

Feminism and Sex Trafficking: Rethinking Some Aspects of Autonomy and Paternalism

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Abstract This paper argues that potential cases of oppression, such as sex trafficking, can sometimes comprise autonomous choices by the trafficked individuals. This issue still divides radical from liberal feminists, with the former wanting to ‘rescue’ the ‘victims’ and the latter insisting that there might be good reasons for ‘hiding from the rescuers.’ This article presents new arguments for the liberal approach and raises two demands: first, help organizations should be run by affected women and be open-minded about whether or not the trafficked individuals should remain in the sex industry. Second, the career choices of trafficked individuals should be expanded by the introduction of an opportunity-extending right to asylum.

Keywords Autonomy · Paternalism · Oppression · Sex trafficking · Sexism · Asylum

The well publicized abuses endemic to sex trafficking¹ arouse sympathy for trafficked sex workers. However, the question of how social policy should address this problem sparks controversy, even among feminists who put a premium on women’s human rights and free agency. No one denies that women’s rights are violated when deception and coercion are used to ensnare women in transnational trafficking schemes. Nor does anyone deny that the forcible rape and imprisonment of women in brothels violates women’s rights. Yet, in the name of women’s empowerment, radical feminists call for closing down the sex industry and rescuing and rehabilitating trafficked sex workers. In contrast, liberal feminists hold that women’s equality and freedom are best served by destigmatizing sex work and ameliorating

¹The 2000 UN “Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime” defines trafficking in persons as: the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. The protocol goes on to specifically include sex trafficking: Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation. (<http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>) Thus, sex trafficking can occur in transport – recruitment, transportation – and/or at the destination – transfer, harbouring, or receipt for purposes of exploitation.

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the conditions of employment for sex workers, including those who have been trafficked but do not wish to leave sex work.

Radical feminists have joined forces with evangelical Christians in the employ of the U.S. government to “rescue” prostitutes in Southeast Asia and relocate them to rehabilitation centers, but liberal feminists point out that most of these women escape from these centers and return to sex work while many others “hide from the rescuers” (Soderlund 2005, 65–66; Chapkis 2003, 931–932; Bernstein 2010, 61–65).² Liberal feminists add that extremely poor women stuck in what I call LDDW economies (national economies with Large Deficits of Decent Work, in the phraseology on the UN Millennium Development Goals) often cooperate with the ruse of trafficking in the transport process despite the high risk that they will be trafficked for sex work at their destinations because there is no other way they can migrate and hopefully gain a secure livelihood (Kempadoo 2005, xvii; Kara 2009, 16). Although liberal feminists find the values and goals of radical feminists far less objectionable than those of evangelical Christians, liberals see trafficked women as exercising a degree of autonomy in a socioeconomic context that offers few options.

In Section 1, I critique several radical feminist claims concerning women’s agency and the strong paternalistic agenda regarding sex work that radical feminism countenances. In Section 2, I develop an account of autonomy that makes sense of the liberal position and that fills gaps in the radical feminist view of women’s agency. My account respects the autonomy of women in LDDW economies but also recognizes trafficking victims and the harms they suffer.

Still, liberal feminists face a practical dilemma of their own. Respect for the agency of trafficked sex workers seems to dictate refraining from intervention and leaving resistance to or acquiescence in sex industry practices in the hands of the women who both take advantage of the system and suffer at its hands. Outrage over the flagrant human rights violations perpetrated against trafficked sex workers together with acknowledgment of the severe constraints on their ability to resist their “owners” seems to dictate advocating on their behalf. In my view, the enormous economic disparities between the Global North and the Global South in combination with the regime of closed international borders and the success of international sex trafficking gangs necessitate a weak paternalist, feminist approach designed to enhance the autonomy of trafficked sex workers.

In Section 3, I urge that feminists should promote two related desiderata. First, supporting organizations founded by sex workers to advance their diverse interests can help to strengthen trafficked sex workers’ ability to exercise autonomy skills. I emphasize, however, that trafficked sex workers have diverse interests because the aim of effectively promoting autonomy rules out assuming that all trafficked sex workers would freely choose to remain in sex work if only the work conditions and pay were decent. Trafficked sex workers need organizations that respect the decisions of women who autonomously choose to continue in sex work as well as women who autonomously choose to leave it. Second, the array of career options available to trafficked sex workers should be expanded. In particular, western immigration law must be reformed to forbid deporting trafficked women back to the impoverished countries and lack of opportunity they fled in the first place, for deportation is a recipe for re-trafficking. I side with legal experts and feminist activists who maintain that many trafficked women qualify for refugee status and ought to be granted asylum in destination countries. Asylum would provide trafficked sex workers with the protection many need to discern and act on their autonomous desires.

² Major statements of liberal feminist positions on prostitution include Schwarzenbach (1990–91), Shrage (1996), and Nussbaum (1999).

