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### 3 Philosophical Assumptions and Presumptions about Trafficking for Prostitution

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#### **Introduction**

Trafficking in women generates about \$12 billion a year, making it the third largest profit industry in the world after trafficking in weapons and drugs (Bindel, 2003). The public health dimensions of trafficking involve sexually transmitted diseases, HIV/AIDS and the impact on the health of adolescent girls, since many of the women are in fact adolescents. One might assume that this obvious hazard to public health and women's rights would generate universal condemnation, but, with one or two notable exceptions,<sup>1</sup> the trafficking debate is dominated by those who argue against abolitionism as a hopelessly patronising and moralistic approach.

On the dominant flank of the trafficking debate are ranged the somewhat rag-tail armies of neo-liberals and neo-feminists, both of which view sex work as work like any other, more or less freely chosen by the women involved. In the Czech Republic, for example, a draft law specifically treats prostitution as a normal job, subject to the usual forms of contract and employment protection. This position takes male sexuality to be inherently promiscuous and incapable of reform, if it considers male sexuality at all. It tends to focus on the women involved, and not on their clients or traffickers; to take prostitution likewise as a given; and to reject the notion that women are exploited in prostitution.<sup>2</sup>

On the other side of the battle-lines stands an equally ill-matched alliance of law-and-order advocates and old-style feminists, who view sex work as inherently wrong or exploitative. This approach does examine the motives of the clients, rather than simply taking male sexuality

as a given. For example, the French association Le Nid has recently published the results of interviews by the sociologist Said Bouamama with 95 clients, of whom the dominant type were classified as 'nostalgics' – men who regret the supposed emancipation of women and look back to the good old days when all women were as 'biddable' as they assume prostitutes to be (Bouamama, 2004). In Sweden, to take another practical example, criminalisation of the buyer rather than the prostitute is the model for social policy.

In my recent experience of leading a European Commission project, the Network for European Women's Rights, voices from the first position were much more vociferous and quite intolerant of the second view – to the extent that Swedish speakers gave up attending workshops discussing prostitution, because they feared being subjected to verbal abuse. There may be political reasons why the neo-liberal camp is so vituperative: many of the organisations that work with prostitutes claim exclusive knowledge of the motivations behind prostitution, and also exclusive rights to funding for working with trafficking 'victims'. In this chapter, however, I make no assumptions about the organisations' motives; rather, I examine both positions on their own merits. I want to argue that the debate is polarised largely because of a failure to examine the underpinning philosophical assumptions critically. To a philosopher it is an offensive *presumption* to make such uncritical *assumptions*.

In particular I want to take issue with two central assumptions:

1. that the sale of sexual services is like the sale of any other good or service;
2. that, by and large, women involved in trafficking for prostitution freely consent to sell such services. (A weaker form of this assumption might be that we are wrong to simply assume that their consent is not free.)

Both assumptions are too often used as a 'knock-down argument', one that closes down further debate because it is widely assumed to be palpably obvious. Philosophers are generally suspicious of knock-down arguments, although cynics might say that is because they put philosophers out of work. This pair of presumptions, however, is particularly suspect because both rely on the libertarian rhetoric which pushes all the right buttons in our psyches, the buttons marked 'choice' and 'freedom'.

However, the opposite pair of presumptions is not necessarily true either: that women never choose prostitution freely, and that prostitution has nothing in common with economic transactions. The Swedish criminalisation model seems to assume that only the clients of

prostitutes exercise sufficiently free choice to be held criminally responsible for their actions, and/or that the sale of sexual services is in fact exploitation rather than free trade. Although the Swedish model has been accused of being puritanical, clearly it is somewhat more sophisticated than simple condemnation of prostitution as a sin. Otherwise the law in Sweden would penalise both the prostitute *and* the client. It seems, however, to be making both assumptions: that women do not choose prostitution voluntarily, and/or that those who buy prostitutes' services are engaging in something other than a normal economic transaction. Normal economic transactions are not criminal offences.

However, although the Swedish position makes certain philosophical assumptions about responsibility and choice, it does constitute an improvement on the blatantly false assumption that whatever one does, one has chosen to do. It implies, rightly, that we can distinguish between actions plain and simple, and actions for which we can be held responsible. Without that distinction, the criminal law would founder. For example, we would always prosecute offences committed by children or by mentally disordered offenders even if they were not old or sane enough to be held responsible for their actions. By judging clients' choice to buy sexual services as freer than prostitutes' choice to sell them, and thus as involving greater responsibility for actions, Swedish policy has gone one step further down the road to critical analysis than the view that all actions should be assumed to be freely chosen. It implies that we can distinguish different degrees of freedom in agents' actions. This is a good start, leading us into an examination of choice and responsibility.

