

Trafficking in Women for

MONIQUE TRÉPANIÉ

Ce texte pose la question du choix au consentement et peut se comprendre à l'intérieur du trafic, de la prostitution et de l'émigration sexuelle. Classer les travailleuses du sexe comme

Can women who worked in the sex industry in their home countries "agree" to be trafficked to do similar work in Canada? Scholars, experts and activists have disagreed over the issue.

des victimes ou des agents comporte de sérieuses implications pour les femmes. Les lois canadiennes sur l'émigration des travailleuses du sexe tout comme sur celles victimes du trafic ont été inefficaces pour distinguer entre les deux groupes et pour assurer que les droits de ces deux groupes ne soient pas bafoués.

Trafficking in women for purposes of forced prostitution and other exploitation within the commercial sex industry is recognized as a pressing global problem. International and domestic laws, regulations and instruments relating to trafficking issues have been created not only to prevent and combat trafficking in persons, but also to protect the rights and meet the needs of those who are victimized and exploited. Their successful application to this latter objective, however, is in part contingent upon the identification of a victim. This essay will explore recent Canadian and international legal responses to trafficking issues. The nature of trafficking in persons will first be examined, followed by a discussion of whether choice or consent can be exercised within the realm of trafficking in women for sexual purposes. Finally, the way in which current laws and initiatives may be viewed either as perpetuating gender inequality or as promoting an end to women's subordination, depending on one's conclusions with respect to the consent or coercion of trafficked sex workers, will also be discussed.

Trafficking in Persons Defined

Trafficking in persons occurs both within and between countries, and is generally understood to involve the recruitment or transportation of persons for profit

(Chuang). Although historically, international recognition of trafficking in persons focused on the forced recruitment of women for prostitution purposes, a much broader conception of the problem has emerged in recent years to include such aspects as forced domestic labour (see Connor), commercial marriages (see Kelly), organized begging, and other forms of exploitative labour and services extracted from men, women and children.¹ Complex social, cultural, economic and political factors are deemed to contribute to women's vulnerability to such deception and abuse (Derks; see also Chuang). Women are "victims of poverty, of the social practice of marginalizing women, [and suffer because] of the failure of some cultures and societies to place value on traditional women's work, and of the lack of education and employment opportunities for women in developing and transition countries" (Tiefenbrun 208).

Despite knowledge of the factors contributing to trafficking, the actual extent of the worldwide phenomenon is still not known. This has been attributed to a lack of available and reliable statistics (IOM),² the underground and illegal nature of trafficking, and the lack of a precise, modern and internationally recognized definition of trafficking, which was only recently addressed by the United Nations (Doezema; see also Derks).

A definition encompassing a wide range of aspects of trafficking in persons emerged from United Nations (UN) negotiations on transnational organized crime (Blackell). The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), that accompanies the *UN Transnational Organized Crime Convention*, was adopted by the General Assembly in November 2000 and defines trafficking in persons as follows:

Trafficking in persons shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or

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services, slavery or practices similar to slavery, servitude or the removal of organs. (Art. 3 (a)).³

The Trafficking Protocol also specifies that the consent of a trafficked victim to the intended exploitation will be deemed irrelevant (Art. 3(b)). The elaboration of such a definition is the result of much debate between various state representatives and non-governmental organizations, over the significance of consent and coercion to the trafficking realm. Although the Trafficking Protocol will not enter into force until it has been ratified by 40 countries,⁴ this definition raises the question of whether the debate surrounding a woman's potential consent to being trafficked, particularly for the purposes of working in the sex industry of another country, has been quelled.

Sex Worker as Victim or Agent? Applicability of the Prostitution Debate to the Trafficking Realm

Can women who worked in the sex industry in their home countries "agree" to be trafficked to do similar work in Canada? Scholars, experts and activists have disagreed over the issue of whether all trafficking, particularly that of sex work, is by definition coercive. Closely related to this debate is the issue of whether sex work or prostitution *per se* is always exploitative or whether a woman can choose to sell her body and/or consent to being trafficked in order to achieve a better life for herself in another country.

