

Stopping the Traffic in Women: Power, Agency and Abolition in Feminist Debates over Sex-Trafficking

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Introduction

In the 1980s, U.S. feminism fractured along political fault-lines defined by conflicting views of prostitution and pornography and related conceptions of power, agency, and sexuality.¹ The “sex wars”—as they were unfortunately, popularly labeled—were apparently settled by the end of the decade, with “pro-sex” advocates declared the winners. The radical feminist anti-pornography and anti-prostitution position has been effectively marginalized—at least within the academy. Interestingly, the same cannot be said for debates around similar issues in a new transnational arena of feminist politics. Since the 1990s, numerous feminist nongovernmental agencies and grass-root groups across the hemispheres have been organizing to stop global trafficking in women and children.² In this context, old feminist debates about prostitution have reconfigured themselves along familiar theoretical lines. The contours of the debate are largely defined by, on one side, activists who align themselves with a radical feminist and abolitionist approach that defines prostitution as an institution of male domination. On the other side, activists who are “pro-sex-work” aim to distinguish prostitution as voluntary “work” from “forced prostitution,” and to distinguish voluntary migration from (sex) trafficking.³ The radical feminist camp has largely prevailed in terms of how international protocol is currently formulated. The “UN Optional Protocol of Trafficking in Human Beings,” known widely as the “Palermo Protocol” was signed by 105 countries in 2002 and specifically does not construct a separate category for “forced” prostitution but rather, classifies prostitution (unmodified) as a major component of trafficking.⁴ Pro-sex-work advocates, however, continue to press for the distinction between “free” and “forced” prostitution. The feminist debate over trafficking offers a timely opportunity for feminists to revisit central philosophical questions concerning agency and power. Given the magnitude of the problem, namely, the vast numbers of women and children whose lives have been devastated by sex-trafficking under globalization, such questions reemerge with a new political urgency.

In this paper, I address these questions in a defense of the abolitionist position. One primary source for my approach is the breakthrough work of Carole Pateman’s critique of “the sexual contract.”⁵ I argue that Pateman elaborates and advances radical feminism’s main contribution to political philosophy, namely,

its disclosure of male dominance as the latter is embedded within and presupposed by a *liberal* political order. Following Pateman, the root question of an abolitionist approach to prostitution is not whether women “choose” prostitution or not, but why men have the right to “demand that women’s bodies are sold as commodities in the capitalist market.”⁶ The central premise of the abolitionist approach is that, “men create the demand; women are the supply.”⁷ In the sections that follow I first make explicit what I take to be the core elements of the radical feminist critique of liberalism, a critique that is central to the subsequent arguments of my paper. Secondly, I argue that the pro-sex-work approach depends on a contractual, liberal model of agency that both conceals and presupposes the demand side of the institution of prostitution. I will then directly address and clear up major points of intellectual confusion about the radical feminist conception of power at stake for the abolitionist argument. Finally, I conclude that if faced squarely, this theory of power does not, as is so often claimed, foreclose women’s agency, but rather radically *challenges* feminism to theorize power and agency *outside a liberal framework*.

The Radical Feminist Critique of Liberalism

Briefly, liberalism continues to be the main philosophical and political philosophy in modern Western societies. For all the efforts to revise, contextualize, and update its classical statements, the result is still variations on certain central ontological themes. Most important for present purposes, liberalism still centrally values the “autonomy” of “individuals” and their rationality, and it continues to promote the idea of a universal equality in terms that conceive that equality as open to all individuals on the basis of this autonomy (“Just make the playing field level.”). It follows, of course, that liberalism is centrally concerned with the idea of “choice,” and construes “choice” as the exercise of the individual’s autonomous will. Disagreements among liberal theorists typically revolve around the question of the extent to which the state can justifiably limit individual “choice,” and the extent to which it must guarantee an individual’s “right” to make choices without interference. A liberal state’s concern with the distribution of rights is thus largely a function of the settlements made concerning these disagreements.

Self-defined “liberal feminists” generally take the core conceptions just mentioned as uncontested starting points of political philosophy and then go on to argue that women have so far not been accorded the full autonomy promised by the philosophy.⁸ In contrast there has been a long tradition of critique, including (aspects of) radical feminism, Marxism and (at least in principle) poststructuralism that contests these very starting points. Most importantly for present purposes, this tradition contests liberalism’s core idea of an unsituated freedom and autonomy, or, in other words a view of individuals as, in principle, free of historical and social conditions. To be sure, such a stark individualist view is not held by all liberal political philosophers. However, even those philosophers who

develop theories of situated autonomy/freedom, often implicitly construe individuals as having the power to have and be affected only by those aspects of that determinateness that an individual “decides” to accept.⁹ The radical critique of liberalism contests the definition of freedom as something in the head, in one’s “thoughts,” or as the physical/legal condition of “being let alone.” Feminists like Carole Pateman, following in the path cleared by Catharine MacKinnon, have elucidated a specifically *gendered* aspect of this unsituated autonomy.