The sex industry includes diverse commercial activities. Pornography, topless dancing, and child prostitution each raise their own questions in regard to the propriety of paternalistic intervention, and these questions differ from those raised by the disparate strata of adult female prostitution where the working lives of streetwalkers bear scant resemblance to the working lives of expensive call girls. I confine my discussion here to the trafficking of adult females from LDDW nations into prostitution in more prosperous countries – a practice regarding which plausible arguments have been mounted both for and against paternalistic intervention.³

1 Feminist Anti-prostitution Paternalism

But soon I was to learn, through direct and regular contact with women in prostitution, that it was not possible to maintain a distinction between the “workers” and their “profession,” and at the same time to maintain an unconditional attitude of personal acceptance and respect. (Chew 2005, 66)

In the essay from which I have taken this quotation, Lin Chew chronicles her moral and political journey from feminist condemnation of prostitution to feminist acceptance of sex work and advocacy of sex workers’ human rights. I concur with Chew’s conclusions, and in this section I answer the most important recent arguments against the anti-paternalist, anti-moralistic position she adopts.

Following Carol Pateman, Catharine Mackinnon, and other radical feminists, Kathy Miriam rejects the category of sex work and advocates abolishing prostitution regardless of its form (2005). Her argument proceeds in two principal stages: (1) a critique of the conception of the self and work that she ascribes to liberalism and (2) a critique of the context in which women act that she thinks anti-abolitionists overlook. I consider these arguments in turn.

Attacking the Lockean tradition of theorizing the relation between the self and work, Miriam argues that the idea of a proprietary contracting self – a self that owns its labor and is free to sell its labor – is incoherent. Because selves are embodied, your body is constitutive of who you are, and you can’t sell bodily services without selling yourself (Miriam 2005, 3–4; for related discussion, see Alcoff 2009). In other words, prostitution isn’t an exchange of sexual services for remuneration. It’s the alienation of your bodily capacities, your very being. Since alienating your bodily capacities is impossible, the concept of sex work is unintelligible.

Of course, many types of employment – bricklaying, supermarket shelf stocking, marathon running, fruit picking, ballet dancing, and so forth – involve using bodily capacities in exchange for payment. So it is necessary to ask what differentiates selling sexual services from selling other kinds of bodily effort that also seem to presuppose that workers have proprietary, contracting selves. Because Miriam’s comments on nonsexual types of physical labor are brief, I must extrapolate from them to offer a suggestion about how she might plausibly distinguish nonsexual physical labor from sexual labor (2005, 3). Perhaps her view is that the capitalist labor market and wage system reduce nonsexual physical labor to exploitation, but a just economic system would elevate such labor to the status of work. If

³ Hence I will not discuss Peter de Marneffe’s liberal paternalist view that sex work should be regulated (not abolished or criminalized) to deter teenage girls from entering sex work in order to diminish the severe harms that he believes are endemic to sex work (2010, 13–17). For criticism of his empirical claims, see Schwarzenbach 2011, 440–441, and for skepticism about the separability of these harms from moral harms, see Yankah 2010, 2.

this is her position on bricklaying and the like, I take it that her prostitution abolitionist view is that transferring sexual services would not be a morally legitimate way of making a social contribution and earning a living, even in a post-patriarchal, post-neoliberal society. For women, trading sexual services for a livelihood is irremediably exploitative regardless of the structures governing gender in the larger society and regardless of the setting in which the sexual services are supplied and the terms of payment to the supplier.

To better understand the support for this claim, I turn to Miriam's contention that male demand for female sexual services – men's right to be sexually serviced by women – is "non-negotiable" (2005, 14). In her view, this "sex right" rules out the possibility of distinguishing between voluntary and coerced prostitution.

I suspect, however, that Miriam's position rests on an ambiguous use of the term 'demand.' The size and profits of the heterosexual sex trade confirm that incalculable numbers of men want and are willing to pay for the services of prostitutes. Undeniably, there is a gargantuan *market demand* for female sexual services. Yet, Miriam's position requires something more – namely, a *socially secured, quasi-moral demand* for female sexual services. If social norms condone and men routinely exercise the power to compel women to comply with their sexual requests, it follows that the concept of voluntary prostitution is unintelligible. But if women can and frequently do decline to go along with male sexual advances without facing harsh consequences or moral condemnation, men don't enjoy the sex right Miriam attributes to them. If not, the conclusion that the concept of sex work is incoherent depends on an equivocation over two different kinds of demand – the enormity of the market demand for sexual services doing duty for an ostensibly rightful demand for those services that is now vestigial and spotty. Absent a convincing argument for male sex right, there is little reason to believe that sex work cannot be voluntary and that all sex workers should be saved from their employment.

In calling attention to worldwide sexual violence against women and the widespread indifference of law enforcement to these crimes, radical feminists have greatly advanced feminist thinking about gender and power. However, concluding that prostitutes' sexual agency amounts to nothing more than the "freedom to be subordinated" overreaches what the facts about sexual relations between women and men generally and the highly various forms of prostitution in particular warrant (2005, 3). Most importantly for my present purposes, Miriam closes her paper by acknowledging that prostitutes do engage in negotiation and resistance on the job and by underscoring the need for an account of agency and empowerment that recognizes that victimization and agency are compatible (2005, 13–14).⁴ I wholeheartedly affirm both of these points.

