Poetic Justice: Why Sex-Slaves Should Be Allowed to Sue Ignorant Clients in Conversion

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Abstract

In this article I argue that clients who purchase commercial sex from forced prostitutes should be strictly liable in torts towards the sex-slaves. Such an approach is both normatively defensible and doctrinally feasible. As I have argued elsewhere, fairness and equality demand that clients would compensate sex-slaves even if one refuses to acknowledge that purchasing sex from a prostitute who might be forced is a faulty behaviour. In this article I argue that such strict liability could be grounded in the tort of conversion, and not only (as argued elsewhere) in battery. Since the quintessential experience of sex-slaves is that of being treated as chattels, the appropriate legal response is to allow them to benefit from the strict liability imposed on those interfering with owners' dominion over their property. Accordingly, sex-slaves should be viewed as both subjects and objects. As subjects they can sue clients for the violation of their sexual autonomy manifested by the fact that they were treated as objects. Such an approach is both advantageous to sex-slaves, in the sense it affords them protection that might not otherwise exist, and fair, since the ultimate response to the objectification of sex-slaves by clients should be to afford the former a proprietary-based claim against the latter. I further explain why such an approach is *not* problematic on conceptual grounds, anti-commodification sentiments or feminist concerns with the symbolic message of such solution: that the law treats women as property.

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INTRODUCTION

The connection between clients' demand for commercial sex and the suffering of forced prostitutes receives increased attention by activists, academics and policy makers. While attitudes of clients towards purchase of sex from prostitutes vary, it is clear that some clients are not aware that they purchase sex from a sex-slave. Should such ignorant clients be liable in torts toward the forced prostitute ("victim")? If the mistake about the victim's lack of consent was unreasonable, no doubt that liability should be imposed (*Ashley v CC Sussex Police* (2008); Keren-Paz & Levenkron 2010). Elsewhere I suggest that liability could and should extend beyond such mistake based on two alternative grounds. First, taking the risk of submitting victims to non-consensual sex is a faulty behaviour given the client's ability to know about the existence of the phenomenon of forced prostitution and about his inability to rule-out the possibility that the claimant is a sex-slave (Keren-Paz & Levenkron 2010). Second, fairness and equality demand that the client would be strictly liable toward the victim, even if his behaviour should not be considered as unreasonable. I further suggested that strict liability could be grounded in battery (Keren-Paz & Levenkron 2009).

In this article I would like to suggest that alternatively, strict liability should be grounded in the tort of conversion. Since the quintessential experience of sex-slaves is that of being treated as property, the appropriate legal response is to allow them to benefit from the strict liability imposed on those interfering with owners' dominion over their property. Accordingly, victims should be viewed as both subjects and objects. As subjects they can sue clients for the violation of their sexual autonomy manifested by the fact that they were treated as objects.[1] Such an approach is both advantageous to victims, in the sense it affords them protection that might not otherwise exist, and fair, since the ultimate response to the objectification of victims by clients should be to afford the former a proprietary-based claim against the latter. I further explain why such an approach is *not* problematic on conceptual grounds, anti-commodification sentiments or feminist

[1] Such duality is not foreign to the common law. In maritime law, for example, vessels are both property and legal person in that the claimant and defendant in the litigation are the vessels themselves.

concerns with the symbolic message of such solution: that the law treats women as property.

Part I provides a brief overview of the forced prostitution phenomenon and summarises the policy considerations which support strict liability of clients. Part II comments on the common law anomaly according to which proprietary interests are better protected than interests in bodily integrity. Part III, the heart of the Article, provides evidence of the objectification of victims by traffickers and clients; conceptualises victims as simultaneously subjects and property; and explains why analogising victims with property is appropriate. Part IV translates the conceptual apparatus into doctrinal ramifications. Part V responds to doctrinal and conceptual difficulties which are raised by my suggestion. Lastly, Part VI responds to the feminist and anticommodification challenges.

I. BACKGROUND

My argument applies to trafficked women who are forced to remain in prostitution due to illicit pressure by the trafficker and are treated as sex-slaves. The pressure might be manifested by violence, threat of violence, psychological intimidation, confiscation of travelling documents, deceit about what awaits the victim if caught by the police, false imprisonment and similar tactics of intimidation. Usually victims do not have control over the number of clients they "serve" and the practices they have to engage in. Typically they do not decide how much to demand for their sexual services and how much of it remains in their hands; at times the money is paid directly to the trafficker and the victim receives (if at all) an amount reflecting 17% of what the client has paid. From this amount the trafficker often deducts unilaterally sums reflecting fines for "violations" by the victim and inflated expenses such as rent and food. Victims trafficked across borders typically receive nothing in the first months after they arrive to reflect the costs of "purchasing" the victim and bringing her into the country. Often victims are sold from one trafficker to another and then for few months victims will receive nothing in order to cover the purchase price. Many victims will receive nothing throughout the period of their enslavement which can vary from few months to two years (Keren-Paz & Levenkron 2009:441-42).

Research on clients reveal that some clients prefer prostitutes who are not forced; some have a taste for forced prostitutes; and some are indifferent. While most clients believe they can identify forced prostitutes, such ability changes with the context and it is very likely that clients engage in self-deception that helps them to purchase sex from a woman who is in fact forced. (Anderson & O'Connell Davidson 2003; Coy, et al 2007:23-24,34).

I will briefly outline the normative case for imposing strict liability on clients in those cases in which (and assuming that) the client cannot be faulted for purchasing sex from a forced prostitute.[2] One distributive consideration which supports generally strict liability is the idea that those who benefit from a given activity should compensate those suffering from its negative consequences (Keating 2000). Elsewhere I distinguish between two versions of fairness and claim–following Fletcher 1973–that especially convincing case for strict liability exists when ex-ante the defendant acts to further his interests while the risks from this activity are borne by the claimant (Keren-Paz & Levenkron 2009:447-51). This happens in the prostitution context. Clients benefit from the purchase of sex by reaching asexual gratification, and this activity results with an inherent risk that forced prostitutes would be subject to nonconsesual sex. Fairness demands that the client who benefits from the activity would compensate the victim.

This analysis is complemented by the insight that even if we are willing to assume that the client was not at fault by taking the risk of submitting the victim to nonconsesual sex, the reality of enslavement prevents the victim from communicating to the client the fact that her apparent consent is not genuine. Therefore, even under the most favourable assumption to the client, we deal here with unavoidable accident in which considerations of fairness justify allocating the loss to the client. As I further argue, the Fletcherian version of the fairness argument stands behind the strict liability for interference with the owner's property.