Pateman focuses particularly on the *contractarian* tradition of liberalism, a tradition in which the concept and practice of contracts is central. Pateman shows that contractarian liberalism has significant political and conceptual force in contemporary understandings of freedom, agency and power and how these understandings are presupposed and embedded in a range of institutions, including (post)modern forms of prostitution. For this reason, contractarian liberalism, and Pateman’s critique of it, will be central to my own criticisms of the pro-sex-work position. For Pateman, the social/sexual contract is an organizing “principle of social association.”¹⁰ In other words, although we think of contract as an “exchange” of pieces of (material) property between two parties, the kinds of contracts that interest Pateman are those that “create *relationships* (such as that between worker and employer, or wife and husband).”¹¹ In these kinds of contracts (e.g., employment) what is exchanged is a special kind of property, namely, “property in the person.”¹² Pateman argues that the core liberal notion of freedom—the freedom to be left alone—is *derivative* of, rather than preceding, the proprietary concept of the individual.¹³ In other words, freedom for the individual-as-owner-of-property-in-his-person includes the freedom to have this *property* left alone. As a principle of social association, contract structures those relations through which the property of one person/owner can be legitimately used by other individuals/owners without violating the individual’s basic freedom, that is, his/her freedom to own property in his person. The individual, defined as an owner of property in his person, is constructed as “free” to trade/sell his capacities through the contract relation in exchange for some benefit. Note that this “exchange” presupposes that a person’s capacities are separable, like pieces of (material) property, from the “self.”¹⁴ As Pateman notes, a powerful “political fiction” masks the fact that a person’s capacities are not separable from her self like pieces of property.¹⁵ In the context of the employment contract, for example, this political fiction is the fiction of “labor power” and allows for the story of employment as an “exchange”: according to this story, the worker sells her “labor power” in exchange for some recompense. As Pateman shows, this story of the employment contract masks the real transaction at stake in the contract which is not in fact an *exchange* but a practice of *alienation*. In turn, since the worker’s *capacities* cannot in fact be alienated from his person, what the worker is really offering (surrendering) to his/her employer, through the contract, is her/his (situated, embodied) *autonomy*.¹⁶ That is to say, the real transaction in this contract is defined by the worker’s *freedom to be subordinated* to an employer/boss.

With respect to prostitution, the central political fiction of prostitution-as-an-exchange is the story that through the prostitution contract, a woman sells “sexual services” for money, as if sexuality were not *actually* embodied, as if there existed a subject who, magically, was capable of separating her physical/sexual capacities from her “self.” This “conjuring trick” (to use Pateman’s phrase) called “sexual services” obscures the real meaning of prostitution as “an institution which allows certain powers of command over one person’s body to be exercised by another.”¹⁷ Thus Julia O’Connell Davidson, closely following Pateman’s analysis here, describes the transaction:

The client parts with money and/or other material benefits in order to secure powers over the prostitute’s person which he (or more rarely she) could not otherwise exercise. He pays in order that he may command the prostitute to make body orifices available to him, to smile, dance or dress up for him, to whip, spank, massage or masturbate him, to submit to being urinated upon, shackled or beaten by him, or otherwise submit to his wishes and desires.¹⁸

In sum, what is really sold in the prostitution or the employment contract is not some fictional “property,” but a relation of command: *the prostitute/employee sells command over her body* to the john/pimp/employer in exchange for some recompense. It is this fundamental relation of domination and subordination that is mystified, if not denied, by the pro-sex-work position on “free prostitution.”

The “Agency” of “Sex Work”

The category of “free prostitution” depends on “the invention of sex work,” that is to say, it depends on the crafting of “sex work” as a new descriptive and normative category for theorizing prostitution as a form of “labor.”¹⁹ The pro-sex-work position is not theoretically or politically homogenous and is defended by a range of arguments. At its most persuasive, the argument for defining prostitution as a form of labor importantly undercuts the fallacious and misogynist notion of prostitution as either “easy money” and/or as evidence of women’s moral lassitude and “promiscuity.” By legitimizing the “labor” of prostitution, pro-sex-work advocates aim to restore dignity to those decisions that enable women to survive within the constraints of the current global economy.²⁰ Given conditions of extreme poverty for women, pro-sex-work advocates claim that women choose prostitution to survive, and that recognition of this choice as a form of labor is essential to the goal of securing health and safety standards for women in an industry that otherwise remains unregulated and unprotected, leaving sex workers particularly vulnerable to such “work hazards” as violent assaults, rape, and sexually transmitted diseases. Following upon this goal, and against abolitionism, pro-sex-work activists advocate for political strategies of decriminalization, regulation, and/or unionization of sex-work-labor.

For abolitionists, a sanitized, regulated sex industry begs the moral question of whether regulating men’s access to women is better than not regulating it. The

strategy also begs the political question of whose interests are best or most served by such an approach.²¹ Since the pro-sex-work position depends on a definition of prostitution as work, one key philosophical issue for my defense of abolitionism concerns the very intelligibility of the category “sex work”: What assumptions are required by the argument that prostitution is a form of work? What philosophically and politically has enabled the “invention of sex work”? While some philosophers have tackled the issue by comparing prostitution, unfavorably or favorably, to (other forms of) labor, my approach is somewhat different.²² My aim is limited to arguing that the category of “sex work” depends on a contractual model of agency and its central notion of the proprietary self, and thus a model that both presupposes and conceals the social relations of domination that obtain for prostitution.

I see two variations of the contractual model of agency and of the proprietary notion of self that is assumed by the pro-sex-work argument although the same prostitutes’ rights advocates often oscillate between both variations. I call these the “economist” and “expressivist” models of agency. The economist approach to “sex work” begins from the empirically sound claim that many women sell their bodies as a way to secure means of subsistence for themselves and their children. However, the argument then shifts from this descriptive claim to a normative claim that therefore selling sex is or ought to be a *legitimate* economic choice for women. This economist view is advanced by a major player in the trafficking debate, namely the pro-sex-work Global Alliance Against Trafficking in Women (GAATW).²³ In its description of the “causes and factors of trafficking,” GAATW lists “the desire for a better life, poverty, gender and other forms of discrimination, family disintegration, negative cultural and religious practices, and the substantial profits that can be made from the trade.”²⁴ Strangely, although GAATW opposes trafficking, in this passage it fails to differentiate here between conditions of the emergence of traffickers and the trafficked—as if both parties, for example, made “substantial profits . . . from the trade.” The report also mutes the factor of gender, for example suggesting that “The low social value given to girls can contribute to trafficking as girls are often educated to [a] lower level than boys and have fewer work opportunities in skilled professions.”²⁵ However, the gendered/sexual specificity of the “work opportunity” offered by trafficking is not given any more ethical or political weight than any other factors in the discourse. Most importantly and strangely, men’s demand for commodified sex is not even listed as one of the conditions of trafficking.