### Choice and responsibility

A choice to sell sexual services in the neo-liberal or neo-feminist view should be presumed to be freely chosen, and free choices must be accepted out of respect for the individual's autonomy. Whether or not this is really true is, of course, not self-evident at all, but is central to one of the oldest debates in moral and political philosophy. In comparatively recent times it was strongly contested by Marx, who did not question the second half of the statement – that we must respect free choices because we respect individual autonomy – but who did scrutinise the conditions in which choice is made, interrogating the notion of 'free' much more closely. Marx does this when he portrays the (male) worker as alienated, robbed of the right to control his own labour, because he lacks the power to control the conditions in which he works. The alienated

worker's labour is in fact the symbol of his oppression not of his freedom – although under capitalism he is not a slave, any more than prostitutes are necessarily always sex slaves even if they have been trafficked (Marx, 1973).

At its simplest, if no work other than prostitution is available, and if I must work or starve, then there is just as much doubt about whether my choice is free as if there is no other work but coalmining, or any of the other masculine icons of the traditional labour movement – where it has been comparatively easy for onlookers to accept that the worker's choice is constrained and not free. The situation is not all that different for women in some parts of Eastern Europe, where only extreme free marketeers would claim that women's choice to sell their sexual services is entirely unconstrained. It is in relation to these women, and to underage girls, that doubt is most often voiced about using freedom of choice and responsibility for one's actions to argue against the non-prosecution of traffickers, the legalisation of prostitution or the treatment of trafficked women as economic migrants. These are comparatively easy cases.

Feminist theory, however, takes these doubts further. In one form, it has questioned whether the choice to remain in the home is entirely unconstrained, or whether it is socially determined by lack of other choices.<sup>3</sup> In another, more sophisticated form, feminist theory has done more than show how the *conditions* under which women make choices about employment are socially determined and limited. Rather, the most novel insights of feminist theory concern the way in which the supposedly free subject is herself socially constructed (Hirschmann, 2003).

This is a risky move because what we are meant to respect in free choices is the notion of the autonomous individual: that is what deserves respect, embodied in her choices – even if the choices seem irrational or ill-advised, undeserving of respect in themselves. But if the individual is not autonomous and free, exactly what is it that we are respecting when we respect her supposedly free and autonomous choice? Might we then be merely colluding in a woman's oppression by respecting her choice to remain with an abusive husband, for example? Or to enter prostitution? It would be ironic if, by respecting liberty of choice, we were in fact diminishing freedom.

Feminist theory has developed a novel take on responsibility and choice out of precisely this tension. On the one hand, feminism has long had to contend with the assumption that women are incapable of real choice: that political decisions, for example, should be made for

them by their husbands and fathers, so that they do not require the vote, in James Mill's argument. On the other hand, feminism has also had to deal with the equally sexist assumption that even if women say no, they mean yes: that when they do make an apparent choice, it does not reflect their true wishes – the basis of many a defence against an allegation of rape.

At its most fundamental, feminist theory transcends Marxist-style analysis, by going beyond the limitations imposed by conditions of choice – such as the lack of jobs other than prostitution – to the way in which the subject's own sense of selfhood and choice is insidiously undermined by the absence of choice – so that such a woman might come to view herself as undeserving of, or uninterested in, any job other than prostitution. She is not forced into prostitution, but the underpinning self that chooses is none the less constrained and limited, in such a way that her choice cannot simply be called free. As Nancy Hirschmann writes:

Many theorists of freedom recognise that desires and preferences are always limited by contexts that determine the parameters of choice: if chocolate and vanilla are the only flavours available, I am not free to choose strawberry, but that does not alter the fact that I would have preferred strawberry if it were available. What is not addressed by most freedom theorists, however, is the deeper, more important issue of how the choosing subject is herself constrained by such contexts: could the repeated absence of strawberry eventually change my tastes so that I lose my desire for it? (Hirschmann, 2003: ix-x)

This is a contrast between the objective definition of freedom, in terms of available options, and the subjective expression of desire, in terms of self-limitation. Arguably, the second is the more dangerous and profound limitation on freedom: if slaves, trafficked women or any other agents do not want to be free, they are much easier to control than if they want to be free but are deterred by beatings or threats. Internalised 'unfreedom' is much more 'unfree' than the externally imposed variant.

However, the obvious problem with this argument again relates to Marxist thought and its difficulties with false consciousness. The trafficked woman who says she chooses freely to remain with her trafficker may be like the worker who votes for a conservative party: both can be seen as displaying false consciousness, a lack of insight into their true interests, an inability to understand the objective reality of their unfree situation. But false consciousness is a patronising notion, and one that

leads us into infinite regress. Yet taking people's evaluation of their preferences at face value also leads to major paradoxes.