The second major distributive argument which supports strict liability is equality. Since clients are overwhelmingly men and come from all ranks of society, while victims are overwhelmingly women who are the most disenfranchised in society, strict liability is desirable according to the distributive axes of sex and class.

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[2] The discussion summarises Keren-Paz & Levenkron 2009: 447-54.

Finally, forced sexual encounter and sexual enslavement involve gross violations of victims' human rights. Arguably, strict liability will have desirable deterrent effect which will reduce these violations.[3]

II. Broader Protection of Property

Elsewhere I concluded that while grounding strict liability in battery is possible, some doubt exists of whether in the tort of battery defendant's reasonable mistake about the claimant's consent negates liability (Keren-Paz & Levenkron 2009:454-55). In what follows I suggest grounding strict liability in the tort of conversion by conceptualising the victim as both subject and object.

The common law imposes strict liability for interference with the owner's title. While the strictness of liability under trespass to the person is somewhat doubted, *Basely v Clarkson (1681)* has set the rule that in trespass to land, an honest and reasonable mistake by the defendant with respect to title, the land's border, or defendant's right to be on claimant's land is not a defence. Similarly, liability under conversion is strict. The honest auctioneer in *Hollins v Fowler (1875)* was liable for the value of the converted cotton. The common law's position on conversion was summarized by Lord Diplock in *Marfani v Midland Bank (1968):970-71* as follows:

> At common law one's duty to one's neighbour who is the owner, … of any goods is to refrain from doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in them. … it matters not that the doer of the act of usurpation did not know, and could not by the exercise of any reasonable care have known, of his neighbour's interest in the goods. This duty is absolute; he acts at his peril.

The fact that the common law generally protects one's property to a greater extent than it protects one's bodily integrity is problematic. If a reasonable mistake about title to land or to a wallet leads to liability, while a reasonable mistake about one's consent to a treatment excludes liability, or if a nuisance or *Rylands v Fletcher* claim (in England) allows the owner of land to recover for damage to property, in the absence of fault, while

[3] The question is contested and in Keren-Paz & Levenkron 2009 we explain why a deterrent effect is possible, and yet unnecessary in order to support clients' liability to victims. See also n.22 below.

personal injury is excluded (*Hunter v Canary Wharf* (1997); *Transco v Stockpot Metropolitan BC* (2003)), then there is much to be said that something is wrong with the current set of priorities of the common law. It might be that a general reform is needed in order to, at minimum, equate the scope of protection to one's person with the protection to one's possession, or to reverse the current scheme of priority so to afford broader protection to the interest in one's person. If such an approach is to be taken, the task of such a radical departure from established common law rules is likely to be left by the courts to Parliament (*Transco* [2003]:[43] (Per Lord Hoffman)).

III. Conceptualising Victims as Subjects and Property

Victims' Objectification

I argue, however, that if broader protection to property interests is justified, at least sex-slaves should enjoy it. The argument is based on the fact that the essence of forced prostitution is the ultimate objectification of victims by traffickers and clients. From the victim's perspective (as from the traffickers' and some clients' perspective) the victim is being treated as property. Victims of trafficking are being bought and sold like a chattel, treated as a profit-making property, and experience ultimate depravation of autonomy and agency. In addition to the review provided in part I above consider the following.

In the Australian case of *R v Tang* (2008) the accused was convicted according to the anti trafficking provision which criminalises anyone who "intentionally possesses a slave or exercises over a slave any of the other powers attaching to the right of ownership".[4] In Israel, one complainant "was subjected to an examination which could only be compared to one done to an animal sold in the market" (*State of Israel v Rabi'ee* (2001); another was told by the trafficker that she "must have sex with condom and oral sex without a condom, and to allow the client do what he wants to do" (*State of Israel v. Yosef* (2003)), while many were sold from one trafficker to another (*M v Salsrevski*, (2005):[6]-[49]; *K v Jaack*, (2006):[2]; *Ploni v State of Israel* (2008): [2] in which two victims were sold for cash and a Ford Pinto car; Keren-Paz & Levenkron 2009:442 n.13). One victim was rented by one trafficker from another (*Ploni (R) v Kochick* (2009):[2]; two victims reported they were inherited by family members of their trafficker who

[4] s 270.3(1)(a) of the *Criminal Code* (Cth).

passed away; and others reported they were used as collateral (Levenkron 2009). Instances in which the trafficker allows the use of the victim's sexual services without collecting money, as kind of a gift are common, as is of course the victim's rape by the trafficker (*State of Israel v Lifshin* (2004):[2]). In England, one victim was sold several times from one trafficker to another, raped and forced to work in prostitution (R v *Maka* (2005):[3]-[5]; four others were used by the traffickers "as instruments for their own profit" (*AT v Dulghieru* (2009):[9]).[5]

Clients as well treat forced prostitutes as property. A research by Donna Hughes, one of the leading experts on demand for prostitution shows that clients "viewed all women and girls in prostitution as objects or commodities over which they had temporary powers of possession after they paid their money"(Hughes 2004:12) and that alarmingly high percentage of street prostitutes are being raped and attacked by clients (:16). A research with the telling title of "'It's Just Like Going to the Supermarket': Men buying Sex in East London" found that for clients "women's bodies and sexual services are regarded as commodities that are purchased in a similar fashion to other goods"..*:"* For these men, the increasing commodification of sex and women provides a context in which not only is commercial sex normalised, but is associated with entitlements: with enough money, you an buy whoever (whatever) you want." "For some men their sense of entitlement was supported by both sexism and consumerism". (Coy at al 2007:19-20,22, 24). Similar commodification and objectification of Thai prostitutes by Israeli sex tourists was documented (Feldman 2008).[6] Note that the research quoted above refers to attitudes and behaviour of clients towards all prostitutes, not only those who are forced. Victims have even lesser ability to turn-down clients and are subject to abject demands from clients without ability to refuse (see e.g. *Yosef* [2003]).

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[5] For the experience of other victims see Dickson 2004; Keren-Paz & Levenkron 2009: 442 n.13.

[6] Nussbaum 1995:257 identifies seven ways in which one can treat another person as a thing: instrumentality, denial of autonomy, inertness, fungibility, violability, ownership and denial of subjectivity. While space considerations prevent me from exploring this further, it is clear that almost (if not) all aspects are manifested in the way forced prostitutes are treated by traffickers and clients.