GAATW’s distinction between coerced and free prostitution depends on a blind spot to the relation of demand undergirding prostitution, and seems to make the liberal assumption that freedom is essentially a state of being “left alone”—or the state of not being forced to do something. From this perspective, “free” prostitutes are economic agents like Kafui, a single mother and low income clerk from Togo who, according to GAATW *voluntarily* migrates to Lagos, Nigeria, to increase her income through work as a prostitute: “Kafui could freely choose her clients and where and when she wanted to work. She sent money home to her

family. After one year Kafui had saved US\$1000. She returned to Togo and used this money to buy her own home there.”²⁶ Replete with such American-dream icons as home-ownership, a very Western, individualist script is super-imposed upon the practice of prostitution in this account. This script, I suggest, assumes a notion of the proprietary individual, the sex worker as an agent who strategically and instrumentally uses property in her person (e.g., her sexuality) to further her economic self-interest.

The pro-sex-work camp, however, often ascribes a set of values to the economic choice of sex work that exceeds a purely economist view and aims at investing prostitution with new cultural—and feminist—meaning. One of the premises of this approach—advanced by writers such as Wendy Chapkis, Josephine Chuen-Juei HO and Kamala Kempadoo—is that the radical feminist view of prostitutes as victims is a distorting ideology rather than a social analysis, and as such, calls for new interpretations of the practice of prostitution. Thus Chapkis reinterprets prostitution as “erotic labor;” and claims that “like other forms of commodification and consumption, practices of prostitution can be seen as sites of ingenious resistance and cultural subversion.”²⁷ In this light, “the prostitute cannot be reduced to one of a passive object used in male sexual practice, but instead it can be understood as a place of agency where the sex worker makes active use of the existing sexual order.”²⁸ An interpretation of sex work as “active use” of the existing order requires that feminists see “sex work not only as ‘work’ but maybe even as a ‘profession’ (both in appearance and spirit),” an attitude that “could prove to be most useful and beneficial for sex workers.”²⁹ Thus argues HO, emphasizing that the selling of sex to male customers requires enormous creativity on the part of prostitutes who, she also claims, often feel “professional pride” in their “work.”³⁰

Theories of sex work advanced by writers like HO, Chapkis and Kempadoo presuppose an *expressivist* (in contrast to economist) model of individual freedom. I use Charles Taylor’s term “expressivist” to refer to a specific heritage of Western Romanticist thought that defines individual freedom in terms of a “poiesis,” an activity of self-creation.³¹ For expressivist/Romanticist philosophers, individual self-definition is a process that unfolds from within the deep interior of self, a process of both creating and discovering one’s authentic identity. Although essentially an idealist conception of freedom (freedom is in change of consciousness) inherited from Hegel, the expressivist model of the self-as-creative-activity did influence Marxist notions of work as (ideally) a form of self-actualization essential to human development.³² Through work, the laborer externalizes her/his “species-being” as human; alienation refers to the way in which this process of self-externalization is appropriated by capitalists. A similar expressivist model of work is applied by Kempadoo to sex work, although she omits the part about alienation and appropriation. Kempadoo includes prostitution under the category of “reproductive labor”: Like “reproductive labor,” *sex work* is interpreted as “human activity,” specifically “the way in which basic needs are met and human life produced and reproduced.”³³ *Sex work* specifically

involves “activities involving purely sexual elements of the body.” If we take out the word “purely,” this last point is uncontroversial. And I would not object to the point that “[S]exual energy should be considered vital to the fulfillment of basic human needs: for both procreation and bodily pleasure.”³⁴ The leap in logic comes with the conclusion that because (1) sex work involves sex and (2) sex is or rather ought to be a vital activity then therefore (3) sex work itself is or ought to be considered vital to the fulfillment of human needs. But whose basic human needs are “fulfilled” by sex work? And is men’s demand for commercial sex any more a “basic human need” than, say, Americans’ “need” for SUVs? What is omitted is any critique of the power relations defining the practice of prostitution, in other words how women’s “sexual energy” is *appropriated* by johns, pimps and traffickers for the latter’s profit and pleasure, analogously (although not perfectly so) to the way in which (according to Marxist theory) the worker’s “energy” is appropriated by the capitalists for the latter’s profit. Without this critique of the actual material, power relations defining prostitution, it becomes possible to cast the “agency” of prostitution as no less than a form of self-actualization, a space for “ingenuity” and creativity. In this vein, HO can claim that sex workers “experiment with various cultural resources” that in turn “empowers” them as not only workers, but as *sexual agents*.³⁵ The “freedom” implied by this view of sex work is an idealist and “expressivist” notion of freedom as existing in an interior process of self-definition and value-creation—“freedom” pictured as “in the head.”

A main political strategy that follows from this expressivist conception of sex work is one that casts sex workers’ rights in terms of a politics of “recognition.” A politics of recognition pivots on “identity” as its moral/political fulcrum and aims at redressing injuries to status, for example stigma and degradation, as a basic harm or injustice inflicted on certain identity-groups—Jews, Blacks, gays and lesbians, transgendered people, etc.³⁶ Applied to prostitution, then, the stigmatization of prostitutes—rather than the structure of the practice itself—becomes the basic injustice to be redressed by pro-sex-work advocates who now construe prostitutes as “sexual minorities” to use Gayle Rubin’s now widely circulated term.³⁷ With the identity-concept of the prostitute as a “sex minority” (as Rubin specifically argued), we have traveled full circle from the argument that as “work” prostitution has nothing to do with the prostitute’s own sexuality but is purely a means for a woman’s economic gain, to arrive at the notion that selling commercial sex is fundamentally an expression of an individual’s own style and desire.