Attempts to achieve a working definition of trafficking, particularly in the last several years, have challenged traditional assumptions regarding violations to women's rights (Chuang). Prior to, and during negotiations on the draft Trafficking Protocol, representatives from two discrete camps lobbied vigorously over the definition of trafficking to be adopted within this document (Goldscheider).

On one side of the debate, representing a traditional prohibitionist/abolitionist approach towards prostitution and spearheaded by the Coalition Against Trafficking in Women (CATW), were those who believe that consensual prostitution does not exist and that prostitution itself is a form of sexual exploitation that reduces women's bodies to commodities (Leidholdt). Similar in focus to aspects of Catherine MacKinnon's views on gender inequality and the male pursuit of control over women's

sexuality, proponents of this school believe that prostitution victimizes all women and that even if women themselves claim to have consented to such work, their consent

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is meaningless. Social inequities (economic and social marginalisation) experienced by women in society, as well as past exposure to sexual and/or other physical abuse, are believed to propel the majority of women into the sex industry to begin with. Women are left without any other valid work options, and often what they believe they have consented to do, does not include the slavery-like situation in which many later find themselves. For this reason, the CATW argues, any definition of trafficking should make consent of the victims immaterial (Leidholdt).

The other side of this debate was represented in the international arena by the Global Alliance Against Trafficking in Women (GAATW). This group, as well as "pro-sex work governments,"⁵ drew a distinction between "forced prostitution" and "voluntary prostitution." They argued that such a distinction within the Trafficking Protocol's definition was crucial in order to acknowledge women's rights to freely choose prostitution as a way to make a living, and by extension, to choose to migrate for sex work. Supporters of this view identified the problem of trafficking largely within the context of forced labour, not prostitution, and condemned trafficking only where elements of coercion were at play. To do otherwise would risk treating women as hapless victims and would deny many women the means to survival, thus violating their human rights (Goldscheider).⁶ By treating women as independent agents, capable of making rational decisions with respect to their own bodies, women are deemed to be able to overcome powerlessness and oppression. This viewpoint echoes less recent arguments made by feminist scholars and supporters of legalised prostitution, such as Margaret Radin, who believe that women might understandably prefer to sell their sexual services given the

conditions of poverty in which some too often live.

So-called “Third World” and anti-racism scholars also subscribe to views that coincide with those within the “pro-sex-worker” camp. In much the same way as scholars such as Angela Harris have criticized Catherine Mackinnon’s work for employing a grand theory that fails to take into account the realities of non-white women, scholars such as Kamala Kempadoo, and Chandra Mohanty identify aspects of gender and race essentialism inherent to the position of some radical feminist scholars writing on trafficking and prostitution issues. Mohanty criticizes western feminists for positioning non-western women in their work as “religious (read ‘not progressive’), family-

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oriented (read ‘traditional’), legal minors (read ‘they-are-still-not-conscious-of-their-rights’), illiterate (read ‘ignorant’), [and] domestic (read ‘backward’)” (18). In this way, non-western women are perceived as being faithful to “traditions” of female subservience, and as victims incapable of making decisions as to whether to work in the sex industry (Doezema). Kempadoo elaborates on this view noting that certain feminists, “in true colonial fashion” apply a particular definition to sex itself which is not necessarily shared by women the world over:

Subaltern understandings and lived realities of sexuality and sexual-economic relations, such as found in various African or Caribbean countries for example, where one can speak of a continuum of sexual relations from monogamy to multiple sexual partners and where sex may be considered as a valuable asset for a woman to trade with, are ignored in favor of specific western ideologies and moralities regarding sexual relations. (12)

By focusing on sex work in particular, and arguing that migration for prostitution whether forced or “voluntary” is a human rights violation, some feminists thereby deny the voice and experience of non-western women who may not share the same view.