CONCEPTUALISING VICTIMS AS SUBJECTS AND PROPERTY

Since the essence of the experience of enslaved victims is that of being treated as property, the victim should be allowed to sue all those whose actions are incompatible with the victim's inviolable right to dominion over one's person. This requires a conceptualisation of the claimant as subject and object at the same time. As subject, the claimant is entitled to not being treated as property. Since this right was violated, the victim could sue, with respect to the violation of her agency, as if she were property. Conceptualising the victim as property should afford her all the relevant proprietary causes of action, including trespass to goods. [7] The discussion concentrates on conversion since the behaviour which establishes liability in conversion – defendant's *acute* interference with claimant's dominion over the property (Rogers 2006:752-53)–better reflects the experience of victims of trafficking.

Some of the ramifications of this approach, with respect to claims against traffickers were explained by me elsewhere (Keren-Paz 2009a:22-26). For current purposes, it is important to see that the claimant would be able to benefit from the rule that with respect to property, the defendant acts at his peril. Accordingly, a reasonable mistake by the defendant with respect to his right to deal with the claimant's property will not serve as a defence, so the client's liability is truly strict.

The argument does not require recognition of an ex-ante right to self-ownership. Such a right, to the extent it implies a right to sell oneself into slavery is objectionable on several grounds including anti-commodification argument (discussed in Part VI below). Rather, it requires merely recognising a right not to be owned by anyone else and not to be rendered into property.[8] This could be conceptualised as an ex-post right to self-ownership: a person who has been rendered into property should be able to sue all those who acted in a way incompatible with the right not be owned, as if she had the ex-ante right of self-ownership. Put differently, the violation of the right not to be owned should

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[7] For a possible caveat see Keren-Paz & Levenkron 2009:449.

[8] At other places in this article I mention the right not to be treated as property. Possibly, one could be treated as property even if one is not rendered (completely) into property. Since victims of trafficking undoubtedly have been rendered into property, I need not conclude here whether the argument should apply to instances in which the claimant has been treated as, but not rendered into, property.

trigger at least the same remedy afforded to owners by the tort of conversion against violation of their dominion over the property. This is so, since the right not to be owned shares at least one vital characteristic with an ownership right – the right to dominion over the property and to exclude others from unauthorised use. The victim has a right to exclude the client from an unauthorised use of her body. The client, who intentionally used the victim's body while being mistaken about his authority to have sexual encounter with the victim, acutely interferes with the victim's right to exercise dominion over her body. The victim's body is conceptualised, ex-post, based on the reality of trafficking, as property. Reasonable mistake about one's authority to deal with the chattel vis-à-vis the rightful owner is sufficient to establish conversion (*Hollins v Fowler* (1875)). Therefore, the client should be liable towards the victim in conversion.

Before working out the doctrinal translation of this novel idea, some further conceptual clarification is required. While I presented above evidence suggesting that clients themselves have a sense of entitlement with respect to prostitutes and victims, such evidence is unnecessary in order to establish the victim's right to sue clients in conversion. To commit conversion, the defendant needs not believe that he has a right over the chattel. While asserting dominion over the chattel is one way in which the defendant might convert the property, it is not the only way. All what required is that the defendant acted in a way which is incompatible with the claimant's dominion over the chattel (Rogers 2006:752-53). The basis for recovery against the client is *not* based on the fact that he *de facto* owned the victim while the victim had the *de jure* right not to be owned. Rather, it is based on the fact that the victim was unlawfully reduced into property by the trafficker (partially with the purpose and effect of benefiting clients) in violation of her right not to be owned, and that the client further acted in a way which is incompatible with such right.

As noted earlier, since liability for conversion is strict the defendant's mistake with respect to his authority to use the property is irrelevant. But cannot the client argue that his mistake was about the *possibility* that the victim–as a human being–is property? I need not dwell on the general question whether a mistake about the possibility that something is capable of being property is operative (as opposed to a mistake whether the defendant, or the claimant has title to the property) for the following reason. Clients

should be aware of the trafficking phenomenon (cf Keren-Paz & Levenkron 2010:33-34). This means that the client's mistake is about whether the prostitute he had sex with is (merely) a subject or a property as well. This type of mistake is analogues to classic inoperative mistakes in conversion about title to the chattel.

Finally, this analysis explains why the data showing that the client himself objectifies the prostitute should not necessarily lead to a right of a nonforced prostitute to sue the client in conversion. It is possible to maintain that a nonforced prostitute can and in fact consents to the way she is treated by the client. Since her quintessential position is not of a property, she should not be able to sue the client in conversion. This could be conceptualised as the owner permitting the use of her property by the defendant, and therefore, there is no liability in conversion. Note, however, that an opposite conclusion is possible according to which the objectification of the nonforced prostitute by the client allows her to sue him in conversion for his violation (during the encounter) of the prostitute's right not to be rendered into property. Whether such result is desirable depends on the answer given to the question to what extent nonforced prostitutes are free from other kinds of coercion, so that their consent to be objectified is valid (cf Keren-Paz & Levenkron 2010:7-10,22-26, 28-30).

WHY ANALOGY IS APPROPRIATE

The suggestion to allow victims to sue clients in conversion is supported by the following considerations. First, it is the victim's lack of voice that makes the analogy with property appropriate. Arguably, the distinction between a strict liability for dealing with another's property and less strict liability for touching the person without her consent could be justified based on the fact that a person can voice her lack of consent to the touching, while the property (or its owner) cannot. If this is the rationale for the increased degree of protection to property, victims should be afforded the broader protection given to property owners since their predicament prevents them from voicing their lack of consent. It could be argued that this is true with respect to all people acting under duress by third parties. Indeed, extreme instances of duress by third parties might invalidate the claimant's consent in battery claims, and the basic distinction between the different

ramifications of different degrees of duress is a case at point (Friedmann 2003:81,91; Restatement (Second) Contracts § 175(2) (1981); Keren-Paz & Levenkron 2009:457-58). Perhaps less extreme forms of pressure would not be sufficient to overcome the reliance interest of the other party to the contract. However, the complete violation of victim's autonomy and the totality of the enslavement justify the analogy with property in this case, and not necessarily in other cases of serious duress.