The circle is logical despite an apparent dissonance between notions of embodiment underlying the two models of sex work. The economist model assumes a starkly instrumental notion of the body and agency. To use Pateman’s description of the proprietary individual, this version pictures a disembodied, Cartesian subject who can stand in the same external relation to her body and capacities as she can to other (material) objects.³⁸ In contrast, the claim for sex work as “expression,” namely as creative expression of identity and sexual

agency, appears to affirm an embodied autonomy for the sex worker. But the contrast is deceptive. The expressivist model of sex work affirms a contract structure of sex work and its central fiction of exchangeable sexual services, a structure and fiction that precludes the conception it wants to affirm—of an expressive, situated, embodied subject. This expressivist model of sex work still presupposes the proprietary individual who can stand back, as an abstract self, from her “sexual energy” and from this abstract position alienate this “energy” as a “service” to circulate for customers in return for payment. Thus, the expressivist and economist models of the sex worker are two versions of the same contractual paradigm of *disembodied* agency.

The convergence of the expressivist and economist models of sex work is at once perfected and perfectly concealed by a postmodern theoretical approach to sex work that construes the latter as a purely discursive construction “produced” by modernity, and as such an “empty symbol.” Thus Shannon Bell, taking this approach, argues that “the referent, the flesh-and-blood female body engaged in some form of sexual interaction in exchange for some kind of payment, has no inherent meaning and is signified differently in different discourses.”³⁹ Seen as contingent in meaning, prostitution is illimitably open to re-interpretation, including feminist reinterpretations of prostitution as empowering for women. Thus Bell affirms the emergence, in the United States, of new prostitute performance artists who have reinvented “the prostitute” as a “new social identity”: the “prostitute as sexual healer, goddess, teacher, political activist, and feminist.”⁴⁰ From this vantage point, the body of the prostitute is infinitely “protean,” a *text* that accommodates “endlessly shifting, seemingly inexhaustible vantage points” of interpretation, and thus exemplifying what Susan Bordo criticizes (referring to what she considers to be a postmodern notion of the protean body) as a traditional, Cartesian “fantasy of transcendence” in its “new, postmodern configuration.”⁴¹ Rather than owner of property, singular, in one’s person, the protean postmodern self is owner of *properties*, plural, in one’s (fragmented) person.⁴² In this version, freedom is the ability to circulate among multiple “identifications,” allowing then, for an interpretation of prostitution that abstracts the institution from any particular, historical situatedness in patriarchal capitalism. However, the proprietary concept of the (unified) self, remains the hidden precondition of this semiotic free play of interpretation. What is still presupposed is the (invisible) liberal Cartesian standpoint of a “self” free to stand back from its determinants and thus free to pick and choose those determinants it desires to be affected by and thus play with. But what is the real “identity” of this “double agent”? Is it coincidental that this is “a discourse about prostitution promoted by a handful of relatively privileged white American women as though it carries a weight equal to any other discourse” as O’Connell Davidson argues?⁴³ The sex worker as postmodern text issues from an elite vantage point, the abstract intellectual projecting its own version of abstract individuality onto prostitutes in general, the vast majority of whom lack a fraction of the mobility enjoyed by the privileged group who craft the theory.

I do not deny that women make real choices in some or many of the cases in which they enter prostitution for their economic survival. What I am contesting is a fantasy of “free” prostitution, insofar as this freedom is inscribed within expressivist and economist models of sex worker agency. For such “freedom” serves to mystify the actual conditions that determines *this* “economic” option, selling command over their bodies, as an option for women (and children) specifically, not for “any” (abstract and/or textual) body. The “sex work” model of agency occludes the reality that it is men’s demand that makes prostitution intelligible and legitimate as a means of survival for women in the first place. In my next section I turn directly to the issues of “demand,” the concept of *domination* at stake in the abolitionist critique of men’s demand, and questions of women’s agency and freedom raised by this conception of (male) power.

The Radical Feminist Critique of Domination

The radical feminist theory of domination which underlies a feminist abolitionist stance on prostitution has been misconstrued by critics of the theory. These critics show two main points of confusion in this regard, namely confusion about the relation between power and domination, and confusion about the relation between domination and coercion. For example, the pro-sex-work distinction between “coerced” and “free” prostitution depends on a conflation of domination and coercion. Thus, pro-sex-work advocate Niki Adams, of the English Collective of Prostitutes, objects to legal measures that criminalize pimping in and of itself when, she argues, harms against prostitutes are already covered by laws against “rape, sexual assault, kidnapping, false imprisonment, coercion . . . theft, extortion [etc].”⁴⁴ The argument here, however, glosses over what both abolitionists and international protocol has defined as the inherent harms of pimping, prostitution, and trafficking—harms that are broader than coercive force. As Liz Kelly argues, the debate over whether prostitution is “forced” or “free” is the wrong debate. “The notion of ‘force’ being the definer of trafficking sits uneasily with the now widely accepted definition within the [Palermo Protocol]. Along with force, coercion and threat . . . the definition of trafficking include[s] deception and human rights abuses such as debt bondage, deprivation of liberty and lack of control over one’s labour.”⁴⁵ In my view, Kelly is describing an institution defined by relations of domination and subordination. These relations of domination and subordination enable a range of harmful and exploitative practices in trafficking and prostitution, practices that include but are not limited to use of coercive force.

