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TRAFFICKING AND SEX WORK: A PROBLEMATIC CONFLATION

by

MELISSA DITMORE

A dissertation submitted to the Graduate Faculty in Sociology in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York

2002

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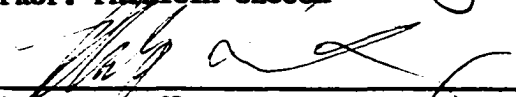
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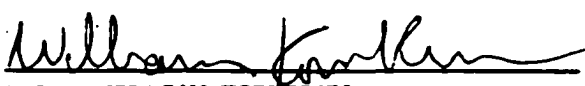
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Acknowledgements

I must thank the readers whose comments both improved the text and encouraged my work. These include Melynda Barnhart, Linda Benbow, Virge Carstens, Koren Gaines, Jean Halley, Angus McIntyre, Dina Pinsky, Michael Putnam, Randi Rosenblum, Belkis Suazo-Garcia, Betsy Wissinger and Alex Zorn. I am grateful to the Jewish Center for the Education of Women for their generous support while researching this topic, to the Durbar Mahila Samanwaya Committee and to Dr. Smarajit Jana for their cooperation, and to the Global Alliance Against Trafficking in Women for the access granted to their archives. I could never have gained access to United Nations meetings without Ann Jordan of the International Human Rights Law Group and Nelia Sancho of the Asian Women's Human Rights Council. Patricia Clough, William Kornblum and Barbara Katz-Rothman helped me every step of the way. Elizabeth Small at the Graduate Center of the City University of New York has been marvelously supportive to me throughout this work. Finally, I thank my family for their moral support throughout this effort.

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Chapter One: Introduction

One of the consequences of the current trend towards globalization has been an increased interest in legislating trafficking in persons both domestically and internationally. The year 2000 saw the passage of two significant pieces of new legislation addressing the issue of trafficking in persons. In October 2000, the United States passed the Trafficking Victims Protection Act, while in December of the same year, the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children was signed. The title of this second piece of legislation is revealing. Although the term "trafficking in persons" refers to men, women and children, and covers both internal and cross-border trafficking for migration and labor (Asia Watch 1993, 1997a, 1997b; Richard 2000), what captures the minds and imaginations of the media, the general public and policy makers remains the specter of women and children trafficked for purposes of sexual slavery (see, for one example of many, *The New York Times*, A1, January 11, 1998).

This narrow view of trafficking gives a distorted image of the problem. Evidence has shown that people trafficked are not necessarily or even usually involuntary or duped participants (Kempadoo and Doezema 1998, Lin 1998, Skrobanek et al 1997). Also, trafficked persons work in many industries, come in all genders and ages, and move from all parts of the world to all parts of the world. One of the inherent dangers in linking trafficking uniquely to sex work is that it can lead to extreme situations of abuse in other industries passing unnoticed or at least unaddressed.

This narrow view of trafficking reflects a historic conflation of trafficking and prostitution. A more nuanced understanding would distinguish trafficking – defined in some recently-enacted policies as essentially a modern form of slavery, and involving a broad spectrum of workers and industries – from sex work – by

which is meant uncoerced, paid sexual services that include prostitution and other sexual services such as phone sex. For such an understanding, there is a clear distinction to be made between sexual slavery – a form of trafficking – and uncoerced work in the sex industry.

The nuanced view has gained little ground in the media or, indeed, in policy debates, where trafficking and sex work are still likely to be sensationalized in half-titillating, half-horrifying stories of sexual slavery. Such stories fail to reflect the fact that most prostitutes are not slaves and that most trafficked persons are not prostitutes. The sensationalization of both trafficking and sex work is harmful because it reduces opportunities to address real instances of victimization of people in real situations of abuse. Resources, time and effort that might be used to help them are instead focused primarily or exclusively on more sensational issues. There is a clear need to formulate policy that is less viscerally-motivated and better able to recognize the real causes and effects of trafficking in persons.

In this dissertation, I study the conflation of trafficking with prostitution, emphasizing the ways in which a morality about prostitution is being transferred to legislation aimed at trafficking, and the way that the legislation thus produced in turn changes the legal treatment of prostitution. Sex law, I will argue, is often a front for a morality that contains rather than liberates women. What is presented in terms of morality is actually a specific political and ideological position, the net effect of which is typically to limit women's autonomy, in the name of concepts such as "family values."

Currently, prostitution is treated in three different ways – it may be legal, decriminalized, or prohibited. When trafficking and prostitution are conflated, new laws on trafficking are likely to encourage a hardening of the legal attitude towards prostitution, with a trend towards increased criminalization. Thus, poorly-

designed legislation on trafficking has the potential to do considerable harm. Examples of abuses arising from misguided policy are numerous. One modern example is the Romanian government's denial of exit visas to young women emigrating to work in Greece, Turkey and Hungary, due to fears these women will become prostitutes in other countries (Coomaraswamy 2000). This worry is not unfounded, as many of the women hoping to leave do indeed plan on working as prostitutes elsewhere. The intent of the law is clear: to prevent Romanian women from working as prostitutes abroad. Unfortunately, the actual effect of the law is to force those women determined to emigrate to do so clandestinely. They are thus obliged to seek agents to help them cross the border and find work abroad. Some of these agents may use this situation to their advantage, and the women migrating for work may end up in situations of slavery, debt bondage or worse.¹

Putting Trafficking and Prostitution in Context

This dissertation looks at the problematic merger between trafficking and prostitution laws in both its current forms and its historical context. I will focus on two pieces of legislation, the United States Trafficking Victims Protection Act and the United Nations Optional Protocol. I also analyze one non-legislative approach, the approach taken by the Durbar Mahila Samanwaya Committee, an organization of prostitutes in Calcutta. The current situation is explored through case studies examining a number of different approaches to the issue of trafficking. To take up these recent responses to trafficking and sex work, I must first develop the historical context.

I intend to extend historical research on protective legislation into the present situation of trafficking legislation and its international context. Because efforts to prohibit trafficking and sex work remain protective and often motivated

¹Conversations with Eszter Birven of the Solomon Foundation, June and October 2000.

by moral intent, I turn to feminist history to elucidate the outcomes of such policies. Feminist history shows that efforts to protect women have often restricted women both economically and culturally. (Baker 1964, Freeman 1990, Rubin 1984, Walkowitz 1980). Prescriptive aspects of legislation have often met with opposition from feminists (Chancer 1998, Kipnis 1999, Vance 1984) who have witnessed the use of regulations "protecting" women from themselves. The outstanding example of this is legislation about women's work at the end of the nineteenth century and early part of the twentieth in the United States. Protective labor legislation was a generic label for a host of state laws applicable only to women which restricted, among other things, the number of hours women could work (Baker 1964: 91-96, Freeman 1990). In protecting women by limiting their working hours, policy makers rendered it impossible for some working women to support their families.

Ironically, promotion of restrictive legislation has not been limited to conservatives: some contemporary feminists have also sometimes exhibited tendencies to encourage curbing women's freedom in the name of protection or "morality." I am referring particularly to the American sex debates of the 1970s and more recent efforts around the world. In an echo of turn-of-the-century US labor laws, Nepalese feminists, in an effort to suppress drunkenness and prostitution, successfully promoted legislation last year that prohibited women from working after nine p.m., with the predictable consequences of fewer working hours (and thereby lower wages) for women (Sharma 2001).

The sex debates

In the American sex debates of the 1970s, feminist treatment of sexuality came to appear polarized. Debates around sexuality include extreme factionalism with a great schism primarily between two viewpoints. In the 1970s we could have referred to radical (or cultural, or liberal) feminists and sex radicals. These

two positions echo a longer history in women's debates since the nineteenth century which has taken different forms regarding a variety of different emergent issues of sexuality, including birth control, hysteria about white slavery, pornography, violence against women, sexual liberation and lesbianism.

Today, increased interest in trafficking in persons has been accompanied by a growing focus on prostitution. Those who have devoted the most time to this issue again fall largely into two camps. One regards prostitution as a form of labor that should be treated as work rather than as vice. The other considers prostitution to be necessarily a form of slavery that therefore should be addressed as traffic in women. Feminists who do not see prostitution as necessarily being a human rights violation have been reductively labeled "anti-censorship" or "pro-sex", while those who do see sex work as inherently victimizing have been tagged with the equally reductive labels "pro-censorship" or "anti-sex" (Chancer 1998: 63).

The protectionist philosophy behind censorship and so-called anti-sex feminism is essentialist in nature. Essentialist views of the sexes include the theory that male power inherently suppresses women and that it is therefore necessary to constrain men's power over women by various means – including limiting male sexual access to women and censoring pornography. However, this view of inherent male power implies an essentially impoverished view of women which constrains women as well as men. One response to this protectionist and essentialist feminism is empowerment feminism, which posits that the way to improve women's lives is to give them more power and therefore more control over their own lives. This entails recognizing decisions that some protectionist feminists have earlier claimed were made with "false consciousness" or undetected coercion (Doezema 2001). Empowerment and essentialist feminists clash over issues surrounding trafficking including prostitution and pornography as well as sex work more generally.

Until recently, most feminists have not asked what might be regarded as the significant question with respect to sex work: how is this sizable population of women working in the sex industry, largely outsiders because of their work, affected by both legislation addressing sex work and by the divisions within feminism?¹ Instead, the stereotypical response of feminism to the sex industry, particularly on the part of feminists who favor censoring pornography,² is that women working in the sex industry do not understand and are not concerned with sexism (Chancer 1998, Ditmore forthcoming, Doezeema forthcoming). To make this assertion of women who have opted for what is simultaneously the most denigrated and the best paid work available to women devalues the experiences of women in the sex industry.

Some feminists, but especially protectionist feminists, have at times purposefully drowned out the voices of other feminists who do not hold the same views (Mitchell 2001, Weldon 2001), and feminism itself has lost out because of the suppression and exclusion of divergent views. But this situation is changing and needs to keep changing if feminism is to move beyond this schism.

In the context of censorship, much press has been given to pro-censorship activists and first amendment hardliners, and this has led to the impression that feminism offers two directly opposing views on the topic of pornography, but does not address other aspects of the sex industry. This is not the case - sex workers like Nina Hartley, Carol Leigh and many other less well-known sex workers are self-proclaimed feminists (Nagle 1997). These women's work

¹ To her credit, Drusilla Cornell brought this up in her 2001 talk at the Graduate Center of the City University of New York.

² Feminists who favor the suppression of the sex industry for victimizing women, such as Andrea Dworkin and Catherine MacKinnon, have been referred to as "anti-sex" or "pro-censorship" (Chancer 1998: 63.) "Victim feminism" is another label used for feminists who see women as perennial victims (*San Diego Tribune* 1997, Wolf 1993). The term victim feminism shows up on women's studies syllabi: <http://hubcap.clemson.edu/~sparks/ws/99FWSSY.PDF>.

developed in response to the 1970s sex debates, to which we will return in greater detail later.

Before addressing the issue of sex work in relation to trafficking in persons, it is worth briefly reviewing the historical relationship between feminism and sexuality. In the 1970s, a strong anti-sexual stance achieved "temporary hegemony" (Rubin 1984: 301). This stance is exemplified by Abby Rockefeller (1973), who argued that lesbianism "muddles what is the real issue for women by making it appear that women really like sex as much as men - that they just don't like sex *with men*" (italics in the original, quoted in Echols 1984: 55). Rockefeller insinuates that women do not or should not enjoy sexuality of any sort. This anti-sex agenda is essentially conservative in nature, making for a more radical chastity, as it were. Alice Echols (1984) writes:

[Cultural feminism] has become a vehicle to establish the proper parameters of lesbian sexuality so as to diminish the possibility that lesbians will defect to "male-identified" sexual expressions.... Perhaps anti-pornography feminists prefer to foreclose on sexuality rather than to explore it and to risk discovering the disjuncture between their desires and their politics. (65)

A particular preoccupation for adherents to this school of thought has been pornography. Ellen Willis (1983) states that anti-porn activists have presented pornography as a feminist issue divorced from other political issues "rooted in conservative moral assumptions that are all the more dangerous for being unacknowledged." (461)

Proponents of this kind of view have gone to rhetorical extremes. For example, Andrea Dworkin and Catherine MacKinnon maintain not merely that pornography is related to an increase in violence against women but that pornography itself is violence. The moral authority of the anti-pornography program rests on a claim to speak for all women, as if women have only one voice rather than many. To achieve this, Dworkin (1981) writes "she in the millions" to

demonstrate that the woman in this quote is actually (as opposed to merely representative of) universal woman. This claim to speak for universal woman makes no allowance for differing opinions or, crucially, different experiences. Here she elaborates her ideas on the effects of sex in philosophy and literature (in response to Sartre's *Anti-semitic and Jew*):

... her sexual degradation is at the heart of the sadism against all women that is now promoted in mainstream sexual propaganda: she in the millions, she naked in the millions, she utterly at the mercy of - in the millions, she to whom anything could be and was done - in the millions, she for whom there will never be any justice or revenge - in the millions. It is her existence that has defined contemporary mass sexuality, given it its distinctly and unabashedly mass-sadistic character. (145)

Some feminist writing is not so much anti-sex as anti-male. For these theorists, all visions of male sexuality are entirely woman-hating and violent. Echols (1984) notes that this view of men is so thoroughly disheartening "that one wonders what would be accomplished by the restriction or elimination of pornography" (59). Willis (1983) continues "[the anti-porn campaign] has begun to attract women whose perspective on other matters is in no way feminist.... Despite the insistence of [Women Against Pornography] organizers that they support sexual freedom, their line appeals to the anti-sexual emotions that feed the backlash. Whether they know it or not, they are doing the good cops' dirty work" (467).

Pro-censorship feminists such as Kathleen Barry have moved on from pornography to address the broader scope of the sex industry with a protectionist stance focused on prostitution. These writers eschew the term "sex work" which they consider as legitimizing the sex industry. Lillian Robinson (Bishop and Robinson 1998) writes "[Kathleen] Barry considers the notion of "sex work" part of the conspiracy to normalize prostitution and thereby to prostitute sexuality as a whole" (243). Barry (1995) furthers this argument with her ideas that sexual activities formerly distinguished women for hire from women at home, and that

the inclusion of some sex acts earlier reserved for prostitutes in contemporary marital and dating relationships elides this distinction (70-71). This way of thinking is effectively prescriptive, declaring what is acceptable and appropriate behavior for women.

The main alternative school of feminist thought vis-à-vis sexuality opposes this protectionist view, noting that its prescriptive stance tends to greatly compromise women's autonomy, and that its adherents have found strange bedfellows in the conservative right (Chancer 1998, Rubin 1984, Walkowitz 1983). Their work focuses not on protecting women,¹ but on removing the emphasis on victimhood which characterizes the protectionist philosophy and on empowering women to make their own choices, especially concerning bodily issues – which include sexuality and sex work.

The idea that sex work may be considered in the context of empowerment issues is a relatively new one. Historically, feminism has largely expressed more conservative views on the subject. Dubois and Gordon (1984) describe feminist views on prostitution up to the first half of the twentieth century, views which are now strongly resisted by empowerment feminists:

First, they exaggerated its magnitude. They did so because their definition of prostitute included virtually all women who engaged in casual sex, whether or not they were paid. Second, feminists consistently exaggerated the coerciveness of prostitution. In their eagerness to identify the social structural forces encouraging prostitution, they denied the prostitute any role other than that of passive victim. They insisted that the women involved were sexual innocents, women who "fell" into illicit sex. They assumed that prostitution was so degraded that no woman could freely choose it, not even with the relative degree of freedom with which she could choose to be a wife or a wage earner. (33)

Yet this description of feminist attitudes to prostitution 'at home' during the first half of the twentieth century could equally well apply to some more recent studies

¹These include but are not limited to academics Chancer, Kipnis and Vance as well as more sex-oriented writers such as Susie Bright.

of the developing world (Doezema 2001). For example, the Coalition Against Trafficking in Women followed the trend set by earlier workers when it came to presenting figures on prostitution during the 1995 Beijing Conference on Women: their estimate of the number of prostitutes in Thailand was 2.8 million – the equivalent of the entire urban female population between the ages of 15 and 29 (Lin 1998: 8). The exaggeration described by Dubois and Gordon continues, as does the willingness to work only with sex workers who confirm their analysis (Weldon 2001).

Not all sex workers are willing to do so. To the writings of 'pro-sex' feminists, there has also recently been added a spate of publications by sex workers (Kempadoo and Doezema 1998, Kempadoo 1999, Nagle 1997). Such writings are not necessarily well received by the opposing camp.

This new literature would not be possible without a change in the mainstream view of sex work as something to be overtly discussed, a sea change in itself. Most earlier academic work addressed sex work as deviance or a social problem to be combated (Hoigard and Finstad (1986), Maher 1996, Maher and Daly 1996, Odzer 1994, Prus and Irini 1980, Sandford 1975, Winick 1971); now sex work is a bona fide area of inquiry, not entirely free from a certain amount of moralizing, but certainly less rife with it than in the past. Academic inquiries include those by sociologists such as Wendy Chapkis (1997), who examines the issues of sex work as emotional labor, and by academic sex workers writing about their work, such as Jo Doezema (2001) on the white slavery narratives; Carol Queen (1997) with her more general explorations of sexuality; and L.S. Sloan's typology of exotic dancers (1997). More general feminist inquiries include feminist debates about sex work, not unlike the earlier "pornography wars" and featuring many of the same arguments for or against sexual material and work (Bell 1987). Additionally, pragmatic public health programs working with and for

sex workers have given rise to a different literature, often focusing on harm reduction for sex workers (i.e. *AIDSLink* and *HealthLink* published by the Global Health Council, an international association of health organizations). Empowerment figures strongly in these discussions (Wolffers 2000).¹

There are also sex workers who work closely with their advocates from human rights and public health organizations. These workers not only write about their work but also lobby for the inclusion of sex workers' rights in legislation affecting them. These include Paolo Longo and Cheryl Overs, the authors of *Making Sex Work Safe*; Nury Pernia of Venezuela who lobbied the United Nations Working Group on Contemporary Forms of Slavery; and the Network of Sex Work Projects representatives to the International AIDS Conferences including Shane Petzer of South Africa and Australia's Sue Metzenrath. Their contributions have been crucial in the formulation of trafficking legislation, which takes different views of sex work in different contexts.

It is imperative to note that sex workers' rights advocates do not present an idealized picture of sex work. They acknowledge that sex work is hard work, that it is often performed in less-than-ideal conditions,² and that there are grave abuses within the sex industry. The primary goal of advocates of sex workers' rights is to improve conditions and to eliminate abuse. In the view of most advocates, legal recognition of the industry is a necessary condition for any such improvement. By contrast, abolitionists seek to make the sex industry more illegal than it already is, and to prosecute and punish men involved as clients and otherwise (Goldstein 2001, *Maxim* 2000, Nieves 1999, Vitzthum 2000, Wagner 1998).