Second, what makes the use of proprietary rules appropriate in the sexual enslavement context is not only the extent of the duress operated on the victim, but rather its effects as well. Admittedly, extreme forms of pressure exist in other contexts (although they are likely to be quite rare). However, in the context of (sexual) slavery, the effect of the duress is that the victim is being *treated* as (and rendered into) property. This is typically not true in other scenarios of extreme duress in which the pressure in manifested in entering into a contract or conferring a benefit on the defendant. While technically (and leaving aside the effects on a *non est factum* claim) the victim enters a contract with the client, the victim is rendered into property in two important ways. First, from the perspective of the traffickers, victims are being sold, bought and used as chattels. Second, in the context of commercial sex, the woman herself is "sold" (or rather let) to the client in exchange for money. Note, that the first observation might support extending the possibility to sue in conversion to all enslaved people, while the second, to all sex workers.[9] Be it as it may, the combined effect of the two observations is to make the analogy between a victim of sex-trafficking and property especially convincing.

Third, the adoption of such an analogy is appropriate, given the low social value of the sex-purchasing activity (Keren-Paz & Levenkron 2010:22-26). In the general commercial context, despite the important social interest in facilitating free commerce, priority was given to protecting entitlements to property. In the commercial sex context, society has much lower interest in facilitating free commerce of sex and protecting clients' reliance.[10] In addition, the victim's interest in not being rendered into property is

[9] The questions whether such extensions are desirable, and what are the ramifications of adopting such an approach are beyond the scope of this article.
[10] This consideration as well, might be applicable to all prostitutes.

more important than the typical owner's interest in preserving his dominion over the property.

Victims of trafficking are wronged by being denied both their right to bodily integrity (protected by torts of trespass to the person), and their humanity by being treated as property. In addition, the industry, from both traffickers and clients' perspective is benefit-oriented. The former treat victims as property out of a profit motive; both treat women's body as object for purpose of sexual gratification. Accordingly, victims should be able to sue based on trespass to person torts as well as trespass to goods and conversion.

IV. DOCTRINAL TRANSLATION

Once the victim is conceptualised (also) as property, the client can be conceived as committing conversion by temporary use, and possibly by taking possession. When the temporary use denies the owner's right (*Lancashire and Yorkshire Ry v MacNicholl* (1919):605), exercises dominion (*Hollins v Fowler* (1875):766,782,787,790,792), or destroys the good (*Roberts v McDougall* (1887); *Mitchell v Ealing LBC* (1979); *Toor v Bassi* (1999)) liability in conversion is established. The client's use of the prostitute clearly denies the victim's right not to be used as a sexual object; clients clearly exercise dominion over victims while purchasing sex; and the cumulative effect of sexual contact between clients and victims seriously affects victims' health (Keren-Paz & Levenkron 2009 445:n34).[11] Joyriding in a car is considered to be conversion (*Rolle Abr. Tit. Action Sur Case* p5; *Aitken v Richardson* (1967); cf *Schemmell v Pomeroy* (1989)). Clearly clients' "joyride" of the victim should be considered as conversion as well. In general, taking possession which is temporary and trivial, which neither harms the property nor accompanied by an intention to assert rights over the goods will not lead to liability in conversion. However, it is not necessary that the defendant asserts ownership over the goods, and as the joyriding cases demonstrate, use which is not trivial, will lead to liability.[12]

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[11] If, contrary to my view, the sexual contact would not be considered by courts as amounting to conversion, it should amount to trespass to goods.

[12] The approach of the Restatement (Second) of Torts (1965) § 222A Ill 24 is similar.

An additional way to commit conversion is by abusing possession by disposing of the goods (*Hollins [1875]; Motis Exports v Dampskibsselskabet AF* (2000)). Possibly, at least in some cases, by effectively returning the victim to the control or "custody" of the trafficker, the client is responsible for conversion.

The use of the conceptual apparatus of property law and proprietary remedies to human beings is not unprecedented. In the Ante Bellum American South, slaves were treated as property (ORREN 1991; STEINFELD 1991:88,90); litigation based on the duty of bailees to take care of the slaves entrusted to them by the owner was common, and in Tennessee, for example, "the master [was] at liberty to regard the wrongful act in a bailee as a conversion and sue in trover" (*Tallahassee v Macon* (1859)).

Strict liability for conversion has several exceptions, but none of them is applicable. Of the exceptions to this strict liability under the *nemo dat quod non habet* rule, the most relevant is the concept of estoppel, which is currently embodied, in England, in the proviso of Section 21(1) of the Sale of Goods Act 1979 "… unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell". This exception, however, is very narrow, and it is based on unconscionability or recklessness on the part of the claimant with respect to her absence of interest in the property. Mere negligence would not do.[13] Except for the most extreme circumstances, a victim who fails to communicate to a client her lack of free consent, could not be considered as negligent, and let alone reckless, or unconscionable, since the extreme pressure she operates under prevents her from communicating to the client her lack of consent (Keren-Paz & Levenkron 2009:455-62).

Prior to 1994 in England, (Sale of Goods (Amendment) Act 1994, Ch.32; §1) the common law doctrine of market overt allowed a buyer to acquire good title to stolen goods if they were purchased in good faith, without notice of any defect or want of title on the part of the seller, and sold in a market that is open, public, and legally constituted by grant, prescription, or statute (*Clayton v Leroy* (1911).[14] The doctrine has been

[13] See ROGERS 2006:772 (a plea of estoppel "is extremely difficult to establish"). See also § 11(1) of the Sale of Goods Act 1979 Ch. 54, which provides that contributory negligence is not a defence to a conversion claim.

[14] For the slightly differently constituted Israeli market overt doctrine, still in force, see § 34 of the Sales Act 5728-1968 (Isr).

explained as allowing the buyer to buy a warranty against the seller's lack of title at the cost of some presumable premium (Dagan 2002). In open markets sellers are repeat players so that the original owner is able to sue the seller and recover if her title is defeated. Similarly, the fact that the market is open and regulated decreases the chance that the goods are stolen. A buyer who refrains from buying in an open market takes the risk of being strictly liable towards the owner. One could argue, by analogy, that if prostitution would be regulated, clients who purchase sex from a regulated sex worker should not be liable to the sex worker, if she happened to be a victim. Clearly, such an argument is not open in England in which market overt was abolished and prostitution is not regulated. It should be doubted, however, whether market overt could ever apply, since it protects a buyer, rather than a user from liability in conversion. The client does not buy the victim (who remains owned by the trafficker), but rather uses her. In any event, I oppose legalisation of prostitution, since research shows that it fails to improve the well-being of prostitutes (Albert 2001; Bingham 1998; Levenkron 2007). Legalising prostitution is too high a price to pay for the speculative reduction of the number of trafficked victims. Women should not be further commodified by the creation of state-regulated market for sale of sex in order to shield clients who violated victims' rights from strict liability.