The question remains of how radical feminists theorize domination and the relation of domination to power. Amy Allen, in her discussion of debates over pornography, criticizes the radical feminist position as *limiting* its concept of power to domination and subordination—“power-over others.”⁴⁶ Allen makes the valid point that feminism needs a conception of power as “power to,” or, in other words, the power to act with others for social change. While it is clear to me that

the radical feminist position can and ought to be *expanded* to include this notion of collective agency, Allen draws a different conclusion. In her view, the radical feminist theory of power forecloses this new notion of agency, that is to say that its theory of *power-over* specifically “undercuts the very aim of feminism: the empowerment of women.”⁴⁷ Yet, in my view, we cannot theorize “empowerment” without a radical critique—and demystification—of the meaning of “agency” in a liberal social culture. Therefore, contra Allen, the radical feminist critique of power-over is a *precondition* for conceiving “the empowerment of women” precisely because of its analysis of the inextricable relationship between female *agency* on the one hand, and male *domination*, on the other hand, in a liberal social order.

Pateman’s work, for a striking example, affords us a unique insight into the contractual, liberal model of social relations as a structuring force of contemporary male dominance. In Pateman’s view, sex difference is a structure of modern liberal social orders, and is necessarily also a “political difference, namely, the difference between freedom and subjection” or more specifically, *the difference between male mastery and female subjection*.⁴⁸ Male mastery and female subjection is a power relation structured into liberalism, and thus also into the organization of modern patriarchy. Pateman’s critics consistently misrepresent Pateman’s model of power in voluntarist and individualist terms, as if what Pateman was referring to was individual men’s coercive control over individual women. In this vein, Nancy Fraser represents Pateman’s model of male power as a “dyadic model” involving “the authoritative will of a superior,” a man, over his female subordinate(s).⁴⁹ Allen applies the same argument to MacKinnon and suggests that a “dyadic” relation of power might have been applicable in earlier periods of patriarchy—when for example practices of *coverture* were pervasive, a legal doctrine that granted men control over his wife’s property and person in a myriad of ways. Today, however, Allen argues, “domination and subordination have taken more diffuse social and cultural forms.”⁵⁰ Allen argues that we need to “broaden” our notion of domination “such that the focus of analysis shifts from the master/subject dyad to the background social and cultural conditions that shape dyadic relations.”⁵¹ If by “master/subject dyad” Allen is referring to individual relations between men and women then I agree that feminism needs to understand the background conditions of these relationships. However, it appears that with the term “dyadic model” Allen is conflating “men’s power over women” on the one hand, with individual men’s command over individual women on the other hand. If there are background conditions that “shape” relations between women and men, men’s power over women is itself a shaping element of these same conditions. Rather than shift our analysis away from men’s *power over* women we need to sharpen our focus on this relation in order to understand both new and old forms that women’s subordination takes today.

To begin with, radical feminism emphasizes that *men* as a social group continue to have *interests* in diffuse forms of women’s subordination. R. W. Connell has theorized men’s interests as “the patriarchal dividend,” by which he means,

the surplus that men as *men* continue to extract from women through a variety of modern practices of power.⁵² This “dividend” is tacitly legitimized by what Adrienne Rich first called “the law of male sex right over women,” meaning men’s tacit right of access to women’s emotional and physical capacities.⁵³ Analysis of “sex right” is not a theory of men’s individual, coercive behaviors vis-à-vis women, nor is it a theory of men’s juridical rights to dominate women. On the contrary, sex right is part of the *background understandings* of gendered, unequal social relations that make, say, an individual man’s use of coercive force over a woman legitimate and intelligible even when explicit expressions of sex right (such as coverture) have been eliminated. “Sex right” is the invisible precondition of a liberalism that (still) works in men’s interests, a claim which does not preclude an analysis of how class and race interests and “rights” are also presupposed by the same political order.

Radical feminist abolitionists conceptualize prostitution as an institution fundamentally based on men’s sex right, that is, men’s entitlement to demand sexual access to women. O’Connell Davidson (who is not pro-sex-work) criticizes this conception of prostitution—for example in Pateman—as based upon a one-dimensional notion of patriarchal power. In other words, O’Connell Davidson thinks that this conception of prostitution reduces prostitution to one social/power relation: “Prostitute use becomes a straightforward expression of patriarchal domination (it is described as an act of aggression, of violence, and of rape)” and thus, for example, elides the difference between rape and prostitution.⁵⁴ O’Connell Davidson argues that we must distinguish prostitution as a practice dependent *on a contracted relation* from rape as the act of “being taken by force.”⁵⁵ She does concede that the contract in prostitution is “fictional” insofar as it suggests a voluntary exchange; but, she claims, it is a “fiction” that is important to the specific social relations that obtain in a prostitute’s relationship with a john, pimp, etc. Most importantly, the “fiction” is important to the degrees of agency that women exercise in this relationship, even if this agency means—to use O’Connell Davidson’s own telling description—degrees of control over one’s “unfreedom.”⁵⁶

Even if O’Connell Davidson is right to argue for differentiating between, say, rape and prostitution, her own grounds for this distinction are debatable. For example, she claims that “[i]f prostitution is rape, then it is logical to define prostitutes as women who are publicly available to be raped, and this is precisely the position taken by many police officers, judges and jurists around the world who refuse to accept that a woman who works as a prostitute can ever be raped.”⁵⁷ But we can see that it *is* logical, although cruelly unjust, that police, judges, jurists, etc. would view prostitutes as “unrapeable.” That is to say, if prostitution is an institution that entitles men to have sexual access to women, the view of prostitutes as unrapeable is an effect of the institution itself rather than a distorting view of the institution. From the epistemic and moral standpoint of the sexual contract, women who “willingly” sell themselves to men for sexual use are not intelligible “true as victims” of forced sex. (They are always asking for it.)

Contra O'Connell Davidson, an analysis of prostitution as a form of rape does not require a view of power as one-dimensional. Rather, it depends on a critique of the way male dominance and female sexual agency are structured into the epistemic and moral/political order of liberalism. We can thus understand the (un)rapeability of prostitutes as due to specific relations of male domination that are themselves *not* reducible to sheer coercive force. I suggest that these relations of domination obtain for *both* rape and prostitution insofar as both rape and prostitution are constructed through the sexual contract. From this perspective, an examination of how rape is like prostitution, more than the reverse, might afford us deeper insight into the complexity (rather than one-dimensionality) of male domination within a political liberal order, and correspondingly, insight into the structure of *female sexual agency* that a pro-sex-work discourse is invested in.