Isaiah Berlin insisted that freedom demands 'a range of objectively open possibilities, whether these are desired or not ... it is the actual doors that are open that determine the extent of someone's freedom, and not his own preferences' (Berlin, 1979, cited in Herschman, 2003: 5). Perhaps we can understand this point more clearly by looking at the opposite sort of case, what I shall call the Woody Allen syndrome. It is entirely possible – indeed, very common – to lack for nothing in the way of open doors, to enjoy money, status, fame and a much younger girlfriend, but still to feel dissatisfied, restless and miserable. Are we willing to say that someone like this, who defines himself as unfree and hampered by circumstances, is *less* free than the trafficked woman who says she wants to stay with her pimp? Surely there are fewer actual doors open for her – often quite literally.

What distinguishes the two camps in the trafficking debate is not only their view of the parameters of choice, but whether they tacitly accept what Carole Pateman calls 'male sex-right' (Pateman, 1988). On this understanding, trafficking merely represents the last stage of men's rights over female bodies, its globalisation. I now want to move on to examine this viewpoint in the context of the other unexamined assumption in the trafficking discourse: that buying and selling sexual services is the same as any other economic transaction.

### Property in women's bodies and sexual services

Let me begin this section by distinguishing between physical property rights in women's bodies – which is atypical of modern economic and legal systems, although it persists in slavery and some forms of customary law – and rights to women's sexual services. It might be objected that a woman's body is not literally sold in prostitution, so long as she is not a slave. There may be distinctions to be drawn here between 'purchase' of a trafficked woman by a pimp, who then controls all her exchanges with clients – which does look much more like sale of the woman's body – and the self-employed prostitute who does not hand over any proportion of her earnings to a pimp. These two ends of the spectrum are very different and we ought to be wary of saying that the self-employed prostitute is selling her body as such. Rather, this argument runs, a service is being exchanged for money in the normal contractual manner.

Where women's bodies are concerned, however, the 'normal contractual manner' does not necessarily apply. I am not referring to the non-enforceability of contracts for prostitution in many jurisdictions, although that ought to alert us to practical problems about claiming that this is a contract like any other (Radin, 1996: 135). There are profounder reasons why transactions concerning the use of women's bodies, even if distinguished from the sale of women's bodies, cannot simply be assumed to be the same as any other economic transaction.<sup>4</sup>

In Pateman's 'sexual contract', which can take many forms – prostitution, pornography, surrogate motherhood and marriage among them – the two parties start from and end on very different footings: the rights of the woman are not protected to the same extent as the rights of the man. The marriage 'contract', for example, has traditionally established men's legitimate access at all times to women's physical persons, so that the offence of marital rape has been recognised only very recently in common law jurisdictions,<sup>5</sup> and is still not recognised in some countries.<sup>6</sup> Similarly, the right to exit from the marriage 'contract', if it exists, is often limited more strictly for women than for men: Islamic law is often interpreted as allowing a man unilaterally to pronounce himself divorced from his wife, but not the reverse. All these barriers are typical of the unequal ways in which rights are frequently apportioned between men and women in 'contracts' concerning the use of women's bodies for sexual services.<sup>7</sup> They would also help to explain the concept I introduced earlier, that of 'adaptive preferences'. Where men's rights over women's bodies are systematically privileged, women must adapt: even if they exercise what appears to be free choice, they exercise it under systematic limitations. As I have written elsewhere:

Other contracts view all parties as possessing equal property rights. This may be a fiction in actuality, as Marxist critics would maintain of employment contracts, but it is a truth in law. Equal rights between men and women in property in the person do not exist in either life or law, Pateman asserts. (Dickenson, 1997: 68)

Pateman warns us to think twice before assuming that a transaction involving the sexual use of a woman's body is no different from any other contract. Rather than being an emblem of modernity or a value-neutral commercial transaction, it is simply one more manifestation of an archaic patriarchal system establishing men's rights of access to women's bodies. Thus viewing prostitution as a sale of services like any other exchange merely allows patriarchy to flourish. (Even if we expand

our concerns to consider male prostitutes, male sex-right can still be seen to be at work, in so far as it is predominantly men who are the buyers.)

One could argue, however, that those who want to treat prostitution under the general rubric of services like any other are in fact undermining patriarchy. Because women have widely lacked property in their own reproductive services and sexual labour, it may seem progressive to credit them with having such property. I think this is what convinces many 'neo-feminists' that they must be critical of the entire notion of women as passive victims of trafficking. Selling sexual services seems to such commentators a liberating notion because at least it recognises women 'sex workers' as (free) agents with a property in their own labour.