How should damages for conversion be computed in the trafficking context? In general, damages in conversion equate the market value of the chattel at the time of conversion. The crucial point is that the relevant market value is that of the victim prior to her enslavement. Since after the client's interference (and more generally after the enslavement is over) the victim is injured, damages should reflect the difference between the claimant's position prior to her enslavement and her post-enslavement position. This is consistent with courts' rulings in cases in which the subject-matter of the suit in conversion was damaged, but eventually remained at the claimant's hand. In these cases the defendant paid the difference between the property's value pre- and post- interference (*Tucker v Wright* (1826); *Solloway v McLaughlin (1938)*). Indeed, the House of Lords in *Kuwait Airways Co v Iraqi Airways Co* (2002):[68] clarified that damages in conversion should always be the true loss suffered by reason of the defendant's acts. In this sense,

the *practical*[15] effect of damages for conversion will be similar to that of damages for battery and false imprisonment. Both will compensate the victim for the harm caused to her from the violation of her rights. In addition, punitive damages are available in appropriate cases for both conversion (McGregor 2003: 1117-18) and battery and false imprisonment (*AT v Dulghieru* (2009)).

Kuwait Airways [2002]: [81]-[86] highlights another important aspect of damages in conversion: damages can be awarded even against defendant – a subsequent converter – who can show that but for his interference, the same damage would have been suffered by the claimant. This is an important practical advantage to victims of trafficking. The fact that the victim was enslaved prior to the encounter with the client-defendant and was further enslaved afterwards should not prevent her from suing successfully the client in conversion for the total difference between the victim's condition prior to her enslavement and her condition after the enslavement has ended. "By definition, each person in a series of conversions wrongfully excludes the owner from possession of his goods. This is the basis on which each is liable to the owner. That is the nature of the tort of conversion. The wrongful acts of a previous possessor do not therefore diminish the plaintiff's claim in respect of the wrongful acts of a later possessor". *Kuwait Airways* [2002]: [82].[16]

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[15] Some might object that a remedy which is based on the market value of the subject matter adds to the inferiority of conversion from symbolic perspective due to further commodifying the victim. The answers in part VI below are relevant to this challenge as well. In addition, market value is only a proxy of the measure of recovery which is the value of the goods (McGregor 2002:1073). Where no market exists (as is arguably the case with respect to each human's inalienable right not to be owned) other measures are being used, such as replacement value, and such alternative measures are both less problematic symbolically and closer to quantum of damages in personal injury and battery cases.

[16] This statement, however, was said in the context of the typical claim in conversion for the full value of the subject-matter converted. In the trafficking context, in addition to the existence of successive converters, the claim is for the difference between the value of the subject-matter – the victim's person – before and after the series of conversions. This, some might argue, can justify apportioning the contribution of each converter to the damage or injury he caused.

Space constraints prevent me from exploring in full an alternative measure of recovery – the full market value of a sex-slave in the industry, which can amount to several thousands dollars. (In *M* [2005]: [15], [17], [25], [34] the victim was sold among several

Some might view this result as unjust, but three reasons point to a contrary conclusion. First, to the extent that liability without but-for causation is unjust, the rule allowing for such recovery should be changed across the board. As long it as it exists, it would be morally repugnant to afford a stronger protection to unauthorised use of (real) chattels, than to unauthorised use of people who were treated like chattels. Second, contribution rules will allow the client found liable to seek contribution from all other clients he can identify and from the traffickers. The risk of inability to do so should lie with the client, rather than with the victim. Finally, a client's liability for all the losses involved in the enslavement could be justified on the ground that clients' indiscriminate demand for commercial sex is the cause of sex-trafficking. Without such demand there would be no trafficking for sexual purposes.

V. Doctrinal and Conceptual Difficulties

My suggestion might be opposed based on either doctrinal or conceptual grounds. According to the doctrinal challenge the weight of authority is against viewing forced prostitutes as property since there is no property in a corpse (*Williams v Williams* (1882)); since a person does not possess his body or any part of it (*R v. Bentham* (2005)); and since, till recently (*Yearworth v North Bristol NHS Trust* (2009)) there was no property in body parts in England (*Dobson v North Tyneside Health Authority* (1996)) and there is no such property in other jurisdictions (*Moore v Regents of California University* (1990)).[17] But these cases raise different issues than that involved in a claim by a forced prostitute so even if correct (a point which I do not explore here) they do not necessitate a denial of

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traffickers for amounts ranging between $3000 - $6500). Such measure is lower than the victim's loss from being enslaved (and in all likelihood from the loss caused to her from the single encounter with the client), is less conceptually sound and is more problematic symbolically (Cf. Keren-Paz 2009a:23-26). Nonetheless, some might think that a remedy in the range of several thousands dollars against an innocent client might better balance the interests of the victim and the client than an amount reflecting liability for the loss caused by the client or by the entire trafficking experience.

[17] Ownership of sperm for the purposes of bequest was recognised by the Californian Court of Appeal in *Hecht v. Superior Court of Los Angeles County* (1993).

the victim's right. Rights to corpse are usually asserted by a next of kin; therefore they do not raise the issue whether the law should afford a person with a proprietary right with respect to her own body. Moreover, denying a deceased (or her estate) a proprietary right in the corpse, does not involve the same difficulties involved in denying a living person a proprietary right in her body. The effects of denying such a right on one's autonomy, dignity and well being in the latter case are much more far-reaching. Finally, as clarified above, my claim falls short from accepting a general proprietary right of one over her body (an approach which might be objected to based on an anti commodification sentiment). Rather, it is limited to instances in which the individual was rendered into property by others. I will return to this point in the next part.

In *Bentham*, The defendant committed a robbery while having his hand inside his zipped-up jacket, forcing the material out so as to give the impression that he had a gun. The House of Lords reversed his conviction for possessing an imitation firearm during the course of a robbery. "One cannot possess something which is not separate and distinct from oneself (Lord Bingham [8]). "…no-one is to be regarded as the owner of his own limbs, … Equally, we may be sure, no-one is to be regarded as being in possession of his own limbs" (Lord Rodger [14]). Even in its context, the reasoning is unduly formalist, since clearly the purpose of the prohibition is to prevent the robber from falsely pretending to have a firearm. But even if for purposes of criminal law a restrictive statutory interpretation is justified and "Resort to metaphor is impermissible because metaphor is a literary device which draftsmen of criminal statutes do not employ" [8] no such similar constraint exists in developing civil liability at common law. The context and consequences of possession in criminal and private law are different, as well as the merits of recognising a right of self-ownership/possession in the different contexts (and let alone, a right not to be possessed by others). Therefore, the reasoning in *Bentham* has little relevance to the forced-prostitution context.