By "rape" I do not only refer to the discrete, isolated event—an event which is never truly discrete and isolated in terms of how it is interpreted and experienced (by both rapist and raped), or in terms of the power relations that contribute to the experience and its interpretations. I refer here also to how rape is currently adjudicated (or not). The legal interpretation and treatment of rape—how rape becomes intelligible as such—is a contributing factor to how *sexual agency* as well as violation is experienced within women's contemporary social situation. First, consider the way that the definition of rape as "coerced" sex has been drawn in opposition to a woman's "consent" to sex. To elaborate, as most feminists know, more times than not, a woman's "normal" (hetero)sexual, gendered behavior is taken as presumptive evidence of her consent. A deeper point has not as often been recognized, namely that this "consent test" has not only served to undermine the credibility of women's accounts of rape; it has also served to make women's credibility irrelevant to the conviction of rapists. Thus legal theorist Katherine Baker argues that the "evidentiary problem of credibility" is not the main obstacle for securing rape convictions as is popularly believed; rather, the main obstacle is the "normative problem of desert."⁵⁸ In other words, juries and judges might believe the victim's account that a rape took place but still believe that the victim somehow "asked for it." From this epistemic and moral vantage point, even in cases where evidence of a brutal stranger rape has been established during a trial, a proven rapist may be judged as *not* deserving conviction, not if the victim, say, wore a lace miniskirt and no underwear as was the case in an actual 1991 Florida trial.⁵⁹ From this same vantage point, the category of rape itself disappears, having subdivided beyond recognition into "consensual" vs. "nonconsensual" rape.

In my view, the consent in the "consensual rape" presupposed by these kinds of legal practices, is consent as structured by contract relations, namely, as (following Pateman) consent to be subordinated. Consider, in this light, that the "consent" in this legal/common-sense paradigm of rape implies the proprietary concept of the individual. Now that a woman has been released from confinement within the private domain, she is hailed as an "abstract individual," and thus "autonomous," a sacrosanct "owner" of property in her own person—except, that is, if she wears a lace miniskirt and no underpants. No, rather, it is *because* she

wears a lace miniskirt and no underpants: as an owner she is free to use property in her person as she chooses; this includes her choice of clothing and behavior, her intercourse with men. What do we have to assume about the very meaning of women's sexual agency within an epistemic and moral framework that takes for granted women's consent to sex/rape unless it can be proven that she physically resisted her assailant, was a virgin, wore plain, concealing clothing, or otherwise did not "provoke" her attacker? Following Pateman, I think we have to assume that within this framework, the meaning of a female sexual agent is the meaning of being a woman who has already contracted for men to have sexual access to her body. Women are told by a liberal political order that we too, like men, are abstract individuals within the public realm of civic society, indeed that we can shuck our gendered bodies as we enter into the social contract, only to have our very particular, sexualized "pound of flesh" returned to us by this same contract. Women are taught, precisely by rape and other forms of men's (tacitly) legitimized sexual access to women, that entry into the public for women is only as sexed/gendered. When, in cases of dire poverty, the only or "best" means for women's survival is to sell to men, command over their bodies, and when this selling of command is considered to exemplify these same women's *agency*, the sexed/gendered specificity of women's "individuality" in a liberal political order is at once thrown back at us and made to disappear before our very eyes. In sum, the *invisible* precondition of the (post)modern woman's *visible* (public) sexual "agency" is men's demand for sexual access to women.

Conclusion: Beyond a Contractual Model of Agency and Freedom

In defense of a radical feminist abolitionist position, I have argued that coercion, consent and agency are intricately bound together in a shared paradigm of *domination*. *Domination* can be best described, not as coercion or force, but as *a relation of access*, a relation that is embedded within a range of institutions that tacitly presuppose the *legitimacy* of this relation. I refer specifically to men's (and other dominant groups') politically and tacitly legitimized *demand* to have physical, sexual and emotional access to the capacities and bodies of other (e.g., gendered) groups of people. As I see it, this legitimized and entrenched relation defined by men's right to demand access to women is the central conception of male power at stake for the feminist movement to abolish prostitution. Moreover, this relation of power/access constitutes the hidden political conditions of women's "sexual agency" as the latter is affirmed by the pro-sex-work position. I conclude that this view of male power, rather than foreclose female sexual agency or empowerment challenges feminism to conceive of agency and empowerment beyond a contractual model. Briefly, this involves, at the least, recognizing that victimization and agency are not mutually exclusive conditions.

The pro-sex-work theory assumes that victimization and agency are mutually exclusive, and points to prostitutes' ability to negotiate over aspects of their work conditions as evidence that prostitutes have agency. The expressivist version of this theory interprets prostitutes' practice of negotiation as in and of itself

constituting a *creative reworking* of the existing sexual order. But from this same theoretical vantage point, one aspect of the sexual order remains *nonnegotiable* and thus unworkable, namely, men's right to be sexually serviced. There is a blind spot in the pro-sex-work theory where this "right" remains invisible as such, partly because male power is invisible to it as *domination* and only intelligible as *coercive force*. Thus blinkered, the theory construes sex workers as "free" unless forcibly coerced into prostitution: the theory argues that if prostitutes have this "freedom," they cannot therefore be said to be "victims." The pro-sex-work position assumes a contractual model of freedom: it construes the consent to be subordinated as exemplifying freedom.

