (finding that 11.5 percent of women and 6.1 percent of men reported intercourse and other sexual violence as children; 46.2 percent of women and 26.2 percent of men reported other contact abuse such as fondling, touching and kissing; 48.4 percent of women and 26.6 percent of men reported mixed abuse or an unspecified type of sexual abuse; and 67.3 percent of women and 40.9 percent of men reported sexual abuse that did not involve contact, such as indecent exposure and inappropriate sexual solicitation).

Data and its quality varies by country so we don’t even know the real incidence and pervasiveness of child sexual abuse around the world, only that it is widespread and largely kept hidden. Based on data we had as of 2009, rates in South Africa are by far the highest for both men (60.9 percent) and women (43.7 percent), next are Jordan and Tanzania, with prevalence rates of 27 percent and 25 percent respectively, for men, they are followed by Israel, Spain, Australia, and Costa Rica, and for women, Australia (37.8 percent, Costa Rica (32.2 percent), Tanzania (31 percent), Israel (30 percent), Sweden (28.1 percent), the United States (25.3 percent), and Switzerland (24.2 percent). Noemí Pereda et al., *The Prevalence of Child Sexual Abuse in Community and Student Samples: a Meta-Analysis*, 29 *CLINICAL PSYCHOL. REV.* 328, 333, 334 tbl. 4 (2009). A number of attempts are underway internationally to more broadly and precisely measure and interdict this abuse, much of it toward achieving the UN’s Sustainable Development Goal 16, which aims to end such abuse by 2030.

<sup>10</sup> 4 WILLIAM BLACKSTONE, *COMMENTARIES* \*358.

treated like a thing before you even know you're a person. It starts before you grow up enough to have your abuse recognized as sexual harassment or exposed through #MeToo. Then child prostitution is regarded as a terrible thing; adult prostitution, well maybe not quite so bad. These are not two entirely separate things. They are the same group of people at two different points in time.

Right now, we are living through the first systemic uplift in women's status since the vote -- a revolution without violence against domination and aggression, a moment of truth and a movement of transformation for the sexually violated toward a more equal, therefore more peaceful and just world. It is happening all around the world, all around us, right now. We *are* winning. Let's make it count.