¹This will be discussed at length in chapter five, about the efforts of Calcutta's prostitutes to empower themselves.

² See Sprinkle, and Leigh, both in Nagle (1997), editor. See also "Addressing Sex Work as Labor," presented by the author to the U. N. Working Group on Contemporary Forms of Slavery during the June 1999 NGO Consultation. The text of this talk is available at <http://www.swimw.org>.

There have been numerous conferences and meetings held to debate and discuss these disparate views on prostitution and trafficking in persons, and to construct a legal document supportable by each of these factions. These include a June 1999 Consultation with the United Nations Working Group on Contemporary Forms of Slavery (Ditmore forthcoming) and a panel presentation at the United Nations Beijing Plus Five Conference in New York, June 2000, both convened and moderated by the International Movement Against Discrimination and Racism (IMADR - a Japanese non-governmental organization) and Anti-Slavery International. Students at New York University Law School held another such event in March 2001. Each of these events included panels of presenters from various organizations representing the different schools of thought followed by a question and answer period.

Speakers in these forums are often determined by whom the organizers favor. For example, at the NYU event, sex worker activist Jo Weldon was removed from a panel at the request of Janice Raymond, director of the prohibitionist Coalition Against Trafficking in Women. Raymond cited Weldon's "experiential advantage"¹ in her request to disinvite Weldon (Weldon 2001), a rare case of an academic being requested not to speak because she knew too much about a subject.²

Sex workers' rights advocates have pointed out that abolitionists often work for legislation that may limit women's autonomy with protectionist measures (such as the new Nepalese law prohibiting women working at night previously mentioned (Sharma 2001)). The consequences of such legislation can be wide-ranging and unexpected. There have even been instances of legislation promoted by pro-censorship feminists being used against their own work. For

¹Weldon was trafficked into door-to-door sales. She is now a sex worker.

²Other discrediting and silencing tactics are discussed in the section on the United Nations' Optional Protocol.

example, Canadian anti-pornography legislation, drafted with the aid of Catherine MacKinnon and Andrea Dworkin, was ultimately used to keep Dworkin's own writing out of Canada on grounds of obscenity (Smith 1995). The same law was used to close gay and lesbian-oriented bookshops throughout Canada, thereby promoting an essentially sexually and socially conservative agenda in the name of feminism (Chancer 1998: 64). In this, it followed the same pattern as earlier obscenity legislation, which tended to be similarly used. The anti-obscenity Comstock Act, for example, was used to prevent and prosecute distribution of birth control information in the United States after 1873 (Tone 2001: 5).

Feminists have had enormous impact on the laws addressing trafficking in persons, through lobbying by both sides: those who favor the suppression and abolition of sex work and those who would see sex work addressed as labor. Despite these apparently irreconcilable differences, the two sides share a good deal of common ground and common interests – both sides seek to eliminate abuse, for instance, albeit by different methods. However, even the identification and promotion of common ground has proven problematic. Feminism has not yet moved beyond this division and this helps neither prostitutes nor trafficked people.

In order to understand how prostitutes and trafficked people may best be helped by legislation, it is necessary to look closely at the laws and their application. In this dissertation, I propose to use legal analysis to determine what exactly the laws addressing trafficking mean and thereafter to try to determine what would most help trafficked persons and sex workers alike.

Why legal analysis?

Legal analysis refers to the process of deciphering the law, considering the ways in which the law is likely to be applied and enforced, and evaluating the possible outcomes of such application. This includes reading the relevant statutes

and researching previous rulings and case law. It is then possible to arrive at a likely interpretation of the law based on knowledge of how similar statutes and cases have been interpreted. In other words, the first step is to examine the issue and laws applying to it; the second, to determine how it is likely to be applied using past cases or if there is no case law, by extrapolating from similar cases. Once the rule (or norm, in more sociological terms) has been determined, apply it to the legal case. This is the basis for legal arguments.¹

The overt motivation for legal policy is to prevent and punish inexcusable actions, but what is cast as inexcusable simultaneously reflects attitudes about morality and society. In the cases studied in this dissertation, the attitudes reflected have to do with sex, immigration and socially-acceptable behavior. Definitions of what constitutes ‘acceptable’ behavior are not neutral: standards for behavior and areas of concern are clearly determined by gender, and this may sometimes be overtly stated – as in the title of the Optional Protocol – or couched in legal language and definitions pertaining to sex – as in the Trafficking Victims Protection Act. An analysis of the legislation thus reveals the attitudes and assumptions at work behind it. Legal analysis is important for understanding the relationship between what laws were meant to affect and the real effects of their enactment, by exploring who and what laws actually affect - what is their purpose and how they can be used.

Analysis of law and its formation is revealing in other ways as well. The discourses and events that lead to the creation of laws reveal the moral and socio-political climate surrounding these issues. Enforcement methods may also reveal political and social climates or goals that are independent of and separate from the professed issues involved (i.e. J. Edgar Hoover's use of the Mann Act against

¹Consultation with Melynda Barnhart of the Southern Arizona Peoples' Law Center, and Virginia Carstens, immigration defense attorney with the Florence Immigrant and Refugee Rights Project, January 23, 2002.

communist sympathizers). For all these reasons, I examine what led up to anti-trafficking laws and attempt to identify the discourse driving the language itself, the actual legislative texts, and, with respect to laws enacted before 2000 in the US and U. K., the actual applications and uses that have been made of anti-trafficking law.

Close legal analysis is a subfield of social science in its own right, with its own journals such as *Law and Society*. The topics addressed in anti-trafficking legislation - organized crime, slavery, illegal immigration and prostitution - are more often addressed as social problems. But the context for such problems is in part shaped by the applicable legislation, so the problems cannot be fully understood without looking at the relevant laws. In turn, these laws cannot be understood without examining the social context – the events and discourses – that gave rise to the legislation.

Legislation is part of social structure and reflects both social rules and ideas about how to respond to breaches of these rules. Penal law is one response to such breaches, and dictates what to punish and how certain acts should be punished. Moral ideas of what is punishable may be assumed to be culturally given, yet penal codes vary even in places that are considered culturally alike. What constitutes a crime and what is deemed to be criminal may vary widely dependent on location. The variation in the age of sexual consent between states within the United States is a good example of this. Legal attitudes towards prostitution worldwide constitute another area where wide variations are possible. In the US, for example, prostitution is largely prohibited both by law (with the exception of rural Nevada) and social mores. In most of the rest of the world, including parts of Europe, Asia and Australia, it is legal, albeit not socially condoned.

The law is not always a reliable reflection of a moral consensus. As we have seen, laws may vary considerably even within one country, or between countries that one might consider to be culturally similar. In other respects as well, laws may appear to depart surprisingly from what one might expect based on an idea of consensus morality. Most people would take it for granted that the severity of a penalty reflects the severity of a crime, and that crimes against people are more serious than crimes against property. Yet in many countries, crimes against property frequently carry longer sentences upon conviction than crimes against people. The law may reflect issues of public concern and act as a mirror of consensus morality, but it is sometimes a distorted one.

In the U. S., the picture is further complicated by the division between federal and state jurisdiction, which leads to different prohibitions and penalties in different regions. State and federal law in the US reflect different concerns. States may legislate on any topic, with health, welfare, and morality reserved to the States as general police power. This separation of state and federal law allows state laws to determine issues such as age of consent, age of marriage, and zoning regulations, for example. All restrictive laws about sex and marriage - such as laws addressing sodomy, cohabitation, adultery and incest - as well as drug law and all criminal law fall under the jurisdiction of the states. Federal law is not intended to address questions of morality, but may address interstate commerce, foreign relations and trade, immigration, war, taxation, and other powers enumerated in the federal constitution. Attempts to impose a moral agenda at the federal level must do so in disguise. This is why the Mann Act, a federal law reflecting a moral agenda, was constructed (or disguised) as a law on interstate commerce and immigration.¹

¹This boundary on federal law-making power is set by the United States Supreme Court, and so has changed several times over the last century. Federal law also addresses, among other things, immigration, federal crimes, taxation, national budget allocation, the military, government land,

The tendency towards hidden agendas persists today. The Trafficking Victims Protection Act was presented as addressing questions of human rights: in fact, as the chapter examining the law will show, it is not a human rights document but a law and immigration enforcement document. For this reason, it is important to look behind the anti-trafficking laws to see what prompted specific legislation, to look not only at the meaning of the law in terms of its specific language - the explicit meaning of the law – but also the happenings and discourse that helped to shape the legislation – the situations that gave rise to the law and thus reveal its implicit intent and focus.

Laws are often formulated in response to specific events and to public perceptions, in particular public fears. To understand a piece of legislation, it is necessary to examine the fears – the evils that the legislation is intended to combat – and to assess the extent to which such fears are rational or well-founded. In the case of anti-trafficking legislation, we can ask what the phantasms of enormous numbers of foreign prostitutes (such as France's *femmes de l'est*, women of the East, described in Montaucieux 2001) or girl-snatchers (for William Stead, Josephine Butler and their colleagues with the Abolitionist Federation) represent, and the extent to which these images accurately reflect reality. Passing legislation during a panic or in reaction to a spectacular event, at a point when feelings run high and the tenor is "something must be done!" tends not to make for good law. Rather than a coherent whole, resulting legal systems often tend to resemble a patchwork crazy-quilt of *ad hoc* measures. This explains, among other things, some of the incoherencies that may exist in penalties, as proponents of legislation urge for the strongest possible measures to combat whichever crime currently occupies the public's attention.

war, international treaties and native American lands. Consultation with Melynda Barnhart of the Southern Arizona Peoples' Law Center and Virginia Carstens, immigration defense attorney with the Florence Immigrants and Refugee Rights Project, September 2001.

A key issue in a legal analysis is to look closely at the actual enforcement of laws in order to identify, among other things, how different populations are treated within legal systems. The language in which a law is written may not be discriminatory; its enforcement very often is. To give an example, most legal codes assume trafficked persons to be victims of crime. Trafficked prostitutes, however, are treated differently and may be denied assistance under the new US law and other current laws. In a case in the US Territory of the Northern Marianas Islands, trafficked sweatshop workers were able to sue their employers for their wages while trafficked prostitutes could not, on the grounds that prostitution is not legally recognized work. Pheterson (1996) reminds us that both voluntary and forced or trafficked prostitutes are likely to suffer under current legal systems. Laws reinforcing a particular morality vis-à-vis prostitution may take precedence over nominally human rights-oriented law such as trafficking law.

The creation of laws may reflect the values of powerful members of society or of public demand. Public reaction is especially important regarding laws made in the aftermath of tragic events, such as the murder of Megan Kanka, for whom "Megan's law"¹ was named, or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA-PATRIOT) of 2001 passed after the tragedy of September 11, 2001.² Laws that are the product of volatile and simplistic, even hysterical, responses to real and difficult issues, tend to offer ample possibilities for subsequent misenforcement or abuse. This is well demonstrated by the Mann Act, passed at the height of hysteria about drugged and kidnapped women but ironically used

¹"Megan's Law" was named for Megan Kanka, a child who was raped and killed by an adult. This law requires "sex offenders" in New Jersey to register their addresses with local police. Similar requirements exist in the United Kingdom. However, where this information is made public, this enables vigilantism and, as it has no time limit, it brands someone a "sex offender" for life.

²USA-PATRIOT creates extreme provisions for government surveillance of electronic communications, including passing all email through a centralized system. As the internet is able to move quickly because it lacks such centralization, this could interfere with internet functioning.

most frequently against unvictimized women, often traveling with their boyfriends or fiancés (Langum 1994, Grittner 1990).

The United States Trafficking Victims Protection Act and the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children, were both passed with enormous work done by well-intentioned feminist activists. Their work reflects a moral consciousness (even as two very different approaches were used, each reflects a moral order) addressing popular issues. There is a grave danger, however, that they may prove to resemble other earlier laws, inasmuch as the eagerness to 'resolve' contemporary issues of concern may have led to insufficient consideration of the likely patterns of enforcement and the potential for abuse.

Any individual law is part of a larger system of law, so legal analysis of a single law must also consider other, related laws and issues. As previously remarked, there has long been a tendency to conflate prostitution with trafficking. In light of this, any legal analysis of trafficking law must also consider the various ways prostitution is legislated. A short summation¹ of legal specifics about prostitution is thus in order.

Prostitution Policy

The primary focus of this work is trafficking. Real-world associations between trafficking and prostitution and ideological agendas that tend to wrongly conflate the two, however, mean that an understanding of prostitution policy is a prerequisite for a proper interpretation of trafficking law. But laws on prostitution are often surprisingly little known or poorly understood. Even those most affected by prostitution law are not necessarily informed about different policies. At a public discussion in a New York feminist bookstore, prostitute-turned-writer Tracy Quan observed that

¹A more detailed exploration of prostitution laws can be found in Ditmore (forthcoming).

"An astonishing number of sex workers don't know what the laws [around prostitution] are in the region or municipality where they work. They don't bother to find out what they are and sometimes they base it on hearsay. Of course for a sex worker it tends to be more important than for other kinds of workers. Probably most people in the bookstore don't know the zoning laws where they are, but for sex workers it is even more important, in a quasi-legal situation where police may come around asking questions. Even literate sex workers don't read the laws."¹

Quan's remarks reflect the fact that the legal definition of prostitution varies by jurisdiction. Statutes in some places specify exactly what physical contact is necessary, while others offer more vague definitions. Within the U.S., definitions of prostitution may even vary county by county. Worldwide, prostitution legislation may show even greater variation. Nonetheless, there are three general ways to address prostitution and each of these possibilities must be reflected in the local trafficking laws.

The three approaches to legislating prostitution are, first, decriminalization, or the removal of prostitution from the criminal codes; second, legalization, which is often accompanied by regulations such as mandatory health examinations, a lack of confidentiality of health records, and restricted mobility; and third, prohibition, which bans prostitution outright.

Decriminalizing prostitution removes it from the criminal code, enabling sex work to be treated in the same way as other businesses. Decriminalization would allow sex businesses to be regulated much like other, similar businesses, putting independent workers essentially on a par with therapists, writers or others who may work alone and from home, and making larger operations subject to applicable laws such as zoning regulations. Decriminalized sex work would also be subject to occupational safety and health standards. This is the system

¹Forum on decriminalizing prostitution, Bluestockings bookstore. New York, January 24, 2002.

recommended by most prostitutes' rights advocates. Decriminalization is in effect in parts of Australia and Europe.

Legalization of prostitution is a gray zone, in which some prostitution, usually indoors, is permitted but subject to being regulated in ways that other businesses are not. This regulation is not necessarily beneficial for anyone involved. For example, legal prostitutes in the state of Nevada are subject to monthly health tests for sexually transmitted disease. This at first seems reasonable until it becomes clear that these tests are aimed not to protect the worker but to protect clients from disease. There is a grave potential danger that such regulations might promote a false sense of security and even encourage some clients to attempt to neglect basic precautions such as condom use. They also reflect a double standard: health professionals such as nurses and doctors are not subject to similar health exams, despite working with blood and other bodily fluids. In other professions, loss of privacy related to personal health records would be recognized for what it is – a serious invasion of privacy. Moreover, regulations may impose restrictions on workers that would be intolerable in other occupations. Legal brothel workers are not necessarily free to come and go from their jobs but some must stay for three-week shifts, with mobility dependent on the discretion of management. However, despite the restrictions and drawbacks, some people find working in legalized and heavily regulated situations to be preferable to working where prostitution is prohibited.

Prohibition of prostitution is found in the majority of the United States, China, and many strict religious states including Saudi Arabia. This means that every business aspect of prostitution - prostitution itself, management of prostitution, soliciting sex as a client or a prostitute - is a criminal act. The prostitutes who are most frequently arrested are the most visible - those who work on the street. The illegal nature of their work makes it difficult or impossible for

street prostitutes to report crimes against them, even violent crimes (Ditmore 2001). Experience has shown that attempts to eradicate prostitution by making it illegal consistently fail. Prohibition is often justified in terms of 'protecting' women from prostitution, but the effect is often the opposite. Where prostitution is illegal, working conditions for prostitutes are likely to be vastly more dangerous, and the risks of abuse or disease are greatly increased.

As an alternative, prohibition activities may focus on clients rather than prostitutes. In this case, it is the activities of the clients that are criminalized. The division is usually made along gender lines, so that men may be arrested as clients, while female prostitutes are not guilty of any crime. This is very unusual, but it is the policy in Sweden. In other parts of the world, the policy of punishing clients takes the form of "John School," in which men who plead guilty to soliciting prostitutes pay a fine and attend a class in which they are berated by former prostitutes (Goldstein 2001, *Maxim* 2000, Nieves 1999, Vitzthum 2000, Wagner 1998). "John Schools" currently operate in parts of the United States and the United Kingdom.

Of these three general approaches to legislating prostitution, the assumption that prostitution equals trafficking will lead to increased prohibition of prostitution. Prohibition tends to greatly increase the risks associated with the practice of prostitution, so a harder attitude toward prostitution will help neither trafficked persons nor prostitutes. In the worst case, both may find themselves charged under either trafficking or prostitution laws (Wijers and Lin 1997, Pheterson 1996).

Distinguishing prostitution from trafficking

When presenting work addressing the sex industry, I have frequently been asked to address trafficking in women (or, on occasion, trafficking in persons more generally). This reflects the popular association of trafficking with

prostitution. Such an association is misleading. Research on trafficking and on the sex industry has convincingly shown the need to address the sex industry as a form of work (Bindman with Doezema 1997, Lin 1998). Moreover, trafficking is not specific to the sex industry but occurs in a wide variety of industries (Richard 2000, Human Rights Watch 2000, Asia Watch 1997b). The amalgamation of trafficking and prostitution in itself is fascinating, and hard to dislodge. However many men are trafficked into construction and agriculture, the indelible image that remains in the popular imagination is that of women and girls trafficked into prostitution.

As I was frequently asked to speak about trafficking, I began by distinguishing trafficking from sex work. To make this distinction requires us to conceive prostitution differently, and one way to do this would be to think of prostitution and all sex work as a form of labor.

Slippery terms

The clearest way to distinguish between trafficking and prostitution is by legal definition, even though this does not always (or perhaps not even frequently) reflect popular conceptions of these phenomena. Human traffic has always meant slavery. The terms "white slavery" and "traffic in women", however became synonymous with prostitution (forced or not) in popular usage. At the same time, these terms remained very ill-defined. Just as "regular coffee" means something different in various regions of the United States, "traffic in women" could mean different things, ranging from situations involving outright force or bodily coercion through economic coercion all the way to independent and voluntary prostitution. Individual interpretation may vary wildly; legal interpretations may not reflect popular understanding, but they do codify acceptable behavior, in the sense of defining the actions that are severe enough to be punishable by "society" as a whole (rather than simply by family or other social institutions).