In *Yearworth*, the Court of Appeal ruled that the claimants (who had to undergo chemotherapy) owned the negligently destroyed sperm which was kept as a safeguard at a fertility unit. This allowed them to sue for psychiatric injury which allegedly followed, based on theories of negligence and bailment and notwithstanding the fact that the Human Fertilisation and Embryology Act 1990 curtailed the claimants' rights with

respect to the sperm. *Yearworth*, therefore, is a recent authority which suggests that in England, recognising a victim's right to sue a client in conversion fits with the increased recognition of proprietary interests in body parts.

The court referred in obiter [30] to the traditional common law principle:

> a living human body is incapable of being owned. An allied principle is that a person does not even "possess" his body or any or part of it… One consequence of the principles, albeit not recognised until the nineteenth century, is that, if our bodies cannot be our own property, it follows that they cannot be the property of other persons; and that therefore we cannot sell ourselves, or be sold, to others. Another consequence is that, if we do not own our bodies, we have no right to destroy them, i.e. to commit suicide; in this respect it was necessary for Parliament, by s.1 of the Suicide Act 1961, to legislate the necessary reform to the criminal law.

These statements do not stand in the way of recognising the victim's right to sue in conversion: To begin with, decriminalising suicide is an indication of the acceptability of the idea of self-ownership. More importantly, the court states the obvious that *ex-ante* we cannot be sold to others. Once this happened, however, there is nothing in the decision suggesting that ex-post self-ownership will be denied. On the contrary, the court's willingness to recognise ownership in sperm suggests that the same court might be willing to give victims of trafficking the right to sue clients in conversion. Both the ruling and the reasoning in *Yearworth* demonstrate sensitivity to context, careful examination of the merits of the case and a strong and healthy sense of practical justice and realist approach. The contexts of *Yearworth* and forced prostitution reveal important parallels. The claims are based on injury to the claimant and do not involve a voluntary attempt by the claimant to sell the object with respect to which a property right is asserted.

Unlike *Williams* and *Bentham*, and to a greater extent than *Yearworth*, *Moore* does raise analogues questions to the claim by forced prostitutes. In *Moore* allegedly the physician did not disclose to the patient that the cells taken over a long period of time from his body are used for a lucrative research project which culminated with patenting a cell line which produced big profits to the physicians and other related defendants. The Majority of the Californian Supreme Court held that while the claimant could have a valid cause of action for breach of fiduciary duty and duty to receive the patient's

informed consent, the claimant did not have a proprietary right in his body cells and therefore could not sue in conversion. Judges Broussard and Mosk filed strong dissenting opinions which would have recognised a right to sue in conversion. The similarity between forced prostitutes and *Moore* is that the bodily integrity of both claimants has been violated for profit-seeking motives. However, even if the majority view could be defended (and I doubt it), it does not follow that sex-slaves should be equally barred.

The majority reasoned that the social utility of biomedical research necessitates the protection of innocent third parties. To the majority, the protection afforded by conversion is unnecessary since the breach of fiduciary duty affords sufficient protection to patient's autonomy. Neither consideration applies in the context of forced prostitutes. The social utility of purchasing commercial sex is much lower than that of medical research; therefore it cannot serve as justification to trump the claimant's rights. Furthermore, the majority is concerned with the interests of innocent third parties. There is much to be said that clients – by ignoring the risk that they purchase sex from a forced prostitute – cannot be considered as innocent as researchers involved in medical research (cf Keren-Paz & Levenkron 2010). As Judge Broussard mentioned (*Moore* [1990]:158-59), the facts of the case are atypical, while forced prostitution is rampant (Keren-Paz & Levenkron 2010:30-32). This affects the extent to which third parties can truly be innocent. Moreover, the forced prostitute cannot base her claim on breach of fiduciary duty[18] (and there are doubts whether she could base her claim against arguably innocent clients in battery).

Three further distinctions between Moore and forced-prostitutes come to mind. First, the invasion of the bodily integrity and its effect on the claimant's dignity and autonomy are much more far-reaching in the context of prostitution. Moore, after all was not enslaved in order to provide the precious cells. This weighs in favour of extending more protection to victims by affording them with conversion claim. Second, removing the cells from Moore's body did not harm him in any way (and in fact probably did improve his health (*Moore* ([1990]:180). By contrast, the sexual contact by the client harms the victim in many ways. Unlike *Moore*, which is a profit-based litigation, the use

[18] At least according to common wisdom. For an argument that she can see Keren-Paz 2009b:23-27.

of conversion law in forced prostitution cases (with respect to clients) is harm-based. Preventing harm is an interest that should be better protected by the legal system than ensuring that the claimant would receive a profit. Third, Moore's contribution to the profits made at his expense was the result of moral luck and his claim was not supported by a labour-desert theory. This rendered his claim possibly weaker. While the victim's claim against clients is harm-based, her claims for any profit made at her expense are based on her (forced) labour.

Arguably, the statutory definition of property in the Torts (Interference with Goods Act) 1977 ("the Act") which refers specifically to "chattels personal other than things in action and money" is a further indication that this area of law does not embrace notions of people as property. Similarly, the House of Lords in *OBG v Allan* (2007) refused (by 3:2 majority) to extend conversion's protection to contractual rights. Seemingly then, it is insufficient for the victim to show that she has been rendered into property, since conversion protects the owner only against interference with chattels (and documents evidencing a debt).

At one level, there is no doubt that people are not, and should not, be treated as property by the law. This is a moot point. My argument is that given the fact that humans were treated like chattels, *they* should be afforded with the option to sue in conversion in order to vindicate their right not be rendered into property. My argument cannot be fairly evaluated if the critique severs the link between its two parts: viewing the victim as both the *de jure* ex-post owner of her body and as *de facto* property. No doubt, that in fact, the trafficker exercised dominion over the victim. But since, on the normative level, the victim is the one that should have had a right not to be rendered into property, we give her the right to sue with respect to all the instances in which she was so rendered. The Act, as indeed the modern common law, did not purport to exclude human beings from being considered as property since the reality of slavery did not cross the collective mind of the Parliament when the Act was enacted.[19] If at all, the Act can support the view that sex-slaves should be able to sue in conversion since in the relevant aspects, victims are akin to chattels rather than to things in action and money (victims are corporeal and not a

[19] For similar reasoning see Baroness Hale's dissent in *OBG* [1997]:[313]-[315].

currency). Likewise, the Act did not prevent the classification of the sperm in *Yearworth* as property.