Still, I am not convinced that Miriam's theoretical framework can accommodate an account of women's agency under oppression that reconciles agency and victimization. Not only does her view belittle the significance of individual sex workers' micro-strategies for gaining better work conditions and their local acts of resistance, it mandates "collective political agency" aimed at defeating men's right of access to women by, among other things, putting an end to their livelihood. Thus, Miriam discounts sex workers' agentic resources and paternalistically dictates an emancipatory agenda to them. Moreover, I am skeptical that feminists who hold that the sale of sexual services is a genuine kind of work and who support the sex workers' rights movement are committed to denying that agency and victimization are compatible or that women's collective agency is vital.

⁴ See Peach 2006 for thoughtful discussion of the tensions between viewing trafficked sex workers as victims or as agents.

Before I take up those issues, however, I need to consider another important contribution to the abolitionist position. Scott Anderson maintains that if decriminalizing or legalizing prostitution resulted in the normalization of commercial sex, it would legitimize an assortment of cringe-inducing practices (2002). For example, employers could include “performing sexual tasks” in job descriptions for positions otherwise unrelated to sex work, and governments could require qualified recipients of welfare or unemployment benefits to accept work in the sex industry (2002, 762). In other words, instead of covertly demanding sexual favors as conditions of employment or promotion and instead of abandoning women to the mercies of the underground sex market when their public assistance benefits are exhausted or when public assistance programs are repealed, these expectations could be made official. Whereas Miriam advocates paternalistically abolishing prostitution for the good of prostitutes, Anderson advocates abolishing prostitution in order to paternalistically protect non-prostitutes’ sexual autonomy.

Although laws against sexual harassment probably shield some women from coercive sexual encounters, sexual harassment is commonplace and seldom punished, and Anderson is well aware of this (2002, 767, note 32). Moreover, the structural adjustment programs that the IMF and World Bank have imposed on LDDW economies in the Global South often encourage recipient states to develop their tourist industry as a source of foreign trade, and attracting foreign tourists often translates into promoting sex tourism (Sassen 2002, 269–270). Even if we grant the dubious proposition that the criminalization and stigmatization of sex work are motivated by policy-makers’ good intentions, these deterrents do little to protect the sexual autonomy of vulnerable women, and countless women are vulnerable.

Were the international economic order one in which a just global distribution system ensured fairly remunerated employment for all persons capable of working... Were the international legal order one in which *quid pro quo* sexual harassment had all but disappeared... Were the global gender system one in which people of diverse sexualities had created non-commercial, above-board, dignity-preserving outlets for satisfying their recreational erotic impulses, Anderson’s arguments would provide strong reasons to maintain that salubrious system and perhaps to oppose instituting an ancillary sex trade. But that’s not the world we live in, nor are we close to realizing this ideal.

Indeed, Anderson concedes that his line of thought may have little practical force:

[O]ur society ought to be moved to create other economic opportunities for women and others when it turns out that prostitution is the best option available to them. Perhaps it is true that a society unwilling to take this further step should not prohibit prostitution. My point is simply that if prostitution is normalized, it becomes very difficult to see any need to act to create additional economic opportunities – that is, any more than we see such a need when workers in other fields face a constrained choice of jobs. (2002, 777, note 46)⁵

While I applaud Anderson’s move to soften his abolitionist stance, I am troubled that he does so by blending a dubious assumption about the inherent undesirability of sex work with unsound inferences regarding sex work normalization.

Sex workers contest Anderson’s assumption that prostitution is an occupation that a woman would choose only because it’s the least awful option in an array of awful options (Kempadoo 1998a, 3–6 and 2005, 151; Satz 2010, 140; Annie Sprinkle, <http://anniesprinkle.org/> (accessed 12/21/11)). Some women choose sex work over socially

⁵ Despite his analysis of the grim psychodynamics of sex worker/client interactions, Jeffrey Gauthier reaches a similar conclusion (2011, 182).

approved options that are available to them and that many people consider more attractive (Schwarzenbach 2011, 441; E.W. 2012). However, women trafficked into sex work present a more complicated profile. On the one hand, these are women who are coping with the privations of LDDW economies – economies that do not afford them a selection of good jobs. Yet, on the other hand, studies of trafficked sex workers and other women in LDDW economies do not support the popular image of these women as passive pawns of economic pressures and criminal gangs (Jacobsen and Skilbrei 2010, 199; Kempadoo 1998b, 124–128, 137; Waugh 2006, xv, 37, 50, 63, 80, 142). Many women rebuff sex traffickers, and some women manipulate the trafficking system to their own advantage. To justify his view, it seems that Anderson would need to join Miriam in asserting the strong paternalist claim that sex workers who believe they are working voluntarily do not know what’s good for them.