Trafficking and prostitution may have coalesced etymologically, socially and politically, but some distinctions are now beginning to be made, as seen in some of the new policies addressed later in this work. A number of contrasts can be sketched. For instance, *traffic* typically refers to transport for commerce, a definition that allows us to exclude general immorality (which was sometimes confusingly – to a modern eye – included under the heading of ‘prostitution’) while potentially including commercial sex. *Traffic in persons* is often defined as a modern form of slavery that involves the transport of persons specifically for the purpose of forced labor. It is thus distinct from *smuggling*, where only the transport aspect is involved, independent of any question of labor. *Sexual slavery* is a form of trafficking in persons, and constitutes the stereotypical motivation for efforts aimed at repression of trafficking in persons (and, to many people, the canonical form of trafficking). In the past, the term *white slavery* was sometimes used as a near-synonym for sexual slavery – a synonym if one is prepared to limit one’s concern, as the users of the term did, to a single sector of the population. Sexual slavery is contrasted with *sex work*, which crucially (or debatably, for some people) covers uncoerced and remunerated sexual services, including but not limited to prostitution, stripping or pornography.

In order to address the way policy often conflates trafficking with prostitution and to keep in mind other approaches to sex work, I want to propose two definitions which distinguish the two and spell out the finer points of these phenomena. The use and choice of definitions is problematic in every study, but trafficking and prostitution are additionally complex because the legal definitions used have been hampered by imprecise language and an ideologically-motivated intention to include more than the specific act one might imagine to be trafficking or prostitution. The definitions I propose are useful for their precision but they do not necessarily reflect historical usage. In fact, historically, these terms have often

been used – even in legal contexts – without the provision of any clear definition. The consequences of such imprecise use demonstrate the need for precise and unambiguous definitions in this area.

For trafficking, I offer the definition of trafficking used by the Foundation for Women, a Bangkok-based non-governmental organization that addresses trafficking in persons. This definition classes under the heading of 'trafficking':

All acts involved in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt bondage, deception or other forms of coercion (Skrobanek et al 1997: 111).

The second definition, of sex work, is the one recommended by the Network of Sex Work Projects. The definition was created with sex workers and is used by sex workers' organizations. It is:

Negotiation and performance of sexual services for remuneration

- i. with or without intervention by a third party¹
- ii. where those services are advertised or generally recognized as available from a specific location
- iii. where the price of services reflects the pressures of supply and demand.

In this definition, "negotiation" implies the rejection of specific clients or acts on an individual basis.² Indiscriminate acceptance by the worker of all proposed transactions is not presumed -- such acceptance would indicate the presence of coercion (Bindman with Doezema 1997).

I use these definitions to clarify the differences between trafficking and sex work. Without such a distinction, the inclusion of all commercial sexual transactions under the heading of trafficking deems all sex workers as victims, when the majority of such transactions are actually consensual and should be thus recognized. These definitions reflect current (Richard 2000, Human Rights Watch 2000, United Nations Optional Protocol, TVPA) rather than historical use of the term trafficking.

¹"Third parties" refers to any managers, madams, pimps, business owners and colleagues making referrals.

²This stipulates the right to decline a client or activity.

Sex work is a new term that includes overt sexual commerce for remuneration. It is thus distinct from dating or the activities of "charity girls" (Peiss 1983) described later. Sex work is a purposefully ambiguous term which is intended to encompass all forms of remunerated sexual activity, including stripping, pornography, professional sadomasochism and prostitution. Where I focus on one sort of sex work, I will use more specific terms. For example, by prostitution I mean direct physical sexual services such as intercourse, for remuneration. This may not necessarily reflect legal usage, as this tends to vary from place to place. There are legal instances where prostitution would include all sex work, while in New York City, for example, stripping and professional sadomasochism are not deemed prostitution. For these reasons, I will include a summary of the legal and legislative context of each location involved in the case studies presented.

The law generally claims to be impartial, but it is interesting to note that legal definitions are often arbiters of morality, especially concerning sex. Sex laws that reflect morality include definitions of incest, age of consent, prostitution and its varying interpretations (i.e. whether stripping is considered prostitution, something that varies county by county in the US), and, more subtly, marriage. Even while the law professes to be impartial and logical, rational above all else, it exerts a determining influence, even determinative power, particularly regarding morality. The following explorations of what policies addressing prostitution and trafficking in persons actually mean, legally and socially, is intended to demonstrate this aspect of legislated morality.

Methodology

In *Trafficking in Persons and Prostitution: A Problematic Conflation*, I use multiple methods. These include critical reading of legal and historical records,

case studies of real-world projects, and participant observation of the process of creating legislation.

Critical reading

The aim of this project is to address policy pertaining to trafficking. I approach this using an historical perspective, comparing the white slavery scare of the early part of the 20th century and subsequent policy, including the 1907 Immigration Act, the Mann Act of 1910 and the 1949 United Nations Convention Against Trafficking in Women and Children to the present. I analyze the texts and the cases that led to these acts as they appear in historical accounts, news accounts and U. N. records. These laws are too lengthy to reproduce in their entirety here; therefore, summations and excerpts are presented throughout.

Trafficking hysteria combines fears about immigration with the desire to protect women and children from sexual exploitation. The Mann Act and the 1907 Immigration Act mirror today's trafficking legislation and concurrent anti-immigration legislation such as Proposition 187 in California. In addition to these examples from older law, I analyze current law, specifically domestic and international laws passed in the fall of 2000 to address trafficking in persons, namely the US Trafficking Victims Protection Act and the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children. In the case of current laws, my legal content analysis focuses on actual stipulations and the potential use of the laws. In the case of these laws, it is too early to see their actual application, in part because they are also now subject to other processes such as the Department of Justice determining regulations for their use. However, legal analysis can be used to envision the outcomes of cases using these laws, and so I have applied this method with these untried laws. Even before use, however, the power of this legislation can have global effects: the US is now

presenting other nations with a model trafficking bill that has already been translated into 13 languages.

Case studies

To answer questions about the way policy is made and enforced, it is important both to observe policy in the making and to understand the enforcement of these policies. Therefore, this project sought both to observe how past policy has been enforced (and the effects of that enforcement) and to gather information about the nature and process of the formation of new policies. To this end I use specific examples of cases from around the world.¹ These cases include men, women and children in a variety of situations including sweatshops and factories, brothels and vending. These examples were chosen because they demonstrate different aspects of recent enforcement of trafficking laws, applied to different industries and for different people. Cases include the recent sweatshop and brothel case in the United States Territory of the Northern Marianas Islands, deaf Mexican vendors in New York City, and the anti-trafficking efforts of the Durbar Mahila Samanwaya Committee (DMSC), a grassroots sex workers' organization founded in Calcutta with impetus from the World Health Organization. The recent US Territory of the Northern Marianas Islands case involves parallel cases concerning women and men in sweatshops and women in brothels, brought to the US territory from Asia by the same traffickers.

These cases are used as examples throughout the text. However, the example of the Durbar Mahila Samanwaya Committee was expanded to a full chapter, presenting a more detailed examination of their approach as it proved to be the most innovative and effective response to trafficking that I had studied. My initial intention had been to research a single case involving this organization.

¹I thank Bangkok's Global Alliance Against Trafficking in Women for allowing me access to their extensive case files.

When I understood it to be an example of a larger approach to trafficking into the red light districts, I felt that a more comprehensive treatment would be appropriate, particularly because it offers an alternative to and a contrast with the legislative efforts discussed in detail elsewhere.

Participant observation

My earlier research on prostitution led to my involvement with organizations including the Foundation for Research on Sexually Transmitted Diseases (FROSTD), an outreach project for street prostitutes; the Network of Sex Work Projects (NSWP) and presentations at various conferences, including the 1997 International Conference on Prostitution. In April 1998, I spoke at the "Beyond Mumbai" conference on trafficking in persons in Washington, D.C. about the nuances between trafficking and prostitution. At this conference, I met Ann Jordan, a lawyer with the International Human Rights Law Group (IHR LG) who directs their anti-trafficking program. This was my first contact with the United Nations recognized non-governmental organization that would enable my participation in lobbying efforts, communicating with legislators and government representatives at the U. N. and the US Congress.

The IHR LG was instrumental in founding the Human Rights Caucus, an umbrella group for many organizations with similar views on trafficking. I attended Crimes Commission meetings and consultations concerning trafficking with legislators and the Department of Justice with the Human Rights Caucus. This enabled me to compare earlier bills addressing trafficking in persons with the final version passed in October 2000. At the international level, I was able to follow the formation of the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children (including the continuous debate about the definition of trafficking). All of this allowed a picture of policy in the making, and offered an opportunity to get at the specific concerns driving the discourse.

In the interest of full disclosure, I must state that I am not an unbiased observer of this process - I have very strong feelings about the issue. Indeed, anyone who has spent much time on any issue generally does develop an opinion on it. I attended meetings as a lobbyist – a participant, not merely an observer. My earlier work with sex workers and the opinions that have been informed by my previous research made it possible for me to attend meetings as a lobbyist addressing trafficking. I would not have been afforded access to United Nations proceedings, nor meetings with Department of Justice lawyers and policymakers, nor had the extensive phone conversations I was able to have with Congressional aides without organizational affiliations with the International Human Rights Law Group, the Asian Women's Human Rights Council, the Network of Sex Work Projects and the Human Rights Caucus. Without their cooperation, it would have been impossible for me to undertake this work. My participation as a lobbyist made me an insider addressing trafficking policy, which is the only way to be close enough to an issue to research it using the method of participant observation.

Lobbyists and interest groups do not, of course, determine policy directly or create legislation themselves. Rather, they work to inform and influence lawmakers responsible for shaping policy or legislation. In the case of the United Nations Crimes Commission meetings were attended by national delegations representing their governments, as well as non-governmental organizations, and intergovernmental organizations. National delegates debate the text of documents under discussion, usually with instructions from their governments.

Non-governmental organizations (NGOs) often focus on specific causes and choose which meetings to attend based on these interests. This is the case with the organizations that I represented, the Asian Women's Human Rights Council and the International Human Rights Law Group. Both groups are

members of the Human Rights Caucus. NGOs sometimes form blocs like the Human Rights Caucus. NGO representatives speak with governmental representatives in order to influence them. Other NGOs in attendance included Human Rights Watch, the Coalition Against Trafficking in Women, Anti-slavery International, the International Abolitionist Federation and Soroptimist International.

NGOs are not the only organizations represented. Intergovernmental organizations were also present, including Interpol (international police) and the International Organization on Migration. Representatives of other bodies within the U. N., such as Mary Robinson, the U. N. High Commissioner on Human Rights and did Radhika Coomaraswamy, the U. N. Special Rapporteur on Violence Against Women also addressed these meetings. In some cases, the positions taken by these representatives aligned with those supported by particular NGOs. Coomaraswamy and Robinson, for instance, are both advocates of the stance promoted by the Human Rights Caucus.

Domestically, I attended meetings with the Department of Justice (DOJ) about proposed trafficking legislation and what the DOJ would recommend to Congress to include in trafficking legislation. The DOJ has investigated trafficking cases involving many different industries and conducts training for US police forces and other nations' police about many issues, including trafficking in persons.

The Human Rights Caucus also lobbied United States lawmakers, delegating tasks to members including making calls to specific Congressional representatives. We reported back to each other after reaching offices and discussing issues with congressional aides, sometimes arranging meetings with aides to discuss our concerns regarding proposed legislation. I spoke most

frequently with Strom Thurmond's aides, while other members were in frequent contact with other representatives' offices. This is standard lobbying procedure.

Interviews

I interviewed members of Calcutta's Durbar Mahila Samanwaya Committee, also known as the Sonagatchi Project, about their response to trafficking law enforcement affecting prostitutes in Calcutta in January and February 2000. These interviews with key informants focused on the ways in which trafficking law is used against legal prostitutes in Calcutta's twelve red light districts and what strategies have proven effective in addressing both trafficking in persons and the problem of legal harassment of sex workers. These key informants included the current and former directors of the project and sex worker coordinators of the anti-trafficking efforts. I also interviewed working prostitutes and a madam, and had more informal conversation with four project researchers, one of whom is a former prostitute. Interviews with the directors and researchers were conducted in English; interviews with prostitutes were in Bengali, with translators. I would like to note my indebtedness to the translators for their help with these interviews.

My initial contact with the Sonagatchi Project, which is renowned within public health circles for its success in organizing health clinics and literacy programs for prostitutes in Calcutta, was a 1997 presentation by the founding director, Dr. Smarajit Jana, in Washington, D.C. Later, I met the DMSC's 15 person delegation at the 1998 International Conference on AIDS in Geneva, Switzerland, which I attended as a member of the Network of Sex Work Projects. I have since maintained contact with the DMSC via the NSWP and electronically, and was able to arrange my visit and interviews in advance.

I interviewed Dr Jana, whose initial efforts in the red light districts were backed by the World Health Organization, at his new office in Dhaka,

Bangladesh. The current director of the Sonagatchi Project was interviewed in the office of the Project, which is affiliated with Calcutta's School of Public Health. I interviewed three prostitutes and their madam in their house, and one woman working independently on the street. I also interviewed three women involved in the anti-trafficking program and learned more about the organization from a former prostitute who now works for the DMSC and from her husband, both of whom attended the Geneva conference. My contact with the project constituted a two-way exchange. Local researchers with the project were interested in the overlap of our work and the prostitutes were very interested to hear about working conditions in the United States.

My interviewees had a great deal to say and answered my questions eagerly, overrunning my interview protocol and volunteering information about which I would not have known to ask. My informants were so forthcoming on the topics I expressed interest in that I learned far more about their efforts than I would have had I stuck to the prepared protocol and not let them tell me all they wanted. It was after these interviews that I decided to include a full chapter about their anti-trafficking efforts (themselves only one part of a much larger project that involves health clinics, literacy programs and a credit union), rather than merely including a single trafficking case involving the DMSC as an example, as I had originally intended.

Overview

The body of this dissertation is divided into four main parts. I begin by reviewing the history of trafficking laws, and of the "moral panics" that motivated them, demonstrating that this link between legislation and moral crusades is a long-standing phenomenon. The next two sections concern examples of anti-trafficking legislation, with my analyses of domestic and international laws made in the fall of 2000. The chapter covering the United States Trafficking Victims

Protection Act displays this morality in the legal construction and language of the law. The following chapter, covering the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children shows how the morality is at work during the process of creating international law. In the fourth and final section, I give a description of an alternative approach to trafficking, represented by the initiatives of the Durbar Mahila Samanwaya Committee of Calcutta, India, with their prostitute-led anti-trafficking project.

Historical background: White slavery scares, scandalous news coverage, and hysterical policy

History provides many examples of efforts to protect women, not limited to legislation, that have actually limited women's actions and opportunities. Regulation of women's sexuality has often ostensibly been motivated by health concerns or a desire to protect women and children. These possibly well-intentioned aims frequently mask an underlying agenda to regulate morality, and even a certain prurience on the part of those who propose them. Moreover, while the intention of such acts may be protective, they are seldom empowering - they typically disregard women's rights and act to restrict rather than extend the options available to them.

Among the laws that have been used as instruments for the social control of sexuality are laws designed to combat "white slavery." The power of such laws as instruments of social control came in part from the absence of clear definitions of the phenomena that they treat - white slavery, immoral acts or prostitution. White slavery initially referred to seduction (synonymous at the time with rape: Connolly 1980) and prostitution but was used against moral laxity. White slavery and "immoral acts" conflated and undefined, resulting in overly broad use based not on law but on the interpretation of these terms by law enforcement officials. Commercial sex and prostitution were ill-defined at best - sometimes encompassing sex in ways that we would consider "dating" rather than an overt commercial exchange. The definition or lack thereof in legislation of prostitution, focusing on "immoral acts" and circumstantial evidence as opposed to crimes committed reflects general anxiety about sexuality rather than about prostitution specifically.

Today's anti-trafficking initiatives echo earlier attempts to address "white slavery:" the same tactics, the same motivations and the same policies, not to

mention the same conflation and similar problems with definitions, make their appearance, with an agenda aimed at the regulation of morality and sexuality hidden beneath a veneer of social concern. Anti-trafficking movements are marked by some of the same features as the social reformers of the Victorian and Progressive Eras a century before - a tendency to hyperbole and over-dramatization, and a need to distinguish between "good women and children" - deserving of protection - and "bad women" - deserving anything they get. In order to better understand latter-day efforts to legislate sexual morality in the name of human interests, this chapter presents a history of some of the white slavery panics as well as the legislation that addressed white slavery, traffic in women and prostitution.

This chapter will analyze a number of different laws, including the US 1882 Chinese Exclusion Act, United States immigration acts from the early 20th century, the 1949 United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (1949 Convention), the United States Mann Act of 1910 (Mann Act), and Victorian Britain's Contagious Diseases Act (CDA) of 1880. In particular, the discussion of the latter two acts will consider why the CDA was repealed, while the Mann Act remained intact until 1986.

Why examine these specific laws?

The laws under consideration include laws on trafficking, immigration and prostitution. There are good reasons to consider these in tandem.

One is that activists addressing prostitution also concerned themselves with traffic in women and girls. This is particularly true of the English Victorian reformers William Stead and Josephine Butler, so their story is included here.¹

¹More recent efforts to address trafficking echo this, with prostitutes' rights advocates and others who favor the abolition of prostitution active in lobbying legislators with suggestions for anti-trafficking legislation.

These acts, especially the Mann Act, give the historical background of the changing interpretation of prostitution, as commercial sex was made illegal in the United States during the early twentieth century.

Another reason to address these categories of laws together is how they affect other issues. Some immigration policy is overtly concerned with prostitution. Trafficking policy additionally affects migration with its stipulations about who can enter and stay in the US. The Chinese Exclusion Act may have promoted trafficking in Chinese women, because Chinese women were unable to legally enter the US. The Mann Act is most known for its interstate aspect, but it also addressed recent immigrants. Additionally, the Immigration Acts of 1903, 1907 and 1910 stipulated the deportation of aliens who are prostitutes. Therefore, the Chinese Exclusion Act, Immigration Acts from 1903, 1907, and 1910 will be discussed, as well as the Mann Act of 1910, the 1949 Convention to Prevent, Suppress and Punish Trafficking in Women and Children for the Purposes of Prostitution and Sexual Exploitation (hereafter 1949 Convention), as well as prominent cases in their enforcement. Each of the acts named above provide the legal and political context in which to examine current efforts. These specific legal and political instruments are analyzed because they illustrate the continuing effectiveness of efforts to regulate morality in the guise of women's issues.