Similarly, none of the substantive reasons mentioned by the majority in *OBG* [2007] to reject liability in conversion for interference with contractual rights is relevant in the sex-trafficking context. Lord Hoffman was concerned with the creation of strict liability for pure economic loss which traditionally requires at least negligence :[99]. But the interests of bodily integrity, sexual autonomy and dignity deserve and are routinely afforded protection from innocent violations. Lord Brown's objection at [321] could be understood as either focusing on the need to limit conversion to "taking of physical possession of property" (why?) or on the difficulty of identifying "real and ascertainable value" of the claimant's chose in action at the date it was interfered with by the defendant. Victims of trafficking, as documented above, are treated like chattels and possession in them is a crucial aspect of their enslavement and the interference with their rights. As for real and ascertainable value, the violation of the right not to be rendered into property leads to a real and significant loss, and as the previous discussion demonstrated this loss is as ascertainable as any unauthorised interference with chattels causing damage to the property.

These (somewhat formalistic) doctrinal quibbles are rooted at a conceptual critique according to which the venerable distinction between non/property-based interests cannot allow the classification of the victim's interest as proprietary, and should not be compromised in order to accommodate the needs of victims. I disagree. To begin with, the correct conceptualisation of victims of sex-trafficking is duality of subject and object. As human beings, they *should* be treated as humans. The reality of their victimization was that they *were* treated as property. Concepts are helpful as analytical tools which help explaining why certain policy considerations are relevant (or not) in a certain context. Affording victims with property-based remedies is conceptually justified, since it corresponds to an essential aspect of the violation of their rights: their treatment as property. No conceptual transgression is made by affording them the benefits of property law to remedy the violation involved in treating them as property.

At a deeper level, the elasticity or rigidly of concepts is the result of value-based decision. My approach is rooted in a legal realist and pragmatic tradition which gives

priority to the attainment of just results and the preservation of human rights and dignity, over formalist distinctions, conceptualist zealotry and fetishism with respect to principles and coherence (Keren-Paz 2007a:154). Legal rules are human creation whose aim should be to promote human flourishing and foster justice. Concepts are meant to serve jurists, not to control them (Cohen 1935), and it would be very unfortunate if in the twenty-first century the clanking chains of concepts would replace those of the forms of action in the path of justice.

VI. Symbolic Message and Poetic Justice

One should distinguish between two separate normative critiques of my suggestion; both are concerned with law's symbolism. The first (and more serious) critique is that allowing victims to sue in conversion is demeaning to victims (and perhaps to women in general) since the law conceives them as property. That objectification of humans is morally wrong is a common ground (Kant:1930:165; Nuasbaum 1995;[20] Radin 1987) and much ink was spelt by feminist thinkers to identify and condemn the objectification of women in general, and for sexual purposes in particular (Mackinnon 1987;174; Mackinnon 1989:124; Dworkin 1987:122-23). Seemingly, a legal response which conceives women as property is demeaning, insulting, unacceptable and pernicious. Moreover, it might be understood as the law's imprimatur to the objectification of victims and thus to the normalisation of the enslavement. Furthermore, this symbolic message that women are commodities might permeate and negatively affect women's status in society. This critique targets the prong of my argument which conceptualises the victim as property. I am unpersuaded by this critique, for similar reasons given as a response to the conceptual challenge. It will be disingenuous to deny victims advantageous remedy based on the argument that conceptualising victims also as property, would harm, demean, or be dangerous to victims, while the purpose and effect of this conceptualisation is to afford victims the better protection given by proprietary torts. To begin with, it will be the choice of each victim whether to pursue such a claim in court.

[20] While Nussbaum 1995:275 acknowledges the possibility of benign objectification in the sexual context, the required conditions are absent in the context of forced prostitution. These include lack of instrumentalization, symmetry, and context of mutual respect and rough social equality.

No one should be the victim's guardian with respect to the claim she should advance (Keren-Paz 2007a:154,184). Secondly, the fact that it is clear that the system conceptualises the victim as property only in order to afford her better protection, and that such conceptualisation is both advantageous to the victim and conforms with her preference, makes the social meaning of such conceptualisation to be beneficial to the victim (Keren-Paz 2007a:152-54). Third, the victim in not conceptualised merely as an object, but as a subject as well: as the owner of the right *not* to be treated as property. Viewing the victim as property is not made in a litigation between two traffickers over their respective rights to the victim, or between slave-owners in Ante Bellum US. Rather it is the victim who sues those who treated her as property. In this sense, accepting the claim has an empowering symbolic effect (other than the beneficial practical aspects). Once it is clear that the remedy protects the victim's right not be rendered into property, we should not fear that the next step would be a litigation between two traffickers interpleading about the right to the victim. Fourth, even if it were true that conceptualising the victim as property is indeed problematical from symbolic perspective to victims or women at large, still the practical advantage should tilt the scales towards accepting the claim, when it is submitted by the victim herself.

Most important of all, is the following observation. The objectification, denigration, and dehumanization of victims are the result of the way in which victims were treated in reality and *not* the result of conceptualising them as property for purposes of legal proceedings. These women *were* treated as property and refusing to afford them with appropriate remedy is not going to undo this horrible truism. Rather, it will just allow clients to benefit from this objectification, instead of assisting victims to recover from this reality (Keren-Paz 2009a:29-30). Strangely enough, it is the denial of such cause of action which might contribute to the objectification of victims, by denying victims a more effective remedy and hence decreasing deterrence, and by failing to appreciate the horrible nature of sexual enslavement. Battery and negligence happen on daily basis and they span from serious attacks to relatively innocuous violations of one's bodily integrity. Channelling victims' claims to battery or negligence might therefore banalise victims' unique and horrific experience. Affording victims exceptionally with proprietary causes of action with respect to their sexual abuse, highlights their unique experience as slaves.

This sends a desirable symbolic message that sexual enslavement did happen, that it is especially repugnant, and that it merits an exceptional response.