My other concern is that Anderson is relying on an inflated view of the moral implications of normalizing sex work. Just as it doesn’t follow from the normalization of daycare centers, table service at restaurants, and so forth that people need not have any choice of occupation, it wouldn’t follow from the normalization of sex work that women and men need not have any other employment options. If we value autonomy, as Anderson does, we must agree that it is undesirable for people to be deprived of options that allow them to decide how they can best make a social contribution that is commensurate with their abilities, that is fulfilling for them, and that pays them adequately. If we value sexual autonomy, as Anderson does, it is difficult to see why permitting those who want to work in the sex industry to freely ply their trade in safe environments and earning decent pay would justify compelling others to join the profession or to accept other types of employment linked gratuitously to sexual duties.⁶ Whatever U.S. unemployment and welfare policy may permit (government disrespect for the autonomy of poor people is *de rigeur* in the U.S.), ensuring that restaurants are safe and that servers are paid fairly doesn’t entail that states are justified in forcing people to take jobs waiting tables.

I have discussed feminist abolitionist positions with divergent paternalist aims.⁷ Miriam argues for limiting sex workers’ liberty to save them from their own degradation as females in sexual servitude to men. Anderson argues for limiting sex workers’ liberty to protect the liberty of other women who ostensibly aren’t sufficiently autonomous to weigh their options and refuse unwanted sexual tasks. In Section 2, I argue that radical feminism relies on an indefensible theory of autonomy and that a more credible theory of autonomy obviates the need for radical feminist paternalism.

2 A Paternalism Resistant View of Selfhood and Agency

In her second report on trafficking in women in April 2000, Coomaraswamy⁸ again cautioned states to abandon their “paternalistic” actions, and instead to develop strategies that truly respect and strengthen the human rights of trafficked persons. (Chew 2005, 73)

⁶ It is worth noting that childcare and serving coffee have sometimes been foisted on female employees whose job descriptions don’t include such tasks, but feminists have successfully eroded such bosses’ prerogatives, and there is no evidence that such extraneous duties are being written into official job descriptions. See Liberto (2009) for related discussion.

⁷ Both Miriam and Anderson are sympathetic to the view that suppressing sex workers’ liberty is justified to bring an end to the objectification of and injustice to women as a social group. For a careful discussion of sex work that makes parallel points about the effects of prostitution on women’s “standing in society” but does not advocate legal abolitionism, see Satz 2010, 144–153.

⁸ Radhika Coomaraswamy served as the UN Special Rapporteur on Violence against Women 1994–2003.

What view of selfhood and agency does Coomaraswamy's (and Chew's) repudiation of paternalism with respect to sex work and trafficking presuppose? What conception might justify their confidence that trafficked sex workers can diagnose and solve their own problems? Must their human rights already be secure before they can take control of their lives? I address these questions by confronting Miriam's challenge to provide an account of agency that acknowledges the compatibility of agency and victimization and that explicates women's empowerment. Taking up this challenge, I show that adaptive preferences do not neutralize agency in oppressive contexts, and I explain how the capacities for autonomy that enable women to cope with everyday oppression can be converted into social empowerment.

Worldwide activism around assorted gender issues has given rise to a pernicious split between movements emphasizing agency and rights and movements emphasizing coercion, exploitation, and victimization (Briones 2010, 63–64). But surely it is too simplistic to theorize women living under oppressive regimes either as free agents actively pursuing equal rights or as passive victims of coercion and exploitation who are in need of help. In my view, this polarized conceptualization poses a false dichotomy that is anchored in mistaken understandings of autonomy.

For theorists like Miriam, no real autonomous agency is possible for women under patriarchy. Little acts of amelioration are possible, but truly free agency must await a post-patriarchal society. What this account gets right is that it appreciates that a just social context removes obstacles to autonomous agency by providing plentiful options that are open to all. What this account gets wrong is that it treats agency as so socially conditioned that the individual subject and her agentic capacities are effaced. Moreover, it posits an implausibly vast chasm between agency under oppression and authentic agency.

Uma Narayan represents a strand of liberal feminism that minimizes the criteria for autonomy. According to Narayan, rational choice in the absence of overt threats or direct force suffices for autonomous agency (2001, 429). What this account gets right is that it recognizes that even under appalling conditions people exercise capacities for choice and action that deserve respect.⁹ What this account gets wrong is that it confines these capacities to instrumental "bargaining with patriarchy" thereby overlooking the complexity and density of autonomous choice (Narayan 2001, 421–422). Worrisome too, Narayan's view of autonomy assumes a conception of coercion that is so narrow that it cannot account for the deleterious effects on agency of less blatant forms of oppression. Although she insists that patriarchy imposes significant constraints on women's choices and can deform their preferences, it is unclear how her minimalist conception of autonomy could accommodate these insights (2001, 422, 424–425).