Protectionist legislative efforts in Britain and America

Britain's Contagious Diseases Acts (1880) intended to curb the spread of disease but the social context of the time was similar to that behind the Mann Act. Social reformer Josephine Butler worked to eradicate both prostitution and "white slavery." America's Mann Act (1910), also known as The White Slave Traffic Act, was motivated by the fear that large numbers of young, white girls were being stolen and forced into sexual servitude. There is no evidence to suggest that this was in fact the case, but both acts had enormous social impact. Both

effectively restricted the free movement of women. In Britain, a woman not in the company of a respectable man risked arrest and physical examination. In the United States, women's travel was effectively limited, especially between 1915 and 1932, when women who traveled across state lines with or to meet a man were prosecuted for conspiring to violate the Mann Act (Langum 1994: 10). The CDA was ultimately repealed; the Mann Act remains a sacred cow to imagined propriety in the United States, but was amended in 1986 and its application strongly reduced. The following sections explore the history of these acts and their enforcement, with a view to the ways that they attempted to exert social control and restraint of women. The selective enforcement of the Mann Act in both its original and revised forms is also analyzed, as an illustration of the way laws may be selectively enforced to yield results different from their original, ostensible intention.

Britain's Contagious Diseases Act

Britain's Contagious Diseases Act (CDA) was passed in 1880, producing an enormous response from both supporters and detractors. The act dealt primarily with prostitution which, then as now, was not illegal in Britain. The Act aimed to regulate prostitution through the use of police and health checks. Women suspected of prostitution could be stopped by the police and taken for an internal physical examination for venereal disease. Most did not display evidence of disease, but those who did were incarcerated in a lock-up hospital until they no longer displayed symptoms (Walkowitz, 1980). For supporters of the Act, health checks were a protective measure necessary for healthy cities; to opponents, they were a violation of women's physical sovereignty and "instrumental rape."

The popular response differed. Women's groups led by Josephine Butler rallied against the CDA. Their objections were not to the impact of the Act on women, but to the way that it seemed to legitimize prostitution. They argued that

prostitution was a relic of a sexual double standard and should be eradicated rather than regulated. Butler began her reform work with prostitutes in Liverpool in the 1860s, and her attitude towards prostitutes can best be described as maternalistic. She regarded them not as her equals, but as "lambs to the slaughter" (Walkowitz 1992: 88). In the 1870s, she published melodramatic propaganda based on her charges' lives (Walkowitz 1992). She herself was appalled by prostitution, describing prostitutes as "fallen" women, and was unable to fathom those among them who welcomed the CDA, saying (Pearson 1972: 65) that "they walked in silks" and were arrogant rather than ashamed of their occupation. There is little doubt that without her efforts, the CDA might not have been repealed.

The CDA was directed at prostitution in general, but its opponents, particularly Josephine Butler, also led the outcry against white slavery. Activists such as Butler were responding to the widespread (albeit largely unfounded) fear that young British girls were being duped into travelling to continental Europe and held captive in regulated brothels. There were indeed British women working in the continental brothels, but they were not the innocents portrayed by activists but overwhelmingly women who went there of their own accord (Walkowitz 1980). Notwithstanding, Butler, with the director of the Salvation Army, turned to William Stead, editor of *The Pall Mall Gazette*, for help publicizing their cause. Stead's four-part tabloid series, "The Maiden Tribute of Modern Babylon," published in 1885, was the result (Walkowitz 1980).

Stead's salacious story

Stead's "Maiden Tribute" was composed of lurid accounts of young girls in brothels in London and abroad. The sensationalism of the series foreshadowed the style of late twentieth-century reporting of trafficking in persons. It seems that even when we know history, we are destined to repeat it. It exhibited the usual double standard of sensationalist reporting, titillating readers and offering a

virtual guide to London's red-light districts while simultaneously demanding action on behalf of young, "defiled" girls (Walkowitz 1992). No sources were cited, but Stead used disguises - false moustaches and affected accents - while visiting brothels to look for young girls (Pearson 1972, Connolly 1980).

Crusaders like Stead and Butler developed a reputation for making statements without evidence and for wild exaggeration (Pearson 1972; Walkowitz 1980, 1992) which were very damaging to their credibility in the aftermath of this series.

Stead described a trade in young British girls both in London and on the Continent. The girls were reported to be either sold by their families or kidnapped and spirited away by madams or their agents. He described their being held against their will, chloroformed, physically examined to assure their virginity, and then raped by the highest bidder. His description of "The Minotaur," a London businessman who spent his evenings deflowering three young girls nightly in the brothels, and the concomitant descriptions of procuresses and midwives who would verify virginity led to public outrage and action.

Later episodes in this series included reports from Belgium of young English girls held captive in continental brothels. His investigative efforts culminated in his purchase of a young girl, to demonstrate the ease of such actions. To prove the practical possibility of such traffic, Stead arranged for a young girl to be purchased from her family, physically examined and then taken away to France. His contact with Josephine Butler led him to employ Rebecca Jarrett, a former prostitute Butler had met in her reform efforts. Jarrett became his contact and agent in this attempt. She had difficulty securing a child but eventually purchased "Lily" from her mother for five pounds. This installment of "Maiden Tribute" described Lily's drunken parents, their dirty and violent home, and her physical examination under chloroform. The article aroused extreme

public response, including parliamentary discussion and protests against male profligacy with many women (Walkowitz 1992).

Lily was actually Eliza Armstrong, whose parents recognized her from her description in Stead's column. They were outraged and sought redress in court. Mrs. Armstrong declared that she had understood that Eliza was to enter domestic service in England, and Mr. Armstrong went to France to retrieve Eliza. A court case followed, which was closely reported by the London papers. The focus of the case was whether Eliza should be restored to her parents, or whether Jarrett had made clear to Mrs. Armstrong that Eliza would become a prostitute, in which case Mrs. Armstrong would be judged to be an unfit mother. It will never be known what exactly passed between Jarrett and Mrs. Armstrong.

In the end, the girl was returned to her parents, and Stead was disgraced (Walkowitz 1992: 115-117). Jarrett and Stead were both convicted for the purchase of a child "slave" and served time, Jarrett six months and Stead three months. Stead's attitude towards Jarrett, whom he saw as a sacrifice to a greater cause, led to a falling-out with Josephine Butler, who was appalled at his disregard for Jarrett.

Stead's lack of concern for Jarrett reflected the way that stolen children took priority in the public mind over the real plight of working-class women - such as Jarrett - who constituted the overwhelming majority of prostitutes. In the Victorian mind, working-class women were expected to adopt occupations deemed socially appropriate for them (which did not include prostitution). Those who insisted on transgressing might be dealt with in various ways. Other women typically responded by deeming prostitutes to be "victims" and thus denying their autonomy, a way to punish them for catering to men's baser instincts. Punishment of prostitutes by men took the form of violence and harassment on the street by vigilantes. The 1888 Jack the Ripper murders were met with male street patrols

that - in the name of protecting women - harassed any women found outside their homes in the evenings (Walkowitz 1983). Like "protective" legislation, grass-roots efforts aimed to "protect" women (in this case, through vigilantism), restrict rather than protect.

The CDA was suspended in 1883 and ultimately repealed (at least in part) in 1886 by the Criminal Law Amendment Bill. With repeal came the raising of the age of consent for girls from 13 to 16, and the criminalization of consensual adult homosexual acts (Walkowitz 1992), the laws used most famously against Oscar Wilde. The Bill thus bundled concern for the well being and protection of girls and young women together with regulations designed to punish sexual acts considered unacceptable by legislators. The association thus reflects a larger concern with sexuality in general, especially sex involving what might be described as "non-traditional" pairings, including both homosexuals and prostitutes. A veneer of concern concealed a specific social and sexual agenda.

American Immigration Acts

While Victorian British concerns with white slavery focused on the removal of innocent British girls to other nations, American concerns in the early twentieth century focused on the immigration of white slavers and immoral women to the United States. The context for the Immigration Acts was a growing wave of immigration to the US, as well as a change in the ethnic background of the immigrants. Earlier waves had been predominantly northern Europeans, especially Norwegians, Germans and Irish. Now established, these groups clamored loudly against the newer turn-of-the-century immigrants, largely Italians and Eastern European Jews.

The concern with white slavery during the late nineteenth and early twentieth centuries included fears about changing morality and changes in immigration. It is not accidental that white slavery hysteria escalated during a

period of increased immigration. To this day, the ethnic cast assigned to supposed white slavers in urban myths closely reflects changing patterns of immigration (Connolly 1980, Donovan 2001). Grittner cites the stereotypes of Chinese white slavers in the 1890s (47). In the following decades, racist fears portrayed white slavers as Jewish (Donovan 2001); the current focus is on organized criminals from eastern Europe and Asia. Ironically, historical evidence (Connolly 1980) shows that the new immigrants were less likely to be involved in prostitution than native-born women. "Loose morals" may have been more of an American than an immigrant characteristic.

Immigrants from Europe, unlike those entering from the Pacific, arrived through Castle Clinton in downtown Manhattan and later through Ellis Island. Before 1875, the date of the first of many restrictive immigration laws, immigration personnel administered open immigration (Ting 1995), rather different from the current border enforcement function of the Immigration and Naturalization Service. The first act to limit immigration was passed in 1875, and prohibited the entry of criminals and prostitutes (Ting 1995).¹ Stereotypes of the Chinese as criminals and prostitutes justified not allowing Chinese people into the country even before the Chinese Exclusion Act of 1882, the second act to limit immigration to the United States (Ting 1995). Race was a greater issue for those entering from the Pacific than from Europe, specifically for the Chinese but also for other Asians.

Chinese Immigration²

Peter Kwong (1997) describes the kidnapping of a quarter of a million "coolies" or indentured servants and slaves, mostly men, from China into the United States between the 1840s and the 1870s, as black slavery declined and

¹As prostitution was not a crime, it had to be mentioned separately.

²I thank Virginia Carstens, immigration lawyer with the Florence Immigrant and Refugee Rights Project, for her help with researching this section.

another source of cheap labor was sought (42-43). Ironically, this real traffic in persons garnered less interest than the exaggerated "white slave trade" and the reaction to it was not motivated by humanitarian concerns. A racist and nativist platform promoted by whites, some of whom were themselves immigrants, encouraged the restriction and ultimate end of Asian immigration. Restricting Asian immigration began with the Chinese Labor Exclusion Act of 1882 and culminated in the 1924 Oriental Exclusion Act. These acts reflect a larger racism seen also in the labor movement and popular preconceptions of the time including stereotypes of Chinese white slavers.

The Chinese Labor Exclusion Act of 1882 eliminated the option for Chinese in the US to become naturalized citizens (Kwong 1997: 142) and forced Chinese would-be migrants to enter the US illegally, often by land from Mexico (Kwong 1997: 76). This policy was intended to prevent permanent settling by Chinese men in the US. Stereotypes of the Chinese at the time were those of criminals and prostitutes (Ting 1995) rather than today's "model minority." Seagraves (1994: 139) writes that of the several thousand Chinese women in San Francisco in 1870, "[l]ess than one hundred were respected members of the community." Low numbers of Chinese women in the US limited the possibilities of marrying and having children. However, a man who claimed citizenship (made possible for many by the destruction of birth records in San Francisco's 1906 earthquake) could return to China and bring his children to the US from China, who were then citizens. The "slots" for these "paper children," as they were called, were frequently sold until new immigration policies eliminated this system in 1965 (Kwong 1997: 93-95).

These restrictions on women were lessened in the 1940s, when veterans were allowed to bring brides from China, but only 100 women were allowed to enter as wives each year (Ting 1995). It was not until the civil rights movement of

the 1960s that all immigration laws specific to colored minorities, including Asians, were repealed (Kwong 1997: 13). Like newer policies that restrict women's movement (and which will be discussed later), this policy did not entirely eliminate the entry of Chinese women to the US. Anne Seagraves (1991) uses florid prose to describe the misery of Chinese "white slaves," meaning forced prostitutes, in the early west and quotes a *San Francisco Chronicle* article from 1932 (147). *The Chronicle* describes outright slavery. The piece profiles Donaldina Cameron, who made her name rescuing enslaved Chinese prostitutes in San Francisco until 1939. It seems the Chinese Exclusion Act offered no improvement for Chinese women in the American west, and may have encouraged traffic in Chinese women because they could not enter the country legally.¹

Luc Sante's (1991) colorful history of New York City's underworld notes that there were unconfirmable claims of Chinese women and children being sold as slaves in Mexico for between \$38 and \$45 before being brought to New York (144). Some of these women were possibly "mail order brides" while others may have been prostitutes. There were more Chinese in California than in the eastern US, but the numbers of Chinese women were very low throughout the US. Sante (1991) cites an 1890s poll recording three Chinese prostitutes or slaves and 800 Chinese men in New York (144). Timothy Gilfoyle's (1992) thorough history of prostitution in New York City supports such a low number with the information that most Chinatown prostitutes were not Chinese but white women (218). Grittner (1990) quotes Jacob Riis' renowned *How the Other Half Lives* (1890) which depicts Chinese ability to handle opium as greater than that of whites, especially white women. Langum (1994) further cites a variant on white slavery

¹Chinese women were not necessarily well off before the Exclusion Act. Sante (1991) cites Chinatown tours to see criminal figures and "slave wives" (128).

rumors of the time that women should not enter Chinese laundries for fear of "kidnapping, druggings, and sexual abuse" (47). Racist depictions of the Chinese precede the anti-Semitic racism of later "white slavery" tracts (Donovan 2001).

Immigration acts referring to prostitution

The 1903 and 1907 Immigration Acts referred directly to prostitution, not in the vague terms later used by the Mann Act. The 1903 Act specified a one to five year prison term and a fine not exceeding \$5000 for this felony (Connolly 1980: 49-50). The 1907 Act further specified deportation for the prostitute involved (Connolly 1980: 50).

The Immigration Act of 1910 went further and applied to "[a]ny alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution" (Connolly 1980: 56). The connection could be tenuous: an alien might be liable to deportation if found in a music or dance hall, public sites of working class entertainment and places where prostitutes often met their clients at that time (Gilfoyle 1992). The exact wording of the relevant statute is:

Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement of resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully in the United States and shall be deported.

[U.S. Statutes at Large, (1910) v. 36: 265, quoted in Connolly]

This provision could have been used against anyone who happened to be in the wrong place at the wrong time.

The numbers of women deported or denied entry increased substantially in 1908, following the passage of the 1907 Act, but the numbers were still small in

the grand scheme of things: less than 300 (see Tables 1 and 2 below). In previous years, the number of procurers - third-parties who secure prostitutes for clients (a heading under which the dreaded white slavers might appear) - barred from entry was in single digits; in 1908, the total jumped to 43. Similarly, the number of alien women barred from entry had previously reached a high of 30 in 1906; in 1908, it leapt to 124. Such numbers suggest that the association between immigrants and prostitution had little basis in fact. Prostitution-related offenses involving native born women at this time in any large American city were greater in number (Gilfoyle 1992: 61, Connolly 1980: 175 [footnotes]).¹

¹Due to limited resources, it is impossible for this work to include numbers of prostitution-related arrests in general. However, this is an opportunity for future research.

Table 1. Numbers Barred From Entry to the United States Under 1903 And 1907 Immigration Acts

	1904	1905	1906	1907	1908
Alien women barred from entry	9	24	30	18	124
Aliens barred from entry as procurers	3	4	2	1	43

	June 1907-June 1908	June 1908-June 1909
Aliens deported as prostitutes	65	261
Aliens deported as procurers	2	30

Table 2. Numbers Deported Under 1907 Immigration Act

[Figures are from U.S. Senate, *Importation and Harboring* (1910): 60-61, quoted in Connolly 1980: 175.]

Such small numbers from an era of enormous immigration suggest that - even with the rise in deportations and the numbers barred from entry of prostitutes and procurers following the 1903 and 1907 Immigration Acts - the scale of the problem was hardly large enough to warrant the legislative efforts deployed against it. Prostitution was a local issue; the sections of the Immigration Acts relating to prostitution and "white slavery" were a response to an imagined

problem that had been inflated out of proportion by irrational fears. Yet, these fears did not end here, they were to find further expression in the Mann Act.

The Mann Act (1910) and Immigration

The Mann Act had two areas of enforcement: first, immigration, where it was used both to deport people and to reject potential immigrants (much as in the Immigration Acts of 1903, 1907 and 1910), and second, the more well-known area of federal trade, where it extrapolated from interstate commerce to the movement of women. The association demonstrates a perception of women as chattel rather than as residents and full citizens. This was perhaps not inappropriate: at the time of the Act, women were not yet able to vote.

In both its immigration and interstate aspects, the Mann Act was targeted quite specifically against "white slavery:"

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white slave traffic [Agreement between the United States and other powers for the repression of the trade in white women, 1908], shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procurement to come to this country within the knowledge of such person.

(U.S., Statutes at Large, (1910) volume 36: 827, quoted in Connolly 1980: 57-58)

Such reports are not included in the thorough studies of the Mann Act by Connolly (1980), Grittner (1990) and Langum (1994), perhaps indicating a lack of informants. The focus on white women - with the implication that sexual servitude of other, non-white women was apparently permissible - is, however, clearly evident from the title of the international agreement cited, the Agreement

between the United States and Other Powers for the Repression of the Trade in White Women, 1908.

Interstate Enforcement of the Mann Act

The Mann Act is far better known for its interstate aspect than its immigration aspect. This interstate aspect is the stuff of American legend¹ as well as a constant reference in legal cases. Prostitution is normally dealt with at the state level; by introducing the issue of travel across state lines, the Mann Act brought prostitution into the federal jurisdiction. The Act relies on the federal authority to legislate interstate commerce and on international agreement to enable enforcement by federal agents without infringing on local police jurisdiction.

Initial enforcement of the Act focused on prostitution, in accordance with the intent of this law, but the language of the Mann Act left it open for wider application. The Act prohibited interstate travel (physical movement from one state to another) for "immoral acts," with a specific focus on women. Women constituted the largest group prosecuted under the Mann Act (Grittner 1990, Langum 1994: 172). In some cases (between 1915 and 1932), women were charged with conspiracy, along with their boyfriends, for their participation in their own travel plans, for "agreeing to go along on the trip" (Langum 1994: 10).

The Mann Act was open to extension, both with regard to the question of what constituted an "immoral act," and to the nature of the travel. For many women who lived close to state lines - such as the Hudson River near New York City - even local travel might be "interstate." Similarly, the act was soon extended from prostitution to other sex acts. In 1911, it was clearly stated in a court that the Mann Act addressed commercial sex (Langum 1994); by 1917, it

¹The Mann Act figured in literature. Fitzgerald used it in *Tender is the Night* and *This Side of Paradise*. Nabokov referred to it in *Lolita*.

had been established that the Mann Act did not apply solely to persons engaging in commercial sex or to actions involving minors but also to consensual, adult acts. This principle was definitively established by the highly publicized Caminetti case, in which two married men and their extramarital partners traveled across state lines, from California to Nevada. The two men, Caminetti and Diggs were convicted and then appealed, but the guilty verdict was upheld by the US Supreme Court. Subsequently, the two men involved in the case divorced their wives and one married his female partner in this crime before he entered prison to serve time for traveling to Reno with her (Langum 1994: 97-138).