The abolitionist position that prostituted women are victims is not one that denies that these same women—any less than other victimized, oppressed, and/or enslaved peoples throughout history—have also employed numerous stratagems of resistance to their situation.⁶⁰ Even if these stratagems amount to negotiating the terms of their unfreedom, many victims can also be said to have "agency." Indeed, the question is not whether sex workers *have* agency. The question is, what is the *meaning* of an agency—and indeed "empowerment"—when these terms are defined as a capacity to negotiate within a situation that is itself taken for granted as inevitable? It is only when we radically interrogate the meaning of "empowerment" in a social order structured through both liberalism and male dominance that we can conceive of power as *power to*, because it is only then that we can conceive of freedom—freedom beyond the sexual contract.⁶¹

To conceptualize freedom beyond the social/sexual contract requires that feminists first, demystify the expressivist model of sexual agency assumed by many proponents of the "sex work" model in order to expose its fundamentally contractarian liberal conception of the self and embodiment. Secondly, feminism should lay bare the ontological and political assumptions of contractarian liberalism that make the selling of sex legitimate and intelligible. Finally, and most importantly, radical feminism must be expanded to theorize freedom in terms of women's collective political agency (*power to*): this task requires an understanding that freedom is not negotiating within a situation taken as inevitable, but rather, a capacity to radically transform and/or determine the situation itself.

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Notes

- ¹The so-called “pro-sex” (AKA “sex radical”) version of the debates is represented by *Pleasure and Danger: Exploring Female Sexuality*, 2nd ed., ed. Carole Vance (London: Pandora, 1992). The radical feminist anti-pornography version of the debates is well represented by *The Sexual Liberals and the Attack on Feminism*, ed. Dorchen Leidholdt and Janice G. Raymond (Tarrytown, NY: Pergamon Press, 1990).
- ²For an overview see Andrea M. Bertone, “Transnational Activism to Combat Trafficking in Persons,” *College Park Scholars International Studies* 10, no. 1 (2004): 9–22.
- ³For a good representation of both positions see Niki Adams (English Collective of Prostitutes), “Anti-trafficking Legislation: Protection or Deportation?” and Liz Kelly, “The Wrong Debate: Reflections on Why Force Is Not The Key Issue with Respect to Trafficking in Women for Sexual Exploitation” in “Dialogue,” *Feminist Review* no. 73 (2003): 135–9.
- ⁴For an overview and critique of the protocol see Barbara Sullivan, “Trafficking in Women: Feminism and New International Law,” *International Feminist Journal of Politics* 5, no. 1 (2003): 67–91.
- ⁵See Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988) and Pateman, “Self-Ownership and Property in the Person: Democraticization and a Tale of Two Concepts,” *The Journal of Political Philosophy* 10, no. 1 (2002): 20–53.
- ⁶Pateman, *The Sexual Contract*, 194.
- ⁷Donna Hughes, “Men Create the Demand, Women Are the Supply,” Lecture on Sexual Exploitation, Queen Sophia Center, Valencia Spain (November 2000). Available at <<http://www.uri.edu/artsci/wms/hughes/demand.htm>>.
- ⁸I’m following Alison Jaggar’s definition of “liberal feminism” in *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Allanheld, 1983).
- ⁹I’m indebted to Robert Scharff for this point. Personal communication, Durham, New Hampshire, Spring 2004.
- ¹⁰Pateman, *The Sexual Contract*, 5.
- ¹¹Pateman, “Self-Ownership,” 27, author’s emphasis.
- ¹²Here Pateman follows C. B. MacPherson’s *Political Theory of Possessive Individualism from Hobbes to Locke* (Oxford and New York: Oxford University Press, 1962).
- ¹³In “Self-Ownership,” Pateman argues that contractarian liberals fail to see that the right to *not* be forced to do something is derivative of the “positive” right to voluntarily alienate one’s person, 27.
- ¹⁴*Ibid.*, 33.
- ¹⁵*Ibid.*, 36.
- ¹⁶*Ibid.*, 27.
- ¹⁷Julia O’Connell Davidson, *Prostitution, Power and Freedom* (Ann Arbor: University of Michigan Press, 1998), 9.
- ¹⁸*Ibid.*, 9–10.
- ¹⁹Kamala Kempadoo attributes the “invention of sex work” as a category to Carol Leigh AKA Scarlet Harlot. Kempadoo, “Introduction: Globalizing Sex Workers’ Rights,” in *Global Sex Workers: Rights, Resistance, and Redefinition*, ed. Kempadoo and Jo Doezema (New York: Routledge, 1988), 8.
- ²⁰Like abolitionists, many pro-sex-work advocates criticize this global economy, arguing that women and children have been the worst victims of neo-liberal policies in their impact on the developing world. For example, the World Bank and IMF have induced debtor-nations to make “structural adjustments” in economies—adjustments that include eviscerating indigenous, subsistence agricultural economies and/or drastically cutting social spending. A consequence has been the increasing pauperization of vast numbers of women and children in the developing world and in the Eastern Bloc countries. A good source for this kind of analysis of the global economy is Cynthia Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics*, updated edition with a new preface (Berkeley: University of California Press, 2000).