Whereas Miriam's view of autonomy exaggerates the impact of unjust social norms and social stratification on individual identity and agency, Narayan's view of autonomy leaves out the impact of systems of oppression embedded in custom and self-perpetuating hierarchies on individual identity and agency. Neither view recognizes that autonomy is a matter of degree and that autonomy can be episodic.¹⁰ But in the best of circumstances, individuals achieve varying degrees of autonomy over the course of their lives, and different individuals

⁹ For a thicker account of autonomy that shares Narayan's concern that individuals be protected from excessive state coercion and that no one who should be accorded full citizenship rights is excluded, see Christman 2009.

¹⁰ There is a growing consensus in the philosophy of action literature that autonomy is a matter of degree and that it may be achieved episodically. For discussion of degrees of autonomy, see Meyers 1989, 160–162, 166, 170; Friedman 2003, 38. For discussion of episodic autonomy, see Meyers 1989, 48, 162, 165, 166, 232; Benson 1991, 397; Christman 2009, 135. In fairness to Narayan, I note that she concedes that thicker conceptions of autonomy may be useful for measuring degrees of autonomy (2001, 430).

more readily achieve autonomy in some domains of life than in others. Furthermore, to make sense of agency under oppression – including the compatibility of agency and victimization and the continuity between agency under oppression and liberating empowerment – a theory of autonomy must recognize that autonomy is a matter of degree and that autonomy is commonly achieved episodically.

My account of selfhood and autonomy acknowledges that, whether for good or ill, individuals are greatly influenced by their social milieus (Meyers 1989, 2002, 2004).¹¹ They internalize norms and values when they are young, and social pressures of various kinds continue to factor into their self-understandings and actions throughout their lives. However, people constantly individualize social inputs – sometimes fully taking them on board, sometimes shunning them, sometimes adapting them, always combining them into a more or less cogent personality that in turn organizes their processing of new social inputs. Many of these individualizing processes operate automatically from the get-go, but as children grow up and mature intellectually and emotionally, they develop a set of agentic skills that they can consciously call on:

1. Introspection skills that sensitize individuals to their own feelings and desires, that enable them to interpret their subjective experience, and that help them judge how accurate their self-understanding is;
2. Communication skills that enable individuals to get the benefit of others' perceptions, background knowledge, insights, advice, and support;
3. Memory skills that enable individuals to recall relevant experiences – from their own lives and also those that acquaintances have recounted or that they have encountered in literature or other art forms;
4. Imagination skills that enable individuals to envisage feasible options – to audition a range of self-conceptions they might aspire to and to preview a variety of courses of action they might follow;
5. Analytical skills and reasoning skills that enable individuals to assess the relative merits of different conceptions of what they could be like and directions they could pursue;
6. Self-nurturing skills that enable individuals to secure their physical and psychological equilibrium despite missteps and setbacks – that enable them to appreciate the overall worthiness of their self-understandings and pursuits and to assure themselves of their capacity to carry on when they find themselves wanting or their life directions misguided;
7. Volitional skills that enable individuals to resist pressure to capitulate to convention and enable them to maintain their commitment to their values and goals.

In my view individuals who generally enjoy high degrees of autonomy have full repertoires of well developed, well coordinated agentic skills. They exercise these self-discovery, self-definition, and self-direction skills frequently enough to keep them from atrophying, and they mobilize them when they make significant decisions or when they sense trouble in their lives. Virtually all persons develop considerable proficiency with respect to these skills – that is, sufficient proficiency to enjoy a significant degree of autonomy in some important parts of their lives. For this reason, states and other persons owe them respect. Moreover, no social system completely thwarts the exercise of these skills, nor does any try to. Although oppressive societies endeavor to suppress autonomous reflection on the values and goals that sustain domination and subordination, they depend on subordinated individuals to exercise autonomy skills episodically to fulfill their assigned social functions (Meyers 2000). This

¹¹ I would argue that the account of autonomy I set out here complements the brand of liberal feminism that Brooke Ackerly and Susan Moller Okin defend (Ackerly and Okin 1999).

irony paves the way for what I call autonomy seepage – that is, the drift of agentic skills into the forbidden territory of hegemonic values and prescriptive social statuses.

None of this is meant to deny the severity of the harms inflicted by women's second-class citizenship and their poverty in LDDW economies. Nor do I mean to deny that such compound oppression can warp women's self-understandings and life projects. Adaptive preferences – that is, reduced expectations and cramped desires that are developed in a structurally unjust socioeconomic context in part because they can be satisfied within the parameters set by that context – must be reckoned with.¹²

Insofar as oppressive social structures succeed in instilling defective values and confining goals in women's self-understandings, they interfere with women's ability to discern what really matters to them and what they really want to do. However, adaptive preferences are typically conjoined with persistent discontent – regret for missing out on schooling, nagging hunger, aggravation at deferential routines, and so forth.¹³ These resistant feelings fuel autonomy, for by exercising their agentic skills – e.g., probing their subjective responses and sharing stories with other women – oppressed women become aware of the multiple meanings of their experience. Moreover, they do not simply capitulate to oppression. They exercise their agentic skills to cope with the obstacles their circumstances present and to take advantage of their opportunities. Indeed, they ingeniously affirm their self-worth and scheme to satisfy their needs without openly resisting the larger social system (Khader 2011, 123–127). If so, it is undeniable that they achieve a significant degree of autonomy in their day-to-day lives. Nevertheless, it is also undeniable that they are obliged to vie with sexist social demands and harsh economic constraints that victimize them. Their agency is robust, yet they are victims of unjust background conditions.¹⁴