What spurred the change in interpretation to include a wider range of social and sexual activity under the Mann Act? Was it the difference in social ideals of the respective judges? Or a sea change in US society? One thing to consider is the shifting social mores and situation of the age (Connolly 1980: 124). The Mann Act was originally enacted during a flurry of concern about changing immigration patterns, and an (unfounded) fear that white women were being bought and sold by swarthy foreign immigrants. As this moral panic slowly died away, a new one took its place.

At the time that the interpretation of the Act began to shift, increasing numbers of young women were beginning to move from rural areas to the cities. Gilfoyle (1992) points out that this had been happening for decades, and that the worries about prostitution had ebbed and flowed with this migration to the cities. Simultaneously, the end of the Victorian Era saw growing public and particularly legislative concern with social issues. The Progressive Era was an age of concern about social hygiene. This was when Rockefeller began funding social purity outfits and the time of the publication of *The Social Evil* in Chicago, a municipal study of prostitution and its replication in many other cities around the United States. Fears about unsupervised single women included fears that they might

succumb to the temptations of city life, such as dancing, drinking and theater, three activities linked to prostitution (Gilfoyle 1992, Langum 1994). This was supported by the fact that women's wages were so low that many women turned to prostitution or "going on the town" for extra money, so many that some professions "in the public mind were linked with prostitution" (Gilfoyle 1992: 60). Langum (1994) states that in 1922 the US government published information stating that the white slave gangs had been eradicated, amid discussion of whether they ever actually existed. Most cases prosecuted individuals and not rings (Langum 1994: 156-157). But instead of simply declaring victory over white slavery, the authorities transferred the focus of enforcement: white slaves and white slavers were simply replaced by prostitutes and pimps, and enforcement was stepped up (Langum 1994: 168). From there, selective enforcement of the law provided the mechanism for the imposition of a specific morality. This enforcement did not correspond to factual incidents but rather reflected socially constructed shifting fears.

Contested concepts

Laws that use terms without offering a clear definition are subject to problems because the meanings of the terms may change over time. A common characteristic of legislation and policy addressing trafficking or prostitution is the vagueness and incompleteness of the definitions given of these phenomena. Some do not attempt a definition at all. There may be various reasons for this: legislators and policy-makers might assume that these are well-understood phenomena and require no definition, they might realize that reaching consensus on a definition will be extremely difficult if not impossible, or they might wish to cater to what may be termed "delicate sensibilities." Regardless of the reasons, however, imprecise language in policy presents a number of dangers. Legislation such as the Mann Act, which cites "immoral activity," is open to wide

interpretation. Thus, the Mann Act has been used in cases of interracial sex and other consensual adult sex as well as prostitution, "white slavery" and cases involving minors. Given an existing tendency to conflate distinct issues - such as prostitution, "white slavery" and trafficking - and imprecise language that refers to open ended concepts such as "immorality," it is easy for laws to be selectively applied and enforced. While selective enforcement can never be eradicated, a clear definition of terms is necessary to allow the enforcement of laws, as opposed to the enforcement of one regulator's sensibilities and personal preferences.

As with other poorly defined concepts, the interpretation of the term "prostitution" has changed over time. Prostitution as we now define it, involving a clear monetary exchange, was not the sole meaning when the Mann Act was enacted. Prostitution included the activities of so-called "charity girls" (Hobson 1987, Peiss 1983) who would date men without parental supervision and perhaps indulge sexual desires after a night on the town.¹ But similar behavior, which would have been identified as prostitution at the time of the Mann Act, is a normal activity for many adults today. Our notions of romance have changed - from courtship under parental supervision to dating without supervision (Gilfoyle 1992: 311; Langum 1994: 121; Pearson 1972).

In the early part of the twentieth-century, the term "prostitute" did not necessarily imply a financial exchange. Earlier reformers in Boston and elsewhere included a variety of sexual behaviors under the rubric of prostitution in their desire to distinguish the virtuous working family from their incorrigible and sinful neighbors (Hobson 1987: 21). Before 1919, there was no clear determination of whether a prostitute was a "loose" woman or a woman for hire. A 1920 Alabama ruling determined a prostitute to be "a loose woman or strumpet" (Langum 1994:

¹Such women have a present day counterpart in the Cuban *jineterias* who perform the same social functions and interactions with men wealthier than themselves, often foreign (American) businessmen (Fusco 1998).

123), after which the legal tendency was a non-commercial definition of prostitution. The Mann Act may have been passed as an effort to combat "white slavery" and forced prostitution, but it easily became an instrument of moral and social control of sexual behavior. The concerns expanded from forced prostitution and in some cases prostitution *per se* to fears about changing morality, including female independence and therefore female sexual activity and autonomy. The enforcement of the Mann Act after Caminetti made clear that female sexuality was not to be treated lightly, but was to be protected by limiting women's autonomy, most obviously regarding travel.

The Mann Act refers to "immoral acts" without specification. The 1910 Immigration Act assumed that all women in places where prostitutes congregated at that time (theaters, dance halls) were necessarily prostitutes. The assumption that any woman out in the evening could be taken to be a prostitute offers women very little alternative save to stay home and avoid the majority of recreational activities, as the consequences could have been severe. A female immigrant who had been in the United States for less than three years might be subject to deportation, and the laws could be applied to women for nothing more than being in the wrong place at the wrong time. The ostensible purpose of these laws was to address the issue of prostitution (forced or otherwise): imprecise definitions and arbitrary assumptions turned them into powerful instruments for legislating and regulating female sexual expression and morality.

The Mann Act refers to prostitution, debauchery and immoral acts without defining any of these terms. Initially the Act addressed solely those cases that clearly involved commercial sex, but the terms used were conveniently ambiguous. The Supreme Court ruled in 1917 that immoral acts certainly included adultery and sex outside marriage, regardless of the age or consent of partners and

irrespective of whether any payment or exchange occurred (Grittner 1990: 141; Langum 1994: 113).

Commissions examining prostitution and working class life¹ cited women's low wages as leading toward "treating," - which we might compare with modern-day dating, where a man pays for the costs of an outing with a woman, stereotypically dinner and a movie - and thus down a slippery slope to prostitution (Hobson 1987, Peiss 1983). At the time, promiscuity or pre-marital sex could be and was construed as prostitution.

Other enforcement of the Mann Act

Immoral acts were also used to prosecute cases involving interracial sexual activity, most notably in cases involving Jack Johnson (an early 20th century black boxer who married and dated white women) and the rock and roll star Chuck Berry (1960).

Jack Johnson was convicted under the Mann Act in 1913. Langum reports that Johnson was first tried for traveling between Minneapolis and Chicago in 1912 with Lucille Cameron, a white woman. She stated that she had been a prostitute before meeting Johnson and did not implicate Johnson in her leaving Minneapolis. (181) He was acquitted and they later married. Johnson traveled with a number of white women and this led to another Mann Act case. Belle Schreiber was another prostitute involved with Johnson. In 1910, he gave her money to move to Chicago and to set up her own business (Langum 1994: 183). Johnson was convicted for transporting Schreiber in 1913. Langum (1994) states

¹ Reports on prostitution include "The Social Evil in Chicago" and "The Social Evil in Syracuse" as well as hygiene reports. On working class women, Peiss (1983) cites "Kneeland, George (1913), "Commercialized Prostitution in New York City," (New York: The Century Company); "Social Life in the Streets," University Settlement Society Report (1899); and Clark, Sue Ainslie and Wyatt, Edith (1911) Making Both Ends Meet: The Income and Outlay of New York Working Girls (New York: Macmillan) among many others, all addressing New York City.

that the trial seemed fair, but that racism was demonstrated in the verdict (185).

Upon his conviction the prosecutor stated

[T]his negro, in the eyes of many, has been persecuted. Perhaps as an individual he was. But it was his misfortune to be the foremost example of the evil in permitting the intermarriage of whites and blacks. ("U.S. Jury Finds Johnson Guilty; May Go To Prison," *Chicago Tribune*, May 14, 1913: 1, quoted in Langum 1994: 185)

This statement seems still more incredible when you consider that the case in question did not involve either of Johnson's white wives, so the question of intermarriage did not even technically arise.

Chuck Berry was arrested with Joan Mathis, a white woman, while traveling across state lines from Kansas to Missouri in 1958. She stated that she "had not been molested" (Langum 1994: 186). No Mann Act charges were filed until later, in tandem with another Mann Act case. In 1959, Berry brought a prostitute, Janice Escalante, from Mexico to Missouri to be a hat-check girl in his nightclub. They traveled together and purportedly engaged in sex during the two-week trip to Missouri. She worked in his club for a few days but the relationship did not last and they parted. She may have been underage, but this was never confirmed. Age would be a clear reason to bring charges. However, the police brought charges against Berry for the Mathis incident at this time, apparently in order to prejudice the jury that would hear the Escalante case. Berry gratefully wrote that Mathis "chose to open herself to what was then considered indignity by declaring that she was in love with a Negro." (Chuck Berry: The Autobiography, quoted in Langum 1994: 187) Berry was convicted in the Escalante case, but this was thrown out because of the overt racism of the court, demonstrated with quotes from the judge, and re-tried. He was convicted in the second trial of the Escalante case and served 20 months (Langum 1994: 186-188; Grittner 1990: 181). The Escalante case may have been brought with legitimately, but the racist motive of

the Mathis case is clear. Considering the dismissal of the first conviction, it is impossible to ignore the racism of the prosecution of the Escalante case.

In addition to racist enforcement, a striking feature of the Mann Act was the gender inequality inherent in the act. In some notable Mann Act cases, prosecution was brought because a woman traveled alone to visit a man elsewhere. Had he traveled to visit her, there would have been no case (Langum 1994). Other cases followed the Caminetti case that effectively proscribed travel for women, either with a man or with intent to meet a man in another state. Such a gender differential and lack of parity could not be upheld today, yet no legislator has proposed repeal of this act. The Final Report of the Attorney General's Panel on Pornography (also known as the Meese Commission Report, 1986) recommended that the Mann Act be amended to use gender neutral language. This change was made in the Child Sexual Abuse and Pornography Act of 1986. This was bundled with another amendment limiting the Mann Act only to acts that were criminal in the jurisdiction where they were committed (Langum 1994: 249-250). This change effectively remanded morality enforcement to the State level (as specified in Article I of the U.S. constitution) and probably more closely reflects current sexual mores.

The vagueness of the Mann Act gave it enormous scope. As already remarked, it was used to enforce a code of sexual behavior on women and to punish interracial relationships. While J. Edgar Hoover was Director of the FBI, it was also used for political purposes and personal vendettas, taking advantage of the flexibility and range of the Act to implement selective enforcement. Hoover led many "white slavery" raids and encouraged publicity around them. Langum (1994) cites numerous headlines about the FBI Director's involvement in such raids in the 1930s and 1940s (170). Hoover used the information gleaned in raids for political ends. He instructed agents to include data such as address books,

especially those containing prominent persons, in "administrative" files to which he had complete access and which he sometimes leaked to the press (Langum 1994: 171).

Hoover sought a Mann Act case against Charlie Chaplin for Chaplin's overt Communist sympathies and perceived immorality (Grittner 1990: 149). Grittner cites Chaplin's biographer's use of the Freedom of Information Act to learn about Hoover's specific involvement. Hoover himself assigned the agent involved and encouraged Chaplin's prosecution (149). Chaplin paid for train tickets for his mistress and her mother to travel from Los Angeles to New York in 1942. At the end of their affair the following year, the woman in question went to gossip columnists with her story. This brought public and prosecutory attention (Langum 1994: 192). Even though Chaplin was acquitted, his public image and career were unsalvageable and he relocated to Europe (Grittner 1990: 150).

The Mann Act was cited in divorce cases in order to demonstrate adultery or alienation of affection.¹ Frank Lloyd Wright was charged in this way with the Mann Act in 1926, but this was dismissed in 1927 when it became apparent that his wife was pressing this in order to obtain a better divorce settlement (Grittner 1990: 145).² Langum (1994) writes that Miriam Wright's use of the Mann Act in her divorce is ironic, in light of the fact that a housekeeper had earlier suggested Mr. Wright be brought up on Mann Act charges for crossing state lines with Miriam in 1915, before they were married (95).

The Mann Act also provided a weapon against organized crime figures who could not be convicted due to a lack of evidence for more serious crimes. Other "undesirables" (such as prostitutes, strip club dancers and club owners),

¹Alienation of affection is cited in cases involving love triangles in which one person leaves a spouse. The third person can be sued for alienation of affection which amounts to stealing a person's spouse or partner.

²Miriam Wright also sued her husband's new companion for alienation of affection (Grittner 1990: 93).

were also prosecuted under the Mann Act. Caminetti and Diggs (convicted in 1917 and mentioned above) fall into this category. It may be impossible to discover how widespread such abuse of law actually was, but Langum (1994) makes a clear case that the Mann Act was selectively applied. Langum (1994) points out that as the number of Mann Act cases declined, the seemingly selective use of the Mann Act increased.

International doctrines do not reveal racism in immigration policy, but still demonstrate sexism and infantilization of women. The following section explores how these limitations have led to the need for new international agreements on trafficking in persons, to be discussed in a later chapter.

United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of Others (1949 Convention)

Traffic in women and children in the United Nations 1949 Convention for the Suppression of Traffic in Persons and of the Exploitation of Prostitution of Others refers specifically and exclusively to prostitution. It also lumps women with children in such a way as to infantilize women. The definition of the issue as strictly sexual in nature makes it the province of women, despite the fact that such events do happen to men and that crimes are not determined by a person's sex. The definition of any issue as something to be protected from as opposed to empowered to avoid remains a stumbling block for women's rights.

This document was the predecessor to the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children completed in 2000 and discussed in a later chapter. The 1949 Convention requires the prosecution of all parties involved in prostitution save the prostitute herself. Its positive aspects include that it uses gender neutral language and addresses trafficking within national borders as well as international trafficking. It required signatory nations to adopt the conception of anti-trafficking (which is in this

document anti-prostitution), to abide by current enforcement measures, and to agree to the use of rehabilitative and educational measures for victims of prostitution. It therefore addresses prostitution rather than labor issues. Some organizations which address trafficking in persons do not utilize this document because it excludes all cases of trafficking into other industries (Human Rights Watch 2000: 49).¹

Article 1:

The Parties to the present Convention agree to punish any person who, to gratify the passions of another:

- (1) Procures, entices or leads away, for the purpose of prostitution, another person, even with the consent of that person or
- (2) Exploits the prostitution of another person, even with the consent of that person.

Article 2

The parties to the present Convention further agree to punish any person who:

- (1) Keeps or manages, or knowingly finances or takes part in the financing of a brothel; or
- (2) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

These articles have led to laws addressing "living off the earnings" of prostitution in countries such as France and Thailand. French law made to comply with this went into effect in 1960, and prohibits prostitutes from living with any other person, including their adult children and other family members over 18 years of age. Such laws do not intend to suppress prostitution itself, but, in keeping with the 1949 Convention's equation of trafficking with prostitution of others, they address the personal relationships of prostitutes in a misguided attempt to prevent exploitive practices. Unfortunately, like many protective laws, these limit the options of those they are intended to protect by criminalizing

¹Some organizations have made their own definitions of trafficking. The most popular comes from the Foundation for Women in the Netherlands and Thailand's Global Alliance Against Traffic in Women. This is "All acts involved in the recruitment and/or transportation of a person within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion." (Skrobanek et al 1997: 111)

normal familial arrangements for prostitutes. Some nations have adjusted their laws to abide by these regulations. In France, for example, this includes sexual exploitation, which is there defined along the lines of what is legislated in the US as "living off the earnings of prostitution." While trying to eliminate the abuse of women is admirable, the results are less so. Women who are prostitutes cannot legally live with anyone else, including their families. This is isolating and detrimental to families, results that are certainly not in keeping with the intention of this legislation (Cabiria 2000).

The inclusion of the phrase "even with the consent of that person" is indicative of a desire to eliminate consent of the prostitute as a defense in cases prosecuting traffickers in human beings. It also denies the agency of women who do opt for prostitution by denying them the ability to consent. Such clauses are most common when dealing with children, who cannot legally consent to some activities, such as work, or sexual activity (if they are below the age of consent in their area).

This document holds no provision for the creation of a supervisory board or for enforcement of any kind. The lack of any enforcement mechanism means that a nation may sign on to this Convention and then not pursue any enforcement of its language without penalty. Nor does it offer protections from prosecution for victims of trafficking, and offers only limited aid during prosecutions. This offers no incentive to witnesses to testify, nor for victims to press charges and thereby undermines prosecution efforts. This lack of enforcement mechanisms is the cause of most criticism of the 1949 Convention. Its tangible lack of effect and limited scope render it inappropriate for the task of addressing modern trafficking in persons. As stated by the representative of the Asian Women's Human Rights Council at the United Nations Crimes Commission meeting in Vienna during June

2000, were this an effective document, there would be no need for a new protocol addressing trafficking.¹

Conclusion

This historical grounding is intended to help understand the ways new legislation is not new at all but actually very similar to earlier attempts to address trafficking in persons.

Stead's tactics are reproduced to this day. The Global Survival Network video "Bought and Sold" focuses on an attempt to negotiate the purchase of women from the former Soviet Union in a rehash of the "Maiden Tribute" over a century later. Feminist debates about sexuality continue to focus on sexual labor. Josephine Butler's maternalistic view of prostitutes is reincarnated in modern abolitionist feminists. Feminists lobbying legislators debated whether all prostitution is trafficking and dominated discussions of the new legislation passed in 2000.

Butler and other Victorian British feminists were appalled at how widely the Contagious Diseases Acts could be used, to force internal examinations upon any woman suspected of prostitution, a clear violation of civil rights. This exceeds the US Immigration Acts in scope because it referred to all women in the country regardless of immigration status.