Now I am quite sympathetic to the attempt to regard women as subjects rather than mere objects of property-holding, as I have frequently stated in *Property, Women and Politics*, and in the sequel I am writing on the way in which commodification of human tissue has turned all bodies, both male and female, into female bodies in so far as all bodies are objectified to a lesser or greater extent. Some earlier feminists wrongly assumed that women's only relation to property could be as its objects, I argued, although they made good polemical use of the notion of women as objects (Dickenson, 1997: 2). But in so doing they risked viewing women as eternal victims, as well as depriving feminism of other useful weapons: property rights and contract. In their justifiable distrust of the liberal discourse of individualism, rights and contract as masculinist, some feminist theorists went too far in rejecting any notion that women could be subjects of property rights.

Saying that such prostitutes sell sexual services seems to assume that they sell them freely, on equal terms, and to enhance women's status as subjects. Yet we do not make any such assumptions about other workers' sale of their time and labour. We cannot assume that these things are sold freely and on equal terms merely because they are sold. We do not assume that the factory worker sells his labour freely, on equal terms, from the brute fact that he sells it. Why should we do so with the prostitute?

This line of reasoning tends to shade over into the freedom argument, but it is also about something more than just the freedom question: property in the body and female sexuality. As Catharine MacKinnon has written, 'Sexuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away' (MacKinnon, 1987: 3). Because women are so frequently reduced to mere sexual beings in patriarchal thought (and in the relentless rise of globalised pornography) sexual

labour can never be unambiguous. It is not a matter of simply ensuring that women sex workers do control the conditions of their own labour, however: there the parallel with male proletarian workers' conditions breaks down. Whereas in Marxist thought collective workers' ownership of the means of production would transform workers' oppressive circumstances into life-enhancing labour, even sex workers' collectives or legalisation of prostitution would be insufficient, in my feminist analysis, to transform prostitutes' alienation into freedom.

One reason why this is so is because both the means of production and the object of the transaction in prostitution are women's bodies themselves. This is different from any other form of 'production': although labourers contract out their bodies, what employers buy is the worker's ability to labour hard, long or skilfully. They are indifferent to the shape and size of the workers' bodies in a way that prostitutes' clients presumably are not. (If they were indifferent, the objects of trafficking for prostitution would not normally be nubile young girls.) So even though women's bodies are not literally sold in prostitution, unless in conditions of slavery, women's bodies are also never merely the means by which the labour of sexual services is performed; they are also the object of the service. This puts the prostitute in the ambivalent position of being both an agent, like the male factory worker, and a thing, like the machine part the worker makes. To see oneself as a thing is profoundly alienating. Yet the neo-liberal and neo-feminist view – that prostitution is like any other exchange – assumes that a woman can stand in just such an external relation to her own sexual labour and to her physical person.

## Conclusion

As a final reflection, thinking about other 'transactions' involving women's sexual and reproductive organs may also be instructive. In the debate over legalisation of 'surrogate' motherhood we frequently hear it said that women are merely renting out their wombs. Apart from the fact that they are also undergoing the risks and pain of childbirth, this is a strange, objectifying discourse. It seems to lead us down the route of selling kidneys, or even selling one's entire body for the organ trade. What's wrong with that? It's an economic transaction like any other.

The Italian political theorist Daniela Gobetti (1992) argues that we are constrained in our thinking about trade in sex, body parts and similar dilemmas by the way in which seventeenth-century natural law thinkers based the modern theory of subjective rights in Roman law

tradition, which sees property in things as the blueprint for all rights-based social phenomena. Our legal and philosophical history creates habits of mind that make it hard to analyse relations among persons concerning resources which are not separable from the body of the possessor, e.g. sexual acts or 'surrogate' motherhood. Only recently have feminists, bioethicists and legal theorists begun to move beyond these restrictions. We need to break away from these habits of thought if we are to find accurate ways of characterising trade in sexual services – and not remain entrenched in presumptions and assumptions.

## Notes

1. For example, Malarek (2003).
2. This is a very rough, common denominator summary of a large literature which includes J. O'Connell Davidson (1999), the country reports of the La Strada organisation, e.g. on the Ukraine and Poland; and Daniela Danna, *Donne di Mondo: commercio del sesso e controllo statale*.
3. In a large literature, see, for example, Basch (1982), Davidoff (1995), Delphy (1984), Dwyer and Bryce (1988), Hartsock (1983) and Moller Okin (1989).
4. See, for example, Satz (1995), and, in the nineteenth century, Flora Tristan's ground-breaking and powerful analysis in her study of English prostitutes, *Promenades dans Londres* (1842).
5. The offence has only been recognised since 1991 in the UK, in the case of *Regina v R* (Court of Appeal, 14 March).
6. Including Albania, Bosnia-Herzegovina, Bulgaria, Macedonia, Turkey and Romania, among south-east European countries. See UNDP (2003: 19).
7. I use the term 'contract' advisedly; the marriage 'contract', although a popularly used term, is not actually a contract in English law.

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