If this assessment is correct, Miriam's disparagement of women's agency under oppression is unwarranted, as is Anderson's assumption that sex workers never choose their work autonomously. Agentic skills often enable women to identify oppressive practices and to circumvent them without sacrificing their social standing or risking outright revolt. Still, the account of autonomy I have sketched also allows us to see why no quantum leap is needed to move from everyday managing in oppressive contexts to seizing social agency and pursuing liberatory projects.

All that is needed is for women in oppressive systems to pool their agentic skills.¹⁵ By rallying the skills that I enumerated above in social pockets of privacy and safety, women can acquire a collective agentic capability.¹⁶ Joining forces with others, they can conceive strategies to challenge and change cultural doctrines and institutional arrangements that pathologize or dismiss their values and projects, that deprive them of accredited discursive means to represent themselves to themselves and to others as flourishing, self-respecting, valuable individuals, and that close off their opportunities to enact their values and pursue their goals. In so doing, they consolidate a capacity to collaboratively define their needs, figure out solutions, and initiate social change. This collective agentic capacity is, of course,

¹² My characterization of adaptive preferences is meant to allow for both conscious and unconscious adaptations as does Serene Khader's (2011, 42, 51).

¹³ For valuable discussion of how "fractured self-images" and "preferences with multiple/ambivalent effects on flourishing" subvert the power adaptive preferences exert over agency, see Khader 2011, 122–132.

¹⁴ For detailed discussion of the compatibility of agency and victimization, see Meyers 2011.

¹⁵ I do not mean to imply that men should not apply their agentic skills to terminating oppressive gender practices and institutions. In this section, however, my aim is to answer Miriam's call for an account of women's individual and collective agency under patriarchy.

¹⁶ For evidence of the oppositional synergies that women generate in "resistant social spaces," see Khader 2011, 3–7, 15, 124–127.

the very type of liberatory agency that Miriam says women need. Although reconfiguring the packages of norms and options that constitute oppressive circumstances and defanging the institutions that sustain them is a plodding, tortuous, piecemeal process, the agentic capacity that propels progressive social change is not mysterious.

If this picture of agency under oppression and emancipatory empowerment is right, strong paternalistic interventions on behalf of oppressed women are unjustifiable. Oppressed women are equipped to analyze and prioritize their interests in the face of tremendous adversity. Likewise, they are well situated to understand the vectors of power that structure their particular situations and the courses of action that are feasible for them to pursue. Feminist scholars working on issues of global justice have repeatedly and pointedly warned of the dangers of exporting Western beliefs, values, and activist agendas to places with institutions and social practices that we know little about (Narayan 1997, chapter 3; Jaggar 2005; Koggel 2009). Still, in the face of sex trafficking, an anti-paternalist stance may seem unduly sanguine – perhaps a form of “moral absenteeism,” to borrow Alison Bailey’s evocative locution (Bailey 2011, 716). After all, what dignity is there in relentless sex with strangers? What options are available to women imprisoned in brothels or threatened with exposure and disgrace back home? I turn to these questions in Section 3.

3 Weak Paternalism for Feminist Critics of Sex Trafficking

[R]ecognition of the right of a person to choose her work, including prostitution, must imply the collateral right of another to refuse that work; thus forced prostitution ... should also be a concern of prostitutes’ rights organizations. (Chew 2005, 79)

How can women assert sexual autonomy despite the meteoric rise of sex trafficking in recent decades? What sort of politics could secure the freedom with respect to sex work that Chew advocates? What role can human rights play in realizing this vision for trafficked women?

There are prominent international, strong paternalist, abolitionist organizations working against sex trafficking – e.g., the Coalition against Trafficking in Women (CATW <http://www.catwinternational.org/>). Moreover, in the U.S. strong paternalist abolitionism is mandatory for NGOs seeking federal funding to aid trafficked women. By law they must sign an “anti-prostitution pledge” that prohibits recognizing prostitution as a legitimate occupation (Musto 2010, 24, 29). Although Jennifer Musto does not gainsay the value of the services that some U.S. NGOs provide to trafficking victims, her research on professionalized U.S. anti-trafficking organizations convinces her that this cadre of gate-keeping, experience-managing experts is blocking trafficked sex workers from organizing and participating in an anti-trafficking movement of their own (2010, 29–31). Steadily accumulating data from around the world testifying to sex workers’ agentic skills as well as their ongoing organizational efforts reinforce Musto’s concern that U.S. restrictions on funding are wrongfully suppressing trafficked women’s autonomous agency (Kempadoo and Doeza 1998; Kempadoo 2005; Zheng 2010). Taking this evidence into account along with the flaws in the principal arguments for abolitionism, I conclude that sex work eradication policies that assume that prostitution cannot be voluntary are excessively paternalistic.