An important difference in British and American attempts to deal with prostitution via legislation, the CDA and the Mann Act, is that the Mann Act remains, in limited form, while the CDA was entirely repealed. The women involved in the repeal efforts of Britain's Contagious Diseases Acts realized the repressive potential of any acts that could be applied to any and all women at the

¹Later chapters will examine recent efforts addressing trafficking including the United Nations Protocol to Suppress and Punish Trafficking in Persons, Especially Women and Children, the United States Trafficking Victims Protection Act of 2000 and one of its riders, the second Violence Against Women Act.

discretion of the authorities. This is one reason they pursued the repeal of the Acts. Considering this, it is surprising that Americans have not demanded the repeal of the Mann Act. One difference from the CDA is that the Mann Act does not subject women to physical examination. These physical examinations were seen as violations. The Mann Act initially may have had more impact on women's mobility, but it was not accompanied by such symbolism. Notably, California formerly had a law like the CDA, which required the detention of women arrested but not yet convicted of prostitution in order to be subjected to medical examinations. This required a three-day stay in jail while waiting for the results of the tests performed. This law was repealed in the 1970s after a joint effort by feminists and prostitutes.¹

While physical aspects of the Mann Act and the CDA differ, they share unclear definitions that were expanded to fit other aims. Definitions of white slavery and trafficking are still confounded to this day, although the terminology has changed, from white slavery to traffic in women and children to traffic in persons. The interpretation of white slavery changed over time from wage labor in the mid-nineteenth century (Grittner 1990: 119), to rape and prostitution. This may in part have been because prostitution was not a crime in and of itself and so other methods outside law enforcement were implemented to constrain prostitution and social mores. Ambiguous definitions promote selective enforcement and interpretation of legislation, as demonstrated by J. Edgar Hoover's use of the Mann Act. These are vain efforts to regulate morality, as social mores continue to change and prostitution remains as common as ever.

Protectionist legislation continues to limit women's self-determination rather than empowering women. This is especially true of legislation addressing women's travel, with restrictive exit and entry visas and morality clauses. Twenty-

¹Private conversation with Priscilla Alexander of the North American Task Force on Prostitution.

first century examples of these phenomena will be explored in the following two chapters. These include the United States Trafficking Victims Protection Act (TVPA) and the United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children (UNOP). UNOP updates the 1949 Convention in order to include a broader definition of trafficking that does not solely address prostitution. TVPA includes both a wider definition of trafficking and a sensational focus on "sex trafficking" that echoes the morality of the earlier immigration acts discussed above.

Clearly from the title, the 1949 Convention had no larger goals than to curb prostitution. This would be an unrealistic expectation from United Nations documents today as such prominent participants as Australia, Germany, the Netherlands and New Zealand have legal prostitution. However, other nations, even some with legal or tolerated prostitution (for example, France and the Philippines) spoke out during UNOP negotiations to say that the new Optional Protocol should clearly deem all prostitution as traffic in persons. With this background, it is easy to understand how the definition of trafficking was so hotly contested in current legislative efforts domestically and internationally. This will be discussed at length in later chapters.

Chapter Three: Drafting New International Law at United Nations Crime Commission Meetings

The United Nations Crimes Commission met for two years in Vienna to discuss and determine a Convention on Transnational Organized Crime. In addition to this mother Convention, three Optional Protocols addressing arms trafficking (Arms Protocol), trafficking in persons (Trafficking Protocol), and smuggling of migrants (Smuggling Protocol) were discussed during this time. Each signatory nation was initially expected to sign a minimum of two Optional Protocols. However, during final negotiations, the Arms Protocol was abandoned.¹ Only the Protocols addressing smuggling of migrants and trafficking in persons were completed. I attended the discussions of the Trafficking Protocol from June 1998 to October 2000. The Trafficking Protocol may be interpreted as an attempt to update an earlier document, the United Nations' 1949 Convention To Prevent, Suppress And Punish Traffic In Women And Children For Purposes Of Prostitution And Sexual Exploitation (hereafter 1949 Convention), discussed earlier. This chapter draws on the final version of this Protocol, signed December 2000 in Palermo, Italy, and my participation and observation of the negotiating process.

This chapter focuses on two seemingly disparate but quite intertwined issues, feminist response to sex work and the issue of how to define trafficking in persons in the United Nations Trafficking Protocol. The reason I describe these phenomena in tandem is because approaches to this U. N. document came from two stances in distinct opposition to the other, each grounded in feminism. One view sees all sex work as a form of trafficking. The other view holds that

¹The arms trafficking Protocol was abandoned because it was not possible to reach agreement on almost any of the articles within it. At the Eleventh and final negotiating session, the version distributed of the Arms Protocol had at least two options for practically each article. This reflects the impossibility of attaining consensus on any aspect of this document. It is also interesting to note that there is no optional Protocol addressing smuggling of drugs.

conditions of labor in all industries, including the sex industry, that should be addressed. The analysis of the articles within the United Nations Protocol on Trafficked Persons, Especially Women and Children and the manifestations of feminist theories at these meetings are woven together in order to provide a rich context including theoretical debates behind the delegates' discussions. I describe these debates and the influence held by various factions lobbying legislators and presenting at negotiations in order to interpret and criticize the discussion of this new legal document.

The debate whether prostitution *per se* is slavery and therefore equivalent to trafficking in persons was related most directly and vehemently to the definition of trafficking in persons in this Protocol. It also arises regarding human rights protections and issues of prevention, as seen in the previous chapter's discussion of the United States Trafficking Victims Protection Act. Therefore, I address how these aspects of the Protocol were discussed, as well as analyzing the final document.

United Nations procedures and participants

International Crimes Commission meetings addressing this document were held in Vienna, Austria, from January 1998 until October 2000. The process of creating a treaty like this one involves government representatives, mediators and lobbyists. Attendance is limited to national delegates, U. N. personnel, representatives of U. N. agencies and non-governmental organization (NGO) representatives. Representatives of U. N. bodies, such as Mary Robinson, High Commissioner on Refugees, and Radhika Coomaraswamy, Special Rapporteur on Violence Against Women, or their representatives addressed the Assembly. All discussion was translated in to the six official U. N. languages (Arabic, Chinese, English, French, Russian and Spanish), but small groups that met outside the

General Assembly to work on difficult issues were not able to rely on translation, forcing them to choose one language, most often English or French.

NGOs with U. N. consultative status may attend these meetings. Some organizations choose only to observe while others engage in lobbying, by distributing documents with suggestions for the issues being discussed and sometimes speaking. Opportunities to speak to the Assembly may be granted by the chairperson. Lobbyists usually speak to delegates about issues that they hope to affect, often presenting documents to explain and/or support their positions to the delegates. These interactions, like most diplomacy, are usually very formal but rapport develops, especially with overextended government representatives who are not experts on the issue being discussed. Some government representatives turn to the NGO representatives for their expertise on these issues. As I already indicated, I attended these meetings as a lobbyist with the Human Rights Caucus, which gave me access to the meetings and therefore insight to the proceedings. I was registered alternately with the International Human Rights Law Group and the Asian Women's Human Rights Council, to speak to French-speaking delegates, mostly from Africa.¹

Gender dynamics are acted out at varying levels during these meetings. For example, the vast majority of government representatives were male, while NGO representatives at these meetings were almost uniformly female.² This reflects a stereotypical male authority, but with a sometimes nagging female conscience. In this distinctly unfeminist way, feminism was extraordinarily relevant and present during these discussions. As this was not a meeting specifically about women, as at the 1995 Beijing Conference on Women,

¹For more on this, specifically common ground and differences within feminism, see Ditmore (forthcoming).

²With one exception. Paolo Longo worked with the Human Rights Caucus at two meetings in 1999.

feminism may have had a stronger impact at this discussion on crime than with any international document specific to women. At the Crimes Commission meetings focusing on trafficking, this non-governmental conscience takes on a particular significance because of the necessity to discuss prostitution. The dialogue ventured upon shame for men who visit prostitutes (see discussion of Article 9). Such a reference to sex and gender is sensationalist, distracting attention and effectively obfuscating any larger issues, such as migration, under discussion. Migration is actually the heart of international traffic in persons, as trafficked persons are (usually undocumented) migrants seeking work elsewhere who find themselves in untenable working conditions. It is these conditions, achieved by deception or outright enslavement, that distinguish between trafficked and smuggled persons. A smuggled person, like a trafficked person, has clandestinely crossed a border or been transported, but unlike trafficking, smuggling is not linked to work.

Legal and national contexts

There was a clear division between countries which perceived themselves as "sending nations," those countries whose nationals were expected to be the trafficked and who were interested in protecting the rights of their nationals in other nations, and countries which perceived themselves as receiving nations, who expected trafficked persons to arrive, perhaps illegally, within their jurisdiction and whom they expected to prosecute or deport or offer protections as required. This division is not obvious as many nations are both sending and receiving nations, and additionally "transit" nations where people pass through and may work to earn money to continue moving. Working while in transit is not unusual in long-distance migration and has long precedent in history, both in migration and nomadic movement and even pilgrimage.

It is erroneous to assume that any nation is exclusively a sending, receiving or transit nation. Examples of exclusively sending nations are rare and usually include those with closed borders and limited opportunities for people there to work, let alone for newly arrived persons to find work, as well as those nations experiencing war. This may formerly have included Albania, although other people are currently passing through in order to take advantage of the proximity to the sea and the opportunity to travel by boat (usually illegally) to Italy and further into the European Community nations. Even nations that send their nationals elsewhere for work usually have other nationals passing through, as seen even in northern Niger's Sahara, where people cross the desert to find work in Libya and elsewhere in North Africa. While most United States citizens imagine Mexico as a vast source of immigrants and cheap labor, other nationals throughout Latin America head for Mexico for its comparatively strong economy. Some work there as they proceed northward, possibly to the United States. These examples demonstrate that even in areas without natural resources, areas lacking abundant employment opportunities and at first appearing to offer little or no reason to be a destination, there will at least be those passing through on their way elsewhere, often seeking work along the way.

During U. N. negotiations, nations form blocs to shore up support for each other. Despite more complex situations, these blocs often take the form of binarizations for and against issues being discussed. One such discussion was whether to require human rights protections and assistance for trafficked persons. At the Crimes Commission, it was clear that nations with large numbers of nationals living and working elsewhere (who often send substantial financial remittances to their country of origin) sought to secure human rights protections for their nationals abroad. However, poor nations were desperate not to have to guarantee specific aid to migrants from elsewhere within their own borders just as

rich nations were reluctant to guarantee specific assistance, especially economic assistance, to foreign workers who may be in their territory illegally. This divided fairly clearly along the G-77 (most easily categorized, if not entirely accurately, as developing nations) nations seeking to protect their nationals elsewhere and the G-7 (the seven largest industrial and economic powers, including the US, United Kingdom and Japan) not wanting to offer substantial aid to migrants, which they fear would lead to an increase in illegal immigration. These are important considerations while analyzing the final Protocol because immigration is clearly an issue to be wrangled with as large scale globalization promotes the collapse of national borders for corporations all over the world, with the free movement of capital but the less free movement of people.

One example of the sorts of external political factors, overtly unrelated to trafficking in persons or to this document, which can affect a nation's willingness to risk possibly dissenting with nations whose support they need in other arenas. One eastern European nation's delegates disclosed that regardless of their position, they were unlikely to say anything on the floor out of concern for their application to join the European Union. Such support occurs internally within the meetings as well, with government delegations working together so that when one representative proposes a change, a second and perhaps more delegates will support the suggestion. A good lobbyist will secure such support for a delegate who makes use of suggestions from his or her organization.

Lobbying blocs

Lobbying factions at these meetings come largely from two non-governmental organizations working with outside allies. These opposed blocs were led by the International Human Rights Law Group (IHR LG) and the Coalition Against Trafficking in Women (CATW). IHR LG worked with the Global Alliance Against Trafficking in Women (GAATW) and the Asian

Women's Human Rights Council (AWHRC). These organizations and others distributed documents with recommendations for the Protocol as the Human Rights Caucus. CATW worked with the European Women's Lobby, the International Abolitionist Federation, and Equality Now. In a move seemingly intended to confuse government delegates, these organizations duplicated the very format and font of the Caucus documents distributed earlier and dubbed their coalition the Human Rights Network. The Coalition Against Trafficking in Women and their Network allies (Equality Now, Soroptimist International, International Abolitionist Foundation, European Women's Lobby, International Human Rights Federation) sought specifically to include prostitution but also other sex work as well. The Human Rights Caucus and the Human Rights Network have diametrically opposed views about whether prostitution is inherently trafficking in persons. As negotiations progressed, both groups brought larger numbers of representatives in order to have greater impact.

Lobbying efforts by the International Human Rights Law Group-led Caucus focused on the definition of trafficking in persons, with intent to exclude voluntary, non-coercive prostitution or other sex work. This would mean that sex work and trafficking are different issues. Additionally, the Caucus worked to include human rights protections for trafficked persons, including the ability to sue for back wages and damages as well as working permits during judicial proceedings.

There is no doubt that any lobbying campaign stresses what will further its cause, but when two opposing views meet in close quarters, it often becomes less polite than the diplomatic milieu of the U. N. would suggest. The issues discussed in this Protocol, especially whether to define prostitution as trafficking *per se*, evoke emotional responses. Some individuals felt so strongly about this that they abandoned the etiquette of diplomacy. The next section of this chapter includes

vignettes of such incidents, including proposed language as well as accounts of bitter arguing and accusations, which occurred during the discussion of the United Nations' Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. It is followed by a close analysis of the relevant articles of the Optional Protocol.

Catfight

I call this section "catfight" because the incident described below was referred to as "the catfight" during subsequent discussion among Caucus members. This phrase, with its sexist connotations, conveys the rancor and bad blood between feminist factions addressing trafficking in persons. This malice is neither new nor unique to the Crimes Commission meetings. For example, an earlier Coalition Against Trafficking in Women newsletter (1998-2000) referred to Jo Doezema, Marjan Wijers and me as "pro-prostitution" advocates. This language is akin to the use of the term "pro-abortion" rather than "pro-choice" by activists who seek to ban abortion. Alice Echols, in her article about the sexuality debates in the larger feminist movement, described similar discrediting and silencing tactics used when she wrote

Anti-pornography feminists have tried to silence their intra-movement critics with the same red-baiting tactics of feminist capitalism. Recently, Kathy Barry characterized the feminist opposition to the anti-pornography movement as a cabal of leftist lesbian and heterosexual women who want to destroy the movement so that "male leftists can continue their sexual abuse of women without fear of censure." (Echols 1984: 54)

It is unfortunate to note that such tactics are reproduced almost twenty years later.

The issues addressed in this Protocol are serious and have strong emotional appeal. This fact led to great tension and argument between the NGO blocs. This is significant because it demonstrates the bitterness between ideologues both in such forums and in feminism more generally. These dialogues

seem locked in the past and the examples of undiplomatic behavior demonstrate how emotionally charged these issues remain. For example, rumor had it (as reported to a Caucus lobbyist by a government delegate) that the Human Rights Caucus was funded by the "European prostitution mafia." Ann Jordan, with other Caucus representatives, confronted Janice Raymond (co-director of the Coalition Against Trafficking in Women), Pamela Shifman (Equality Now) and the representative of the International Human Rights Federation with this accusation. The International Human Rights Federation representative immediately became indignant and stated that she has been in this movement for 25 years and learned at the beginning that such tactics are unproductive. No one doubts her, but her colleagues made no comments about the allegation. Melynda Barnhart, representing the International Human Rights Law Group, relayed to me that Schifman asserted that the positions put forward by the Caucus were those which traffickers wanted, and therefore in her opinion the Caucus was essentially advocating for traffickers. Barnhart added that Raymond said that the Caucus cannot deny working with traffickers. These assertions are unfounded. Barbel Uhl, of the German feminist organization KOK which is affiliated with the Human Rights Caucus, explained how hurtful such slander is to her personally, as a person who works directly with trafficked women and who is frequently threatened with violence from traffickers. Raymond's response that the Coalition Against Trafficking in Women also works with trafficked women in no way diminishes or even addresses this defamation.

While the catfight was happening, there was another to-do. The Caucus sought to lobby the delegates who were specifically interested in the definition of trafficking in this document, including those who attended the small meetings outside the larger discussion. In lobbying, I left a note with suggestions about the definition of trafficking on the desk of the Caucus-friendly delegate from an

antipodean nation, while she was at a meeting to discuss the definition of trafficking. An Indian representative of the International Abolitionist Federation, which is a member of the Network, asked for a copy of this, and I replied that I had only enough for those government representatives who attended the special meeting about the definition of trafficking and not other NGOs. When I returned to the room, my note was gone and the delegates had not yet returned. I confronted the other NGO representative and she took the paper I had left from her purse and returned it to me. I said loudly that stealing documents from government representatives would certainly be frowned upon by the U. N. secretariat and possibly jeopardize her organization's U. N. consultative status. When the delegate returned, I apologized for the folded and crumpled state of the note I had for her, and explained that it had been taken from her desk by someone. She sarcastically replied, "I wonder who would have done such a thing!" Her reaction reflects that everyone, even the overworked government representatives, were aware not only of the NGO differences, but also the bad behavior exhibited.

After this, the Network-affiliated International Abolitionist Federation representative tried at every opportunity to convince me not to report her theft. (I did not.) When I asked her, with her organization's interest in human rights, to distribute suggestions for the inclusion of human rights protections (which were not related to the definition of trafficking, and therefore not in dispute between NGO factions) for trafficked persons, she declined. I was disappointed that the Network made no efforts to address anything but the definition of trafficking and thus neglected human rights protections for trafficked persons. Any group claiming to work toward the inclusion of human rights protections without actually making such efforts is clearly misrepresenting the goals of the organization.

An additional lobbying tactic is to use media pressure. This usually takes the form of op-ed pieces and letters, particularly during the penultimate Tenth Session in June 2000. Both the Caucus and the Network used media contacts in the United States to promote their views. The US delegation was walking on eggshells about what to say during the last few meetings as their comments were presented as "pro-prostitution" to media and government representatives by Network members and affiliates. These contacts sometimes exhibited the "strange bedfellows" phenomenon of some feminists working with the radical right (Chancer 1998). In a meeting with James Puglio of the US delegation, a Caucus representative and a Network representative from Equality Now, Puglio stated that the inclusion of a definition of sexual exploitation would prevent any accord and so would be scrapped. The Network representative said that she was disappointed and said that Senator Jesse Helms would also be very disappointed with this. Senator Helms became involved in the stateside discourse and expressed dismay at the "pro-prostitution" stance of the Clinton administration. This was especially timely because domestic anti-trafficking legislation was also under discussion. The timing of the Congressional break for August meant that no such support would be available at this high level for the rest of the summer.

The government delegations were the only people truly negotiating, as the NGO blocs were effectively at war with each other. Delegates commented on the disagreements among the NGOs. Similar differences were visible among the government delegations, leading to protracted discussion of the definition of trafficking.

United Nations' Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

The earlier discussion of feminist theories of sexuality offers some explanation of the theoretical justification for varying views on the definition of

trafficking. It should clarify how feminism influenced the more recent Trafficking Protocol, while the discussion of bitterness demonstrates how emotionally and politically charged these issues are. What follows is a description of the negotiations and an analysis of the final document article by article with an eye to the expected use of this document. The articles are grouped together as they are in the Protocol itself, with greater discussion of the definition of trafficking in persons.