Southern women themselves have criticized those who view prostitutes or migrant sex workers as helpless victims who can only be “rescued” through the support of their western sisters (see Kotiswaran).⁷ One cannot, however, identify one distinct Southern voice with respect to these issues. In contrast to those who advocate reforms that highlight the agency of sex workers, a voluntary Indian

organization called Prerana, for example, works to abolish all commercial sexual exploitation, and believes that women, at least those from India, cannot consent to work in the sex trade. Prerana’s executive secretary argues that “where gender-based, class-based, and caste-based inequalities conspire against women and children, it is inhuman and exploitative to state that girls and women join and continue in this ‘profession’ out of their own ‘free will’” (Patkar).

Scholars of international law have also focused on issues of cultural relativism in relation to trafficking and prostitution. Di Otto’s criticisms of earlier UN trafficking instruments such as the *Convention for the Suppression of the Traffic in Persons*, rest on the fact that measures contained within them, such as prohibitions against consensual prostitution, limit women’s opportunities to achieve economic justice and equal rights. She notes that women are often constructed in such documents, “in procreative and heterosexual terms as mother and wife...” based on Western ideas that are upheld as international feminist goals and strategies, but that reflect an exclusion of identities (Otto).

Finally, sex workers themselves are also held to have influenced the work of those who condemn trafficking only where coercion is involved (Kempadoo 14). As Jo Doezema notes, however, while the GAATW’s view of trafficking has promoted significant legal advances for those “forced” into prostitution, women who choose sex work are still marginalized by a moralistic approach that reinforces the innocent victim / bad woman dichotomy. According to Doezema, the “whore” who decides to do sex work is still deemed to deserve the treatment she receives when the issues are framed in such a way (cited in Kempadoo 14).

Given the UN’s adoption of a definition that will not allow traffickers to use consent as a defence against prosecution, the question posed at the outset of this essay has effectively been answered in the negative. Not only do the elements of coercion, deception and force that are the focus of this definition, viciate any free and informed consent, but the provision explicitly states that consent to being trafficked is considered irrelevant. Despite this development, however, the prostitution/sex work aspect to this debate appears to be alive and well. A woman may not be able to consent to trafficking, but it is still arguable whether she can consent to prostitution or sex work, and by extension, consent to migrate for work in the sex industry.

The Debate Today

Both sides to the trafficking for sexual services debate still actively pursue their respective stances on the prostitution issue, focusing at the moment on domestic governmental implementation of the Trafficking Protocol. Significantly, delegates attending the UN negotiations agreed

to leave the key phrase “exploitation of prostitution of others or other forms of sexual exploitation” undefined while clarifying the omission in a note further along in the text. The *travaux préparatoires* thus indicate that this phrase was not defined so as not to prejudice the way in which States Parties choose to address prostitution within their respective domestic laws (Crime Prevention and Criminal Justice; see also, Blackwell). GAATW’s comments with respect to the final definition chosen reflect satisfaction that states are not required to treat all adult participation in prostitution as trafficking (2). In their view, the international community has acknowledged that while one may not agree to being trafficked, consenting to the provision of sexual services is no longer necessarily seen within a context of victimisation.

The CATW’s view of the post-UN negotiations on the other hand, is cautious but equally laudatory of the results achieved. According to Janice Raymond, the group’s Co-Executive Director, the CATW and its proponents won a key international battle over the definition of trafficking. Nevertheless, she believes that some governments and NGOs are currently undermining this achievement, by “only emphasising the provisions of the Protocol that suit them and ... [by] focus[ing] only on forced trafficking” (7). In her view, trafficking and prostitution are intrinsically linked and should not be dealt with as two separate issues within domestic legislation just because some countries have legalized or regulated prostitution. On the contrary, she contends that prostitution exploits women in the same way as does trafficking for prostitution purposes. Governments, she believes, must therefore place prostitution on their legislative policy agendas and address it as a human rights violation (8).