Rejecting strong paternalism, the Global Network of Sex Work Projects (NSWP <http://www.nswp.org>) and the Global Alliance against Trafficking in Women (GAATW <http://www.gaatw.org/>) are international organizations that oppose sex trafficking but do not

oppose sex work.¹⁷ Their foe is forced prostitution, not voluntary prostitution, and their method is human rights advocacy in the service of respect for women's autonomy. Here is a representative sample of the values and commitments of these two organizations:

- Ensuring that sex workers represent their own realities and fully participate in dialogues and decision making about issues that affect them (NSWP).
- Acknowledging the equality of all persons to exercise, defend and promote their inherent, universal and indivisible human rights (GAATW)
- Supporting self-representation and organization of those directly affected by trafficking (GAATW)
- Securing the right to seek asylum and protection from refoulement (NSWP and GAATW)

Both organizations insist on egalitarian, participatory activist responses to and research on sex trafficking. In view of their fierce anti-paternalism, it is somewhat incongruous that the right of refugees to seek asylum and the principle of non-refoulement – the principle that no refugee should be returned to persecution or danger of persecution in her country of origin – figure prominently in the credos of both of these organizations. Yet, small local, self-organized groups of trafficked women are typically in no position to advocate for, let alone ensure, these human rights. As undocumented migrants, they are at the mercy of asylum jurisprudence in destination states, and they must depend on lawyers to prepare their cases for presentation to immigration authorities. It seems, then, that concessions to weak paternalism are necessary to achieve this goal.

Still, there is ample reason for NSWP and GAATW to spotlight this human right. For many trafficked sex workers, asylum in a non-LDDW destination country would secure greater scope for autonomously directing their work lives. Indeed, by working with sex workers' rights organizations in states where sex work is prohibited, trafficked sex workers who have been granted asylum might gain the right to choose whether to stay in sex work or not. But the fulfillment of Chew's vision of freedom with respect to sex work remains a distant possibility because legal recognition of the right to asylum for trafficked sex workers has gained only a tiny foothold in destination countries.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime is the legal instrument governing all forms of trafficking in persons. As the title of this document proclaims, international law construes sex trafficking as a law enforcement problem, not as a human rights issue. In downplaying the obligations to victims that the principle of non-refoulement would ordinarily impose, the protocol legally paves the way for "rescue" and deportation policies.¹⁸ Some states – e.g., the U.S. and Britain – issue temporary visas that allow trafficked sex workers to postpone deportation and obtain medical services while they serve as witnesses against their traffickers. However, fearing for their lives once they're deported and criminal gangs catch up with them, very few women cooperate with prosecutors. The Anti-trafficking Protocol does not protect trafficked sex workers who can't or won't turn states evidence. On the contrary, because it permits destination states to treat trafficked sex workers as undocumented migrants, it authorizes

¹⁷ Kamala Kempadoo's report "Sex Workers' Rights Organizations and Anti-trafficking Campaigns" sketches the positions and activities of organizations in China, India, and Thailand and provides a valuable supplement to the information available on these umbrella organizations' websites (2005, 149–155).

¹⁸ For helpful discussion of how the Anti-trafficking Protocol could be implemented in a less draconian, more humane way, see Abramson 2003.

states to reverse these women's decisions to seek opportunity abroad and does nothing to secure their future autonomy.

In this legal climate, it is not surprising that the asylum prospects for women trafficked into sex work are bleak. It is uncontroversial that persecution for reasons of gender is a proper ground for an asylum case (Luopajarvi 2003, 3; Foster 2007, 325). Nevertheless, U.S. immigration authorities deny trafficked sex workers' asylum claims more often than not (Knight 2007, 5–12; Hartsough 2002, 114–116). Still, these claims sometimes succeed, and they seem to offer the only glimmer of hope for augmenting the autonomy of women trafficked into sex work (Haynes 2006, 476–477; Knight 2007, 12–14). If granted asylum, a trafficked sex worker is entitled to reside permanently in the host country and to work there legally. The alternative is deportation, which returns trafficked women to the very conditions of poverty and vulnerability that traffickers exploit and that prompted many of them to seek out traffickers to facilitate their migration in the first place. The upshot of deportation is cyclical trafficking, for women trapped in LDDW economies regard themselves as “failed migrants” and continue to see trafficking schemes as their best chance of escaping from privation and helping their families (Waugh 2007, 39).

Nevertheless, I acknowledge that destination states might object that granting asylum to trafficked sex workers could incentivize opportunistic victimization – that is, poor women in LDDW economies might deliberately “fall prey” to sex traffickers in order to obtain asylum in more affluent nations. If so, the floodgates of immigration would open to untold numbers of poor, unskilled women. I see three main replies to this objection – one in the moral register, one in the pragmatic register, and a third in the legal register.