This Optional Protocol to the Convention Against Transnational Organized Crime is a law enforcement document, and not a human rights or feminist document. The aim of this Convention is to prevent and prosecute multinational crimes, and this determines the subject of the initial three optional Protocols: arms smuggling, smuggling of migrants and trafficking in persons. As the scope of this document is law enforcement, it focuses on illegal activities and the procedures taken to address them. It does not address rights of legal immigrants, save as they are affected by trafficking in persons, nor does it address what is or is not legal within any nation's borders. Only those activities deemed illegal across borders are affected by these documents. As this document addresses transnational crime, trafficking within national borders is not affected by this document. This is not to imply that intranational trafficking does not occur - it certainly does (Asia Watch 1997a, 1997b) - but that this instrument has limited focus specifically addressing only those incidents occurring across national borders.

The two successfully completed optional Protocols, on smuggling and trafficking in persons, each address movement of persons, but with different levels of agency. Trafficking in persons defines a victim of crime rather than an agent, while smuggling necessarily implicates the person who has engaged the services of a smuggler. A smuggled person is not a victim but a criminal, an

illegal immigrant, an undocumented alien, while a trafficked person is assumed to be an innocent victim. This conception of agency divides in the imagination if not in reality along gender lines, as reflected in the title, Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, *Especially Women and Children* (emphasis added). This contorted language was sought by the Coalition Against Trafficking in Women-led Network, which initially advocated for the title "Trafficking in Women and Children," leaving men out of the equation entirely. The Smuggling Protocol has no such coda and no specific emphasis on gender. Smuggled migrants are assumed to be men seeking work elsewhere without proper documentation, while trafficked persons are assumed to be duped victims, usually women. When dealing with law enforcement, it is preferable to be perceived as a victim of crime rather than a criminal.¹ Perhaps law enforcement personnel prefer to refer to victims of trafficking as opposed to trafficked persons for the clear delineation of who is a criminal to arrest and who is a victim to protect.

I use the term "trafficked persons" in preference to "victims of trafficking" throughout this chapter because I prefer the agency reflected in this term, and its lack of gender ideology. In these documents, trafficking is something that happens to women while smuggling is the province of men. This gendered distinction follows long-standing stereotypes of women as victims and men as less able to be victimized. These distinctions may significantly affect enforcement, depending on their interpretation, and are also visible in laypersons' interpretations and in the crafting of this Protocol. Some separatist feminists use gender distinctions to posit women as victims of patriarchy.² Even the language

¹This is also reflected in the title of the United States Trafficking Victims' Protection Act, discussed in another chapter.

² Victims do garner greater sympathy from law enforcement, encouraging the adoption of almost permanent victim status by women in domestic violence cases as well as some interpretations of prostitution. "Victim feminism" is an accepted term. It has been discussed by popular feminists

"victim of trafficking in persons" was debated. The Caucus unsuccessfully recommended the term "trafficked persons" as a step away from the assumed lack of agency that accompanies ideas of victimhood.

The term "victim" does not reflect the complexity of this issue or the experiences of all people who have undertaken to leave their homes and families to pursue a better future via economic migration (Finkel 2001b, Human Rights Watch 2000, Skrobanek et al 1997). Trafficked persons are often the go-getters of their home communities. It is ironic that in this framework the ambitious and industrial poor who undertake migration, the "up by the bootstraps" heroes of American myth, are unrewarded in this legislation, while "pathetic victims" garner greater sympathy. This insistence on the title of "victim" from an anti-sexual feminist camp has historic precedent. Dubois and Gordon (1984) write that feminists of earlier eras

consistently exaggerated the coerciveness of prostitution. In their eagerness to identify the social structural forces encouraging prostitution, they denied the prostitute any role other than that of passive victim. They insisted that the women involved were sexual innocents, women who "fell" into illicit sex. They assumed that prostitution was so degraded that no woman could freely choose it, not even with the relative degree of freedom with which she could choose to be a wife or a wage earner (33).

This is convenient for those whose definition of traffic in persons finds traffic outside the sex industry to be ancillary to the phenomenon of trafficking. The examples of bad behavior above provide additional evidence of the currency of these misrepresentations today.

The Preamble to the Trafficking Protocol mentions that there is no internationally legally recognized document that addresses all forms of trafficking in persons. The 1949 Convention addresses only prostitution and sex, without

like Naomi Wolf (1993) and more academic feminists like Martha McCaughey. This term appears on some women's studies syllabi. (<http://hubcap.clemson.edu/~sparks/ws/99FWSSY.PDF>)

attention to other labor abuses or less salacious offenses, therefore it is inadequate for the task of addressing all traffic in persons which includes domestic labor, construction work, sweatshop labor and many other industries (Richard 2000). As the Optional Protocol addresses only international cases, it too does not address all instances of trafficking in persons but it does have a far wider scope than the 1949 Convention. I will proceed with an analysis of the articles of the Protocol in the order they appear in the final version, with an eye to possible enforcement of the new laws and to assumptions about gender and morality especially as played out during negotiations.

General provisions

Article 1 of this Protocol states that all provisions of this Protocol apply overall to the mother Convention on Transnational Organized Crime, and that all acts criminalized within this Protocol are to be addressed by the mother Convention. This means that all activities deemed crimes in this Protocol are subject to the requirements of the mother Convention. The mother Convention contains requirements for international cooperation and standards of law enforcement that would apply to all transnational organized crime. Transnational organized crime is defined as any network of two or more people engaging in criminal activity across national borders.

Article 2 declares the purposes of this Protocol to be the prevention and combating of trafficking in persons, "paying particular attention to women and children," protection and assistance for victims of trafficking in persons with attention to human rights, and the promotion of cooperation among State parties to achieve these ends. The last section of this chapter will discuss whether it is possible for this document to achieve these ends.

Definition of trafficking in persons for this document

Article 3 defines trafficking in persons. As noted, consensus was extremely difficult to achieve regarding this definition. This definition was discussed at the eleven sessions and was hotly contested every step of the way. Informal meetings and specially scheduled lunchtime meetings were held almost daily by a working group devoted to discussing proposed definitions and trying to find middle ground after no headway was made during general assembly meetings. The frequency of special meetings not only took time from the delegates concerned with the definition but demonstrated the difficulty of achieving consensus on the definition of trafficking in persons. New definitions with slight but significant changes were circulated regularly. Rather than list all the proposed definitions, I will use examples of the more contentious dialogue.

One takes a sex workers' rights stance, that sex work is a form of labor and should be addressed as such, outside criminality and deviance, while the other takes a victim's stance, that sex work is a human rights violation and should be abolished and punished, without punishing sex workers themselves as this would constitute blaming and punishing the victim of a crime. This latter view seeks to eschew the term "sex work" as legitimating the sex industry.¹ It is imperative to note that sex workers' rights advocates acknowledge that sex work is hard work and not always performed in ideal conditions.² Sex workers' rights advocates recognize that there are abuses within the sex industry and seek to correct these, not by abolition but by improving conditions and affording legal recognition to the sex industry. Abolitionists seek to make the sex industry more illegal than it

¹This was also debated at the June 1999 NGO Consultation with the United Nations Working Group on Contemporary Forms of Slavery (Ditmore forthcoming).

² See Sprinkle, and Leigh, both in Nagle (1997), editor. See also "Addressing Sex Work as Labor," presented by the author to the United Nations Working Group on Contemporary Forms of Slavery during the June 1999 NGO Consultation. The text of this talk is available at <http://www.swimw.org>.

currently is and to prosecute and punish men involved as clients and otherwise. Camps are deeply divided.

Initially, the proposed definition of trafficking included "prostitution," but with concerted efforts on behalf of sex workers' rights advocates this was changed to include "forced prostitution" only to revert back with the lobbying efforts of abolitionists. Each of the 11 meetings endured such swings and made little progress on the definition of trafficking in persons. Initial efforts included fairly simple recommendations such as the inclusion or deletion of the word "prostitution," or the inclusion or deletion of the word "forced" used to modify "prostitution."

Examples of the willingness to sacrifice women's autonomy to an anti-sex agenda from within feminism were in evidence during discussions of the definition of trafficking in persons during the Crimes Commission discussions. Some feminists believe that sex work and exchange of sex for goods or money, as in prostitution or possibly even dating, is a reinforcement of male social elevation over female. While most feminists and certainly most women do not take this much further than acknowledging that an exchange for sex exists and that they may not approve, a minority have taken this further. This is reflected in some recommendations for the definition of trafficking, given below.

The definition agreed upon necessarily affords a certain interpretive leeway for its enforcement by signatory nations in order to achieve consensus in such a large meeting. Additional measures and/or sterner enforcement are not in any way prohibited by this Protocol, thereby allowing signatory nations to enforce additional domestic legislation regarding these crimes and to assess punishment for them as they see fit. Such an allowance for domestic legislation affords great variation in the possible enforcement of this document nation by nation. This is

the definition of trafficking decided upon at the final Crimes Commission meeting to discuss this protocol:

Article 3 states:

For the purposes of this Protocol:

- (a) "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 services, slavery or practices similar to slavery, servitude or the removal of organs;¹
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- (d) "Child" shall mean any person under eighteen years of age.

Later sessions witnessed more emotionally charged pleas on the floor of the U. N. and definitions designed to include one issue but which sacrificed others. For example, a written suggestion from the Philippine delegation was circulated June 6, 2000, during the Tenth Session, which suggested a definition of "with or without consent of the victim by legal or illegal means, for all purposes

¹The inclusion of "the removal of organs" may seem incongruous at first, but fears of organ trafficking and of theft of children for their organs dominate urban legend and apparently endure through cycles in which they recede and reappear with new variations (Donovan 2001). New and more reliable articles have appeared about organ trafficking, for example, removal of prisoners' organs for transplant in China, and of sales of organs by poor people to rich, involving travel to Turkey (Finkel 2001a). Numerous nations' delegates including Argentina, China and Cameroon repeatedly requested the inclusion of trafficking in parts of persons in this Protocol. A representative from Cameroon spoke of finding "bags of genitals" three times during the meetings of June 2000. I will not debate the veracity of these claims as I am more concerned with the documented trade in entire persons and their human rights.

of sexual exploitation including prostitution, marriage, employment...." Were this definition adopted, all marriage and employment would be considered trafficking in women in international law. This demonstrates a myopic focus upon prostitution which allows the sacrifice of other rights and liberties in the name of eradicating prostitution.

Children are not able to give consent under international law and the definition of a child, any person "under 18 years of age," here is in keeping with international law. However, during the October 2000 meetings, a member of the Philippine delegation who is also the director of the Coalition Against Trafficking in Women in the Philippines, made an intervention (spoken suggestion) seemingly intended to define prostitutes as children. Melynda Barnhart, who attended the Eleventh (and final) Session as a representative of the International Human Rights Law Group, said that this statement "essentially said that all women making decisions we don't agree with, i.e. voluntary prostitutes, we should have the legal ability to override their decision, and substitute ours." This suggestion is in keeping with feminist theory that patronized other women during the white slavery panic of the previous turn of the century. In 1913, Jeannette Young Norton wrote

The big sisters of the world [want the] chance to protect the little and weaker sisters, by surrounding them with the right laws for them to obey for their own good. (Jeannette Young Norton, "Women Builders of Civilization" *Women's Political Civilization*, September 1, 1913, page 5. Quoted in Dubois and Gordon 1984: 38.)

When proposed in writing, the Philippine suggestion seemed clearly to include people with disabilities. The written proposal, distributed October 2, 2000, had been significantly refined and reads

Article 2bis(d) [this article is numbered 3 in the final document]
Definition of Child

"Child" shall mean any person under 18 years of age provided that those over 18 years of age but unable to fully protect themselves from abuse, neglect, cruelty, exploitation due to mental or physical incapacity be considered for the purpose of this protocol.

This is legally very dangerous, as seen in the United States where women were institutionalized for being "promiscuous" through the 1950s (Keefe 1994: unnumbered). The language proposed above demonstrates the willingness to sacrifice many hard-won gains for women, including independence, legal majority and the ability to make enforceable contracts, in order to render prostitution more criminal. Additionally, it resembles Rubin's "brainwash theory" which

explains erotic diversity by assuming that some sexual acts are so disgusting that no one would willingly perform them. Therefore, the reasoning goes, anyone who does so must have been forced or fooled (Rubin 1984: 306).

A second recurring issue regarding the definition was the inclusion of consent (Article 3 (b)). The Human Rights Caucus maintains that one cannot consent to any human rights violations, and that prostitution is not a human rights violation in and of itself. The Caucus sees that a person's consent to migrate or to work is no defense against trafficking (as one cannot consent to a human rights violation), but the presence of the ambiguous term "sexual exploitation" in the definition of trafficking remains problematic. This is because sexual exploitation remains legally undefined and therefore especially subject to interpretation. The conviction that a person can consciously choose sex work as an occupation means that the Caucus cannot advocate the inclusion of a clause regarding consent in the international definition of trafficking. Additionally, consent as a defense is a prosecution issue and would be more appropriately included not in the definition but in under the heading "Obligation to criminalize." Ultimately, Article 3 (b) stated that any use of coercion or deception eliminates the use of consent of the victim as a defense against prosecution.

The means that determine the occurrence of trafficking are set forth in the first paragraph of this definition. 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 (Article 3 (a))

essentially requires the use of force and/or deception. The elimination of this clause would define all sex work as trafficking in persons, while the inclusion of this clause enables signatory nations to address sex work as they see fit in their own domestic law. Much discussion debated whether this was a necessary constituent of the crime of trafficking because of the focus on trafficking in persons for prostitution. Nations that were so focused include the Philippines and South Africa, while Belgium changed position more than once during the discussion. South Africa led one bloc of African nations. Others such as the Netherlands, Germany and Australia were adamantly opposed to a formulation of trafficking that would essentially define all prostitution or any sex work as trafficking in persons because it would require them to alter their national domestic law upon ratification of this Protocol. While signatory nations would not be required to share information or services in instances that do not include such means, nations that wish to interpret the crime of trafficking in persons as such will be able to enforce domestic law without regard to means used.

The most pressing concern over the means used in trafficking persons during the Eleventh (final) Session, October 2000, was whether to include "inducement"¹ as a means to trafficking. Inducement is persuasion. Merely asking someone to do something could be "inducement." This would define soliciting as trafficking, which now carries a life sentence in the US Inducement can

¹This was translated as "*incitation*," in French, which is different, less ambiguous and less objectionable, as in "incite to riot," therefore less objectionable. Unequal translations made for difficult negotiations as the French-speaking delegates were discussing a different meaning.

encompass threats, but also payment. It is a clear inducement to change jobs if a person is offered double their current salary, and need not be violent or illegal. Inducement was not included in the final definition, because delegations including lawyers from English-speaking nations were adamantly against it.¹

One fact from documented trafficking cases is that, in addition to the recruitment of trafficked persons by family and friends and other persons known to them, much trafficking occurs with the collusion of officials, including corrupt or ineffective police officers who do not respond to complaints, immigration officers who accept bribes to let certain people enter or leave nations without proper paperwork and embassy employees who sell visas to high bidders.² Such corruption abounds throughout the world. Article 5 includes the obligation of signatory nations to criminalize trafficking in persons as defined in Article 3 and to create domestic legislation to enable enforcement. It includes criminalization of accomplices and of organizers or employers. This should encourage prosecution of "agents" and personnel auxiliary to human trafficking, like those described above selling visas. Some trafficked persons fear this type of enforcement as agents and recruiters may include family or friends and may not address employers. Others see it as the sole way to adequately address the serious abuses that occur. A greater effort than any document can ensure is required to address human trafficking, but perhaps the document as a whole and this specific article reflect some interest in making this effort. It is certain that prosecution will have the greatest effect upon those who cannot afford good legal counsel - such as family members involved in trafficking rather than more organized traffickers.

¹Incidentally, many delegations do not include lawyers, which can be a disadvantage in lawmaking.

²The examples I mention here are taken from Human Rights Watch (2000) and Asia Watch (1997a, 1997b) reports, specifically Thailand and Japan, but these problems are not specific to Thailand, Japan or any part of the world. Similarly, Kwong (1997: 64) describes the sale of passports to mainland Chinese nationals by the Chinese Consul in New York.

The following sections are divided along the categories used in the Optional Protocol itself. These are "Protection of victims of trafficking in persons," "International efforts of prevention and cooperation," and "Final provisions." Protection of victims includes assistance offered during criminal cases and issues of documentation, which is very important as trafficked persons frequently do not have identity documents. International efforts include border measures, a serious topic for anything pertaining to migration and especially to illegal migration. Final provisions are largely bureaucratic and are therefore less scrutinized.

Assistance to and status of trafficked persons

The next section is entitled "Protection of victims of trafficking in persons" and includes Articles 6-8. It would have been the natural place to include human rights protections, but these are skirted rather than overtly required.

Privacy and confidentiality of legal proceedings are assured "in appropriate cases" as well as requiring, again "in appropriate cases," that victims obtain information relevant to their cases and to the courts, while promising assistance without judgment in presenting their concerns regarding their cases. This latter would necessarily include translation in a great number of cases. Unfortunately, this is not currently made available in many places. The discretionary language "in appropriate cases" effectively renders these clauses optional. Paragraph 3 of Article 6 states that

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations....

The assistance listed includes appropriate housing, counseling and information regarding their cases in a language trafficked persons can understand, medical, psychological and material assistance, and employment, educational and training

opportunities. Appropriate housing could mean prison if authorities are fearful for a trafficked person's safety or if they intend to prosecute the person in question (Human Rights Watch 2000: 124-146,197-199). As it stands now, many trafficked persons are prosecuted either because law enforcement personnel do not understand their story or because they do not care to investigate this and prefer to deport illegal aliens (Human Rights Watch 2000: 157-172).

The sentiments expressed here, the desire to assist trafficked persons with housing, medical services and legal and psychological counseling are admirable. However, the use of discretionary language again renders these requirements optional and to be delivered at the discretion of signatory nations. Clearly, there is unequal fiscal status of differing nations and the inability to guarantee such assistance but this discretionary language makes this a recommendation rather than a requirement and as such it can be disregarded with impunity. It is unrealistic to believe that international law associated with underground, illicit business can be enforced the world over. Therefore, weakening such a document, with its limited expectations from the start, is liable to lead to grievous misenforcement. However, such documentation remains important for the indication that trafficking is a global issue meriting international attention.

Special considerations and safety of trafficked persons are addressed in Paragraphs 4 and 5 of Article 6. Paragraph 4 reminds the signatory nations to consider age, gender and special needs of trafficked persons, especially in the case of children. It goes on to remind States Parties that children have special needs including appropriate housing, education and child care.