Where does this leave the issue of trafficking for prostitution purposes? Scholars such as Kamala Kempadoo argue that many cases involving migration for work in the sex industry still fall within a grey area. She argues that there are extreme cases where women are held against their will and suffer serious human rights abuses, but that there are numerous cases that cannot be as clearly defined (Gardiner). Recent work conducted on behalf of Status of Women Canada confirms such a view. In an extensive report on migrant sex workers from Eastern Europe, scholars from the University of Toronto found that only half of the migrant sex workers they interviewed could be considered to have been trafficked. Nine out of 18 women were brought to Canada either under totally false pretences, or knew they were destined for the sex trade, but were not aware of the coercive work conditions they would encounter upon their arrival. The other nine women were classified by the researchers as non-trafficked sex workers, who ended up in the industry because they could not obtain gainful employment elsewhere (McDonald, Moore and Timoshkina).⁸

Classification of migrant sex workers as either victims or agents has significant implications for the women in-

involved. Nevertheless, regardless of whether or not the women’s experiences fit neatly into the Trafficking Protocol’s definition, reports with respect to Canada’s response to these women and to trafficking in general, point to a large scale denial of women’s basic human rights.

Canada’s Response to Trafficking and “Trafficked” Women

Canada’s criminal justice system faces significant challenges in combating trafficking and in providing services to victims of this offence. It is well known that enforcement of international treaties and conventions can only be

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effective if countries enact the domestic legislation required to implement the international standards, and devote the financial resources required to achieve these aims. Canada’s treatment of traffickers and victims of trafficking in past years has not been deemed effective or respectful of the rights of victims. Police raids of massage parlours in Toronto between 1998 and 2000, which involved the arrest of several women from abroad (primarily Thai and Malaysian) on prostitution-related charges, were heavily criticised for treating the women involved as criminals instead of as victims of trafficking (Blackell). Canadian law enforcement officials had publicly announced that the raids were conducted to “rescue” Asian women from “traffickers,” yet despite this rhetoric, the women were treated as criminals and illegal migrants, and were given little if any assistance from government authorities (The Toronto Network Against Trafficking in Women). The sentences meted out to those responsible were based on existing criminal code provisions for procuring sex workers⁹ or operating a common bawdy house.¹⁰ These were also criticised as lenient and ineffective since fines of \$15,000 represented a pittance in comparison to the amount of money generated from a few trafficked women in one day (McClelland).

Despite having signed the UN *Convention Against Transnational Organized Crime* as well as the Trafficking and Smuggling Protocols on December 14, 2000 (Blackell), the vulnerability of trafficked and of migrant sexual workers in Canada appears to have not been lessened to any significant extent. The Immigration and Refugee Protection Act, which was passed by the government of Canada on November 1, 2001 includes fines of up to \$1 million and the possibility of life imprisonment for those con-

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CINDY CHILDRESS

What Remains for Suzie

Suzie writes to me about sexual exploits
when she's between chemo treatments.
The friend she always flirted with
took leave from his job and moved across the
country
to change her bed pan and give sponge baths
after the partial;
he found ways to please the two remaining
inches
inside her when the scars healed.
Eddie's gone home now.

So, she tells me what color scarves should I
send,
what places she dreams of having again
to be touched
and by whom.
The tumor isn't responding to radiation
Eddie is married.

The doctor smiles sadly, she thinks
because he likes her face
masked in donated Lancôme products
framed by a bright, red wig
in defiance that those outside herself
should read her inner cavities
like a cheap novel
as she awaits prescriptions at Walgreens.

When they met, Eddie said he didn't normally
like feminist
but she was not butch at all.
She clings to breasts and the masquerade of
hormones,
feminine and undone.
It is the female abjecting itself from itself, she
writes
amazed at her body's
treachery, conspiracy with science
against her nature's
impulse to climax.

Cindy Childress' poetry appears earlier in this volume.