Morally speaking, it is important to recognize that poor women in LDDW economies are already knowingly choosing to risk being trafficked into sex work in order to migrate. The trouble is that many of their destination countries either tacitly condone the brutal treatment that traffickers mete out to them by ignoring the underground sex industry or arrest the sex workers as “illegal aliens” and deport them. The former policy turns a blind eye on grievous human rights abuses in destination countries. The latter policy promotes cycles of trafficking and re-trafficking – cycles of violence against women in the service of profits for criminal gangs. Neither policy is morally acceptable.

From a pragmatic viewpoint, it is important to recognize that if more liberal asylum standards for trafficked sex workers really did open the dreaded floodgates of immigration, this development would have one stunningly salubrious consequence. It would make sex trafficking unprofitable. Once transnational sex trafficking rings discovered that they were providing uncompensated transport services for women who could find safety and economic security in destination countries, they would realize that they were losing money, and sex trafficking would decline. Because sex trafficking profits depend in part on controlling women through their fear of being caught and sent home, alleviating trafficked women's fear would undermine the business. It is altogether possible, then, that respecting sex workers' right to asylum would do far more than prosecuting traffickers ever has to close down sex trafficking. I emphasize, moreover, that this outcome is consistent with an anti-abolitionist, human rights position on sex trafficking. Because de-incentivizing sex trafficking does nothing to advance the rights of sex workers to work legally, safely, and for fair pay, such a policy is tangential to a prime aim of NSWP and GAATW. Nevertheless, these organizations are anti-trafficking NGOs, and as such, they endorse strategies for reducing sex trafficking provided that they respect trafficked women's rights.

Still, it is by no means certain that respecting trafficked sex workers' human rights with respect to asylum would create a tidal wave of migrant women in destination countries. The legal criteria for claiming refugee status and gaining asylum center on persecution in the

country of origin and a well-founded fear of persecution upon repatriation (<http://untreaty.un.org/cod/avl/ha/prsr/prsr.html>). To demonstrate persecution, candidates for asylum must prove that they have been subjected to harm that rises to the level of persecution, that this abuse was inflicted on account of race, religion, nationality, political opinion, or membership in a particular social group, and that the government where the abuse occurred is in some sense complicit in the abuse.

Although having been trafficked counts as a harm that rises to the level of persecution, asylum judges typically insist on a showing that the trafficked person was duped into the trafficking scheme (Luopajarvi 2003, 21; Foster 2007, 243). Asylum claims lodged by women who migrated willingly but were sold into sexual bondage at their destination point are viewed with skepticism. Another major stumbling block for asylum applicants is specifying the group targeted for trafficking in a noncircular manner. If ongoing persecution is all that defines the persecuted group, persons who have a well-founded fear of being persecuted are tautologically members of a particular social group because they fear persecution (Foster 2007, 293). Yet, asylum decisions yield no cogent guidelines as to how particular social groups, including gender groups, should be demarcated (Foster 2007, 294–301). Finally, controversy and inconsistency abound with respect to the question of how the home state's failure to provide protection to women vulnerable to sex trafficking and re-trafficking should be evaluated. Some courts require that the state intend not to protect potential victims while others require only that the state be unable to do so (Foster 2007, 268–270). Because the UN Convention on Refugees leaves fleshing out the details of asylum law to the national judicial institutions responsible for deciding and appealing cases, the disarray in this area of law is an understandable consequence of decentralization and judge-made law. Still, the chaotic state of asylum law is scandalous, for the unpredictability of asylum decisions condemns trafficked sex workers to a deplorable legal limbo with respect to core human rights.

In view of the Anti-trafficking Protocol's glaring failure to respect the autonomy of women trafficked into sex work, NSW and GAATW are right to turn to international refugee law for a remedy. Otherwise, trafficked sex workers have no legal recourse. But this strategy cannot succeed unless feminist citizens of destination states embark on a weak paternalistic, autonomy promoting, pro-asylum action plan. On the one hand, it is essential that activists opposed to forced sex work persuade their governments not to sacrifice upholding the morally compelling mandates of the Convention Relating to the Status of Refugees for the sake of policing national borders. On the other hand, the legal community must work to place feminist judges in asylum agencies and courts and must provide pro bono representation to trafficked asylum claimants. Both of these measures are paternalistic insofar as they usurp trafficked sex workers' freedom to address their oppression as they autonomously see fit. Yet, without these weak paternalistic interventions, the autonomy of trafficked women will continue to be constrained by poverty at home and foreclosed by punitive practices abroad. These interventions impinge on trafficked sex workers' liberty far less and therefore are far less objectionable than strong paternalist rescue and rehabilitation schemes, for they do not deny trafficked sex workers' right to decide for themselves whether or not to seek asylum.¹⁹

¹⁹ Thanks to Sarah Babbitt for vital research assistance on this paper and to the editors of this issue for their comments on an earlier draft.

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