The second critique concerned with the law's symbolic message utters an anti commodification sentiment. This critique attacks the other prong in my suggestion: affording victims with proprietary rights. According to the critique there are interests which are inalienable and should not be subject to market mechanisms, logic or rhetoric. The interest in bodily integrity is such an inalienable interest, and therefore victims should not be allowed to sue in conversion for its violation. The argument was made in several contexts including slavery (Seboc 2003), sale of body parts, prostitution, adoption of babies, and surrogacy (Radin 1987). Margaret Radin presents a powerful and eloquent account of the pitfalls of universal commodification which represents an inferior conception of human flourishing and undermines personhood. And yet, Radin's powerful anticommodification argument should not oppose my suggestion. To begin with, given the imperfections of the nonideal world in which live, Radin supports merely incomplete commodification of prostitution, rather than market-inalienability (1987:1921-25). More importantly, the tenor of her argument in Market Inalienability (with few exceptions) is directed against an ex-ante consensual alienation, and does not target ex-post compensation for non-consensual infringement of inalienable right. Radin is correct in limiting her argument to consensual settings, since as we will see, the nonconsesual setting raises different concerns.

Yet others make the misconceived argument that allowing a proprietary-based remedy for violations of inalienable right commodifies and hence banalises the interest. Judge Arabian's concurring opinion in *Moore* [1990]:148 is typical of this line of argument:[21]

> Plaintiff has asked us to recognize and enforce a right to sell one's own body tissue *for profit*. He entreats us to regard the human vessel -- the single most venerated and protected subject in any civilized society -- as equal with the basest

[21] For the argument in the context of restitution for slavery see Seboc 2003. For a response which parallels the one I offer in the text see Dagan 2004:250-54. cf Keren-Paz 2009a:29-30.

> commercial commodity. He urges us to commingle the sacred with the profane. He asks much.

Such a concern totally misses the mark. "Defendants' position that plaintiff cannot own his tissue, but that they can, is fraught with irony." (*Moore* [1990]:166, J Mosk, dissenting citing the Court of Appeal). Cases of objectification (by slavery or by taking body parts) raise only a distributional question. The commodification has already occurred, the only question is whether we should allow the wrongdoer or the victim to keep the profits. Redistributing ex-post the profits from a past violation of an inalienable interest does not commodify such interest. If at all, by better deterring such a behaviour it is likely to decrease the incidence of such violations. But regardless of the deterrent effect of such a rule justice requires that the victim, rather than the wrongdoer, would be given a right to these profits.

True, there is an even more radical anticommodification argument. It opposes tort compensation for violation of bodily integrity since damages for pain and suffering "commodify our unique experience" and damages for injuries to relationship "commodify love". The jury "must simulate a market in sadomasochism"; tort law "transforms an involuntary past experience (injury) into future gain (damages), reflecting bourgeois notions of delayed gratification and an instrumental view of the self" (Abel 1985:803-806; cf Abel 2006). Admittedly, such view is incompatible with my suggestion. Note, however, that such an approach if taken seriously would (partially--Abel does not oppose any tort compensation for physical injury) deny victims compensation which is grounded in battery and negligence causes of action. At least as long as tort damages continue to be based on the principle of full compensation, forced prostitutes should not be excluded. Since Abel's argument targets tort damages in general, rather than proprietary responses, one could reject his radical anticommodification argument (based on grounds of either fit or justification) while rejecting *Moore*-like anticommodification arguments based on their failure to distinguish between voluntary transactions and forced violation of interests. To be sure, Abel does suggest that no compensation should be given to negligently-caused property loss. But his reason is distributive (Abel:1985:823). It would be most unbecoming to adopt Abel's opposition to compensating property damage, which is based

on egalitarian commitment of protecting the interests of the marginalised, in order to deny perhaps the most vulnerable group in society – sex-slaves – a better remedy.

Finally, Abel's suggestion to significantly curtail tort damages for bodily integrity could be questioned on pragmatic and principled grounds. On the pragmatic side, denial of damages based on their symbolic message might impede the well being of the victim, and this might seem to be harsh (a point conceded by Radin 1987:1877). On the principled level, damages for infringement of inalienable right could serve to vindicate the right, rather than to provide a substitution (Witzleb & Carroll 2009; Stevens 2007:59-62: Weinrib 1999:34; cf Keren-Paz 2007b:197-200). Moreover, especially in a capitalist society which values things according to their monetary value, it is crucial to put a high price tag on violations of inalienable rights in order to convey the importance accorded to the interest by society. A commitment to the importance of the interest without the backing of financial sanction might be deemed as hollow (cf Jaffe 1953:224; Radin 1993:61,73-74). Once damages are understood as serving vindication, rather than compensation, their social meaning changes, and they do not (necessarily) commodify the interest any longer.[22]

To conclude: One should distinguish between the symbolic effects of deciding that a given interest is alienable and of deciding to afford a given remedy for the infringement of inalienable interest. The problem with the former is that law's constituents who now sell - since the law permits such transaction - what should be inalienable will devalue the interest. This problem is irrelevant in the context of forced prostitution in which the sale and objectification of women remains prohibited. The potential risk of the latter–that law's constituents would think of women as property since the law conceptualises them as such–is unlikely to happen once it is understood that the conceptualisation only

[22] Tort damages might serve as deterrent. While the achievement of deterrence might be less crucial when liability is strict (since the behaviour which triggers liability should not necessarily be reprehensible) elsewhere (Keren-Paz & Levenkron 2009) I support strict liability of clients also on the ground that it is likely to reduce violations of victims' rights. See also n.3 above.

responds to illegal reality in which women were treated as property and that victims seek such conceptualisation in order to receive better protection. Such fear is also based on contested and somewhat implausible assumption about the potential of legal *reasoning* to mobilize views of the law's constituents.

In short, I argue that it is fair and that it serves poetic justice that the response to the ultimate objectification of victims would be to afford them the more generous protection given by proprietary torts. Note that this approach is both *advantageous* to victims and *fair*. It is advantageous since it might afford victims better protection than currently available under the law of battery. It is fair, since it does not objectify victims; rather the reality of trafficking does. The suggested solution merely allows victims to somewhat alleviate the consequences of this horrid objectification rather than letting clients and traffickers benefit from it. Finally, the suggested solution serves poetic justice since the ultimate response to the objectification of victims by clients should be to afford the former a proprietary-based claim against the latter. Clients who treat victims as property are met with the onerous burdens imposed by the common law on those who seriously interfere with the owner's dominion over her property.

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