- ²¹ Laurie Shrage for example endorses regulation, an approach that entirely assumes the prostitution as “work” model: she argues specifically for a “progressive” system of regulation where prostitutes “would be licensed, much like other professionals,” and in this system, the “standards for licensing sex providers should be established by public boards or commissions made up of service providers, community leaders, educators, and legal and public health experts.” Moreover, “candidates for this license could be expected to complete some number of college-level courses on human sexuality from the perspectives of biology, psychology, history, medicine, and so on.” Shrage, *Moral Dilemmas of Feminism* (New York: Routledge, 1994), 159. As Julia O’Connell Davidson comments, “In the real world, it is absurd to imagine that women like Catalina or Maria [two prostitutes who O’Connell Davidson discusses] are going to complete a number of college level courses before entering into prostitution (if they were in a position to attend college rather than work they would not be prostituting themselves in the first place)” and, she continues, “Except for a small minority of people, prostitution is not a positive career choice like deciding to become a brain surgeon, or even an aromatherapist” (198). I will discuss the notion of prostitutes as “professionals” in further detail later.
- ²² A trenchant argument for the distinction between prostitution and work, as well as an in-depth literature review of the issue, is provided by Scott A. Anderson, “Prostitution and Sexual Autonomy: Making Sense of the Prohibition of Prostitution,” *Ethics* 112, no. 4 (2002): 748–81. Anderson’s argument contrasts interestingly with my own as he defends the radical feminist position on the basis of what he considers to be a liberal view of sexual autonomy.
- ²³ See GAATW website <<http://www.inet.co.th/org/gaatw>> (June 2002) (Accessed June 10, 2004).
- ²⁴ *Ibid.*
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*
- ²⁷ Quoted in Kempadoo, “Introduction: Globalizing Sex Workers’ Rights,” 9.
- ²⁸ *Ibid.*
- ²⁹ Josephine Chuen-Juei HO, “Self-Empowerment, and ‘Professionalism’: Conversations with Taiwanese Sex Workers,” *Inter-Asia Cultural Studies* 1, no. 2 (2000): 283–99.
- ³⁰ *Ibid.*, 287.
- ³¹ Charles Taylor, “Aims of a New Epoch,” in *Hegel* (Cambridge: Cambridge University Press, 1977).
- ³² This point is made by Seyla Benhabib, *Critique, Norm and Utopia: Foundations of Critical Theory* (New York: Columbia University Press, 1986).
- ³³ Kempadoo, “Introduction: Globalizing Sex Workers’ Rights,” 4.
- ³⁴ *Ibid.*
- ³⁵ HO, “Self-Empowerment, and ‘Professionalism’: Conversations with Taiwanese Sex Workers,” 284.
- ³⁶ I’m following Nancy Fraser’s formulation of a “politics of recognition.” “From Redistribution to Recognition?” in *Justice Interruptus: Critical Reflections on the “PostSocialist” Condition* (New York: Routledge, 1997).
- ³⁷ Gayle Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality,” in *Pleasure and Danger: Exploring Female Sexuality*.
- ³⁸ Pateman, *The Sexual Contract*, 55.
- ³⁹ Bell quoted in O’Connell Davidson, *Prostitution, Power and Freedom*, 110.
- ⁴⁰ *Ibid.*, 111.
- ⁴¹ Susan Bordo, “Feminism, Postmodernism, Gender Skepticism,” in *Unbearable Weight: Feminism, Western Culture and the Body* (Berkeley: University of California Press, 1993), 226.
- ⁴² I’m indebted to conversations with Bonnie J. Mann for this insight. Berkeley, CA, Spring, 1999.
- ⁴³ O’Connell Davidson, *Prostitution, Power and Freedom*, 113.
- ⁴⁴ Adams, “Anti-Trafficking Legislation: Protection or Deportation?” 141.
- ⁴⁵ Kelly, “The Wrong Debate: Reflections on Why Force Is Not The Key Issue with Respect to Trafficking in Women for Sexual Exploitation,” 141.
- ⁴⁶ Amy Allen, “Pornography and Power,” *Journal of Social Philosophy* 32 no. 1 (2001): 512–31.

- ⁴⁷ Ibid., 515. Similar criticisms of MacKinnon have been made by Drucilla Cornell and Wendy Brown. See Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (New York: Routledge, 1991): 119–164 and Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton: Princeton University Press, 1995), chap. 4.
- ⁴⁸ Pateman, *The Sexual Contract*, 6.
- ⁴⁹ Fraser, “Beyond the Master Subject,” *Justice Interruptus*, 227.
- ⁵⁰ Allen, “Pornography and Power,” 515.
- ⁵¹ Ibid., 523.
- ⁵² R. W. Connell, *Masculinities* (Berkeley and Los Angeles, California: University of California Press, 1995), 71.
- ⁵³ Adrienne Rich, “Compulsory Heterosexuality and Lesbian Existence,” in *Powers of Desire*, ed. A. Snitow, C. Stansell and S. Thompson (New York: Monthly Review Press, 1983): 177–205.
- ⁵⁴ O’Connell Davidson, *Prostitution, Power and Freedom*, 120–1.
- ⁵⁵ Ibid., 121–2.
- ⁵⁶ Ibid., 102.
- ⁵⁷ Ibid., 122.
- ⁵⁸ Katherine K. Baker, “Once a Rapist? Motivational Evidence and Relevancy in Rape Law,” *Harvard Law Review* 110: 563.
- ⁵⁹ Baker refers to the following case: “Consider the remarks of a Florida jury foreman after acquitting a defendant who had been charged with knifing, beating with a rock, and twice raping a woman dressed in a lace miniskirt and wearing no underwear: ‘We felt she . . . asked for it for the way she was dressed. . . . The way she was dressed with that skirt, you could see everything she had. She was advertising for sex.’ The jury believed that the woman had been slashed with a knife, hit with a rock, and raped. They just did not care. Enhancing that woman’s credibility would have done no good.”
- ⁶⁰ Kelly makes this argument in *Surviving Sexual Violence* (Cambridge: Polity Press, 1987).
- ⁶¹ Although she draws different conclusions than my own with respect to the radical feminist analysis of power, Allen proposes a reconceptualization of power that resonates with the notion of freedom I am arguing for. For example, she argues that feminists need to “modify our understandings of empowerment and resistance” (523) and she criticizes “sex radicals” who “conflate empowerment with resistance” (524). Especially important is her proposal that true resistance involves “power that we exercise *with* others in collective and social action” (527, author’s emphasis). However, she also concludes that, given her criteria for a new conception of power, transforming (rather than abolishing) pornography is possible—transformation of pornography is possible if it is undertaken through feminists’ collective action. In my view, however, she has not met the burden of showing why pornography is something that ought to be so redeemed in the first place.