Paragraph 5 says "Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory." This is especially important for trafficked persons who may stand as witnesses in prosecutions of others, as it is for many witnesses to crimes. This

could be akin to a witness-protection program or police surveillance and escort or the investigation of threats. As of now, some are detained, effectively imprisoned (Human Rights Watch 2000: 197-199). This amounts to treating victims of crime like criminals and should not be encouraged.

Paragraph 6 reads "Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered." This is intended to assure trafficked persons the opportunity to attempt to recover damages, although the attempted recovery of back wages is not encouraged by this article and is not often undertaken (Human Rights Watch 2000: 206-8). The difference between damages and wages is specific here, and damages awarded in United States cases are often greater than an amount of back wages. This is also important regarding prostitution as prostitution is not universally recognized as labor and therefore is not always considered work, a prerequisite of any suit for back wages.¹ The inclusion of a guarantee of the ability to seek both back wages and damages would be better.

Suggestions were made by NGOs that assets seized could and should be used to compensate trafficked persons. This is one of the very few things that all present NGOs agreed upon. However, it is unsurprising that government representatives did not wish to consider this. Seized assets can be substantial and are built upon the labor and abuse of trafficked persons, but governments may prefer to use their discretion and apply such seizures to other objectives, possibly including law enforcement training. It was pointed out to the US delegation by a representative of the International Human Rights Law Group that such seizure of assets without compensation for trafficked persons amounts to exploitation of

¹This is clearer in the discussion of the United States Territory of the Northern Marianas Islands case. It is also discussed regarding Thai women in Japan (Human Rights Watch 2000: 207-208).

trafficked persons by States Parties. The US delegates' angry response was notable for both its vehemence and the reflection of unwillingness to recognize the fact that governments may actually profit by the seizure of these assets, earned by trafficked persons. Seizure of assets has proven lucrative for some jurisdictions in the US, where assets may be seized under vice law, including locations (e.g. real estate) where illicit activity such as drug distribution and sex work occur, even without the knowledge of the owners of such property. This has included seizure of buildings and of vehicles. Ultimately, such seizures may generate large sums of money and distribution of this money is likely to be contested under any circumstances.

The legal status of the trafficked person in the receiving state is addressed in Article 7. Signatory nations are required to "consider adopting legislative or other appropriate measures" to allow trafficked persons to remain in their territory temporarily or permanently "in appropriate cases". "[A]ppropriate consideration" of humanitarian and compassionate factors is ensured. Again, discretionary language renders these "requirements" optional. These clauses are intended to offer nations and trafficked persons an opportunity to work out an amenable solution to the illegal presence of trafficked persons, especially as humanitarian factors may include family in the receiving state and threats of violence or retribution in the home state. It remains to be seen whether such language can be made to mesh with the aims of immigration law which usually focuses on deportation of those in the country illegally. Japanese law and US law will be interesting tests of this. Japan did not sign on to this treaty at the December 2000 ceremony. The United States did.

The repatriation of trafficked persons is addressed in Article 8, which requires signatory nations to accept the repatriation and other return of their nationals and those with the right of permanent residence safely and without delay

and attempts to provide for the safety of repatriated persons in transit. This is a serious concern--there have been at least three deaths from suffocation during forcible repatriation from Europe to Africa.¹ Therefore, not only juridical procedure but also physical conditions of transport are important aspects of repatriation. Paragraph 2 additionally requires respect paid to the status of the trafficked person as a victim of a crime and encourages "preferably" voluntary rather than forced repatriation.

Legal documentation, such as identity cards, travel papers and passports, of trafficked persons is the issue of Paragraphs 3 and 4 of Article 8. States possibly receiving repatriated trafficked persons are required to verify nationality or right of residence without delay. Paragraph 4 requires the country of origin of a trafficked person to provide documentation to facilitate transit during repatriation. Additional concerns include the acceptance of people without documents or other proof of their having legally resided in the country of origin. This is of less concern for nations which have thorough birth registers but is a grave concern for people from nations without such thorough registry, especially those who have left their home country without legitimate paperwork, i.e. with a false passport or a passport belonging to another person. The Caucus recommended that laws addressing the status of stateless persons be used in situations with such undocumented persons. This was suggested by the leader of the Belgian delegation, but not adopted by the General Assembly.

International efforts at prevention and cooperation

Specific law enforcement measures such as border control and sharing of information internationally as well as preventive efforts are delineated in Articles

¹These deaths have occurred in situations where the deportee physically resisted deportation. They usually involve excess physical force and sometimes involve a special "helmet" intended to prevent the deportee biting guards. (No Border Network 2001, Amnesty International (2000), U.S. Committee for Refugees 2001, Kim 1999, Tyler 1999).

9-13. These issues touch upon and/or include information sharing for both potential migrants and international officials, legal paperwork including both actual documents and who may receive them and socio-economic roots of trafficking in persons.

Measures intended to "prevent and combat trafficking in persons" and to protect trafficked persons, "especially women and children" from revictimization are listed in Article 9. Trafficked persons are often determined to migrate and conditions upon arrival in the location of destination may depend upon the agents with whom they contract for transport and employment. Some repatriated persons and other returnees immediately re-contract to attempt migration again and may end up in abusive conditions once more. The most reliable documentation of such situations is by Asia Watch (1993, 1997a), near the border between Thailand and surrounding nations including Myanmar. It is clear from such documentation that so long as people who are determined to seek a better life via emigration are forced to use illegal agents to do so because of restricted legal immigration or emigration (in the case of exit visa requirements or extra stringent examination of the travel applications and documentation or wholesale denial of legal exit of any group of people, such as young women¹) there will exist people who are willing to help them migrate either with helpful or abusive intent. The International Labour Organization's Asia Pacific director has stated "The only foolproof way to curtail clandestine migration and exploitation of migrants by traffickers, intermediaries and unscrupulous employers is simply to respect the rights of

¹Young women leaving some nations, especially Thailand (Human Rights Watch 2000) and Romania (conversations with Eszter Birven of the Solomon Foundation, Hungary, June-October 2000), describe particular scrutiny of their documents, intended to prevent emigration for prostitution.

migrant workers."¹ (Human Rights Watch 2000: 214). Unfortunately, this document does not assure the human rights of migrants.

Paragraph 2 says that States shall attempt measures including research, information campaigns and socio-economic initiatives to address trafficking in persons. Research is most useful in documenting the practice and strategizing how to combat trafficking, including prosecution of abuses. Socio-economic initiatives usually include job programs for trafficked persons, or for people deemed "at risk," which usually indicates young women. Gendered programs suffer some ineffectiveness because of unmarketability (Human Rights Watch 2000: 191, 203, 204). This is especially likely in places where women routinely earn less than men and where women are shunted into sewing programs, for example, rather than more lucrative and less common fields. The closing of Bangladesh's Tanbazar brothel in 1999 (covered by the *Bangladesh Daily Star*, Associated Press and Reuters during July and August, 1999) and the enforced career change to sewing for some of the brothel's former residents is one example of a spectacularly misguided approach. This process was essentially government trafficking women out of the sex industry into seamstressdom, involving the use of force, coercion and police abuse. Kenyan women attending the XII International Conference on AIDS in Geneva (1998) detailed the unsuccessful attempts to train women to sew and encourage them to become seamstresses instead of prostitutes. The main reason they objected to this program was the loss of income they would experience. Some new seamstresses continued to supplement their income with sex work.²

¹Statement by Mitsuko Horiuchi, ILO Asia Pacific Regional Director, to the International Symposium on Migration: Towards Regional Cooperation on Irregular/Undocumented Migration, Bangkok, April 22, 1999. Quoted in Human Rights Watch 2000: 214.

²Presentation at a satellite forum organized by ASPASIE, a Swiss sex workers' organization, June 1998.

These issues about the availability of work are related to those in Paragraph 4, which encourages States Parties to take measures to address poverty and lack of equal opportunity. This could be interpreted so as to encourage participation in development programs sponsored by international bodies including the World Bank and International Monetary Fund. It could also be interpreted to encourage the adoption of gender parity and anti-gender discrimination policies. In any case, few states would acknowledge that their own practices may harm some of their residents and nationals.

Paragraph 3 encourages cooperation and involvement with NGOs and other relevant organizations in implementing such measures. Social and economic initiatives would most successfully include job creation programs in regions with high unemployment or underemployment. It is unrealistic to expect governments to provide employment for all. Some ambitious people may seek to migrate in any case. Information campaigns attempting to deter emigration by detailing what may happen to emigres are unsuccessful with people who are determined to seek their fortune elsewhere. One Australian campaign distributed in Asia intended to discourage migration to Australia and so described racism and abuses of foreigners in Australia (Rees 2001). The knowledge of one's rights abroad can prevent abusive situations in which the lack of knowledge of one's rights is taken advantage (Brussa 1999: 56; Human Rights Watch 2000: 67, 199). Unfortunately, this kind of information is not included in all such information campaigns (Human Rights Watch 2000: 188-189).

Paragraph 5 encourages states to take measures of any form "to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking." This was initially a written suggestion by the United States, included with suggestions referring to prostitution. These were uniformly condemned by representatives as diverse as those from the Vatican and

the Netherlands as it would open similar discussion as the inclusion of prostitution did in Article 3. There is speculation that the US delegation circulated this in order to evade accusations of being soft on crime, particularly prostitution.

The ambiguous "demand" mentioned above is strategic, not to enable multiple efforts, but was made to appeal to shame. This "demand" essentially defines all sex work as trafficking and all also immoral. In this lexicon, the reference to sex allows one to condemn trafficking as immoral rather than condemning slave-like conditions. Melynda Barnhart, an International Human Rights Law Group representative with the Caucus, paraphrased an intervention made during a specially scheduled late session (7-10 pm) on the Friday night of the Eleventh Session, October 2000, the final meeting before the signing of this document. This statement was made by Aurora Javate de Dios, Coalition Against Trafficking in Women director in the Philippines and a member of the Philippine delegation, to the effect that "we all know what demands we are talking about,"¹ an allusion to prostitution and sex tourism. She feels that all prostitution must be deemed trafficking and was very active during discussion of the definition of trafficking in persons for this document, participating in all meetings addressing this. Her focus led her to suggest the aforementioned definitions that would include all employment and even marriage of women in order to include all forms of prostitution and sexual exploitation. This language would allow nations to prosecute clients of prostitutes as traffickers. Trafficking carries a life sentence in the US, and clients certainly do not merit such treatment, especially when clients of prostitutes are the people most likely to bring prostitutes in coercive situations to the attention of those who can help them. This has been demonstrated in numerous US cases, such as in the 208 Bowery brothel in New York City. This may be tragically misenforced.

¹Discussions with IHRLG representative Melynda Barnhart.

There is some international momentum favoring laws against clients of prostitutes, as in Sweden and in the promotion of "John School" in the US and U.K.¹ However, there remains relatively little effort to prosecute clients of prostitutes, and this reflects a sexual double standard by which women are likely to be arrested as prostitutes while men are unlikely to be arrested as their clients in places where prostitution is illegal, while both parties are necessary for the occurrence of prostitution.

The inclusion of recommendations to train law enforcement professionals to address trafficking in persons could lead to better, more fair enforcement, especially with the consideration of NGO services and the need for sensitivity included in Article 10. It additionally notes the "need to consider child-and gender-sensitive issues." It remains to be seen whether these objectives will be carried out, but US activity in light of the recently passed Trafficking Victims Protection Act indicates a willingness to work with NGOs. This pertains to information sharing between States Parties regarding whether a person is a criminal or a trafficked person, types of documents used and routes and methods for recruitment and transit of trafficked persons in hopes of greater ability to discern who has been trafficked, which is also addressed in this article. A Caucus meeting with the Department of Justice during the year 2000 also demonstrated the efficacy of law enforcement training. Lou de Baca, a DOJ attorney working on trafficking cases, described the change in attitude toward trafficked persons once officers understand the severity of abuses sustained by trafficked persons. He described the sudden realization of a need for rescue rather than prosecution and compared the response to this enlightenment to chivalrous knights in shining

¹ John School is a day or weekend-long program for men arrested as clients of prostitutes during which they are subject to beration by former prostitutes. "I wanted to kill you!" is one quote from Norma Hotaling, creator of John School (Nieves 1999). John School is usually accompanied by a fine and a removal of these charges from one's record, paralleling to the Scared Straight program which targets youth to discourage drug use. See Nieves 1999, Vitzthum 2000 and Wagner 1998.

armor mounting rescue missions. While I may have private feelings about this image, I'd certainly prefer to be "rescued" by law enforcement than hunted as a criminal. Finally, Article 10 addresses the need for restrictions on shared information, as it would be counterproductive for sensitive information to be made public in ways that would jeopardize the safety of individuals or the progress of investigation.

"Border measures" including the right of states to increase border controls are addressed in Article 11. Many nations including the US have already turned to increased border patrols to prevent illegal immigration, with limited result. In fact, increased border measures may promote trafficking in persons by forcing those who seek to cross the border to undertake greater risks and engage various "agents" to facilitate illegal entry (Kwong 1997: 169-170). This is an issue not solely regarding trafficking in persons but also of alien smuggling, the subject of the other Optional Protocol to the Convention Against Transnational Organized Crime.

Border measures also include the responsibility of States Parties to require commercial transporters to ascertain that their passengers are in possession of the necessary documentation for entry in the receiving state, and encourages the provision of legal sanctions against carriers that do not make this effort. This is already the practice for most international flights, but may not be the case with regard to sea travel, and is almost certainly not the case regarding land travel. This will prove untenable in areas where the major forms of transit are not large commercial carriers but small, independent firms, perhaps composed of an individual driving a car, as in a Latin American *collectivo* or an African "bush taxi,"¹ to a border. Some discussion addressed the fact that no one can expect

¹ *Collectivos* and bush taxis are usually overcrowded, shared vehicles for which a similar price is paid by all passengers (excluding children) with extra paid for luggage. This is a common form of

commercial carriers to be able to ascertain whether a person's documents are genuine, and that transport can even occur without the carrier's knowledge. It remains to be seen what, if any, effect this will have.

States Parties are required to "consider taking measures" to permit the denial of entry or visas to persons implicated trafficking in persons under paragraph 5. The difficulty with this is that persons implicated are not necessarily convicted or even accused of any of the crimes set forth in this Protocol. This would allow any person suspected of being at all involved in trafficking in persons to be severely restricted with regard to personal freedom of movement. While the desire to end abuses including trafficking in persons is laudable, the erosion of individual liberties in the name of implication, which does not involve any evidence or conviction of said individual, is to be condemned. This could lead to restriction of many innocent people, especially as "implication" is not defined and there is no legal standard for implication. Additionally, some governments have resorted to scrutiny of their nationals traveling abroad or applying for passports and visas. This includes Thailand's travel restrictions of young women who "have been suspected . . . of being procured to sexual business in a foreign country" (Human Rights Watch 2000: 189-190, 196-199) and the Romanian policy of restricting the travel of young women suspected of leaving to be prostitutes elsewhere.¹ This restriction of movement of young women is unjustifiable. This is an example of how attempts to protect women by limiting their options may actually encourage the contraction of "services" to assist their emigration, possibly leading to the exact abuses the policy was implemented to avoid (Human Rights Watch 2000: 196-199).

long and short distance transit in the developing world, especially where infrastructure does not include government-subsidized rail and bus networks.

¹Discussion with Eszter Birven, Solomon Foundation outreach worker with Eastern European women in Hungary. Vienna, Austria, June 2000.

Travel documents, which are usually passports but in some cases may include birth certificates and other identification,¹ and their integrity are the subject of Articles 12 and 13. These are valid and reasonable concerns--fake documents or documents belonging to others are frequently used. However, most nations attempt to produce identity papers that are not easy to forge or to alter, rendering this moot. Article 13 requires States Parties to verify "within reasonable time" the validity of such documents and identity papers. This is important because some trafficked persons have lingered in detention while their nationality and documents are verified by the country of origin. Human Rights Watch (2000) documents cases in which women remain in Japanese jails and detention centers for extended stays, sometimes indefinitely, while waiting for verification and proper documentation from Thailand (126-131).

The section entitled "Final provisions" begins with Article 14. These articles mainly address bureaucratic process, but Article 14 asserts that this Protocol does not in any way affect or diminish rights and responsibilities, making particular mention of humanitarian and human rights law and citing the 1951 Convention (against slavery) and the 1967 Protocol relating to refugees and the principal of non-refoulement. The principal of non-refoulement is the illegality of repatriation or extradition to any place where the returnee may be subject to cruel and unusual punishment, including torture. Nations that do not allow the death penalty often do not extradite people to nations where they may face the death penalty. This is not required by the principle of non-refoulement but is an easily understood example of the concept.² Paragraph 2 of Article 14

¹This is the case when US nationals travel to many areas of North America, including Canada, Mexico and many Caribbean islands. Other travel documents include transit papers, such as the Certificate of Identity issued by Thailand to facilitate repatriation of their nationals who lack documentation (HRW 2000: 118).

²In fact, a person may be extradited to face death penalty charges if the means of death are not deemed cruel.

assures that trafficked persons will not be discriminated against for their status as trafficked persons and reaffirms internationally recognized principles of non-discrimination.

Other documents were discussed including the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the 1961 Convention on the Reduction of Statelessness. The 1949 Convention was discussed, but the realization that if this had been an effective anti-trafficking document, there would be no need for another anti-trafficking document prevented its inclusion here.¹

The remaining six articles, numbered 15-20, included under the heading "Final provisions" mainly address bureaucratic formalities such as arbitration of disputes between signatory nations, when and where signing will occur, the date from which it will enter into force in a signatory nation's jurisdiction, the procedure to amend this document, the procedure for a State Party to denounce this document in order not to be bound by it, and finally, a statement that this Protocol is equally authentic in each of the six official languages of the U. N. As these are largely procedural and in no way specific to the Trafficking Protocol, I will not analyze these articles further. It is significant, however, that these final articles specify how a State Party may express a reservation and so begin the process of removing themselves from the responsibilities set forth in this document.

Conclusions

Negotiations occur between delegates, not non-governmental organizations. This is especially true in this case because contact between the two blocs of NGOs was almost entirely hostile and accompanied by covert malicious

¹This was recommended in the statement of the Asian Women's Human Rights Council to the General Assembly, June 2000.

behavior. The rancor resembled interactions between pro-choice and anti-abortion advocates. Even common ground was unable to be pursued. This schism is seen whenever trafficking is discussed¹ and mirrored the delegates deliberations over the definition of trafficking. The debates reflect the two opposing positions. One position is that sex work is real work and trafficking is a grievous violation of human rights. The other position views sex work itself as a human rights violation and that trafficking is a vehicle to use to address this violation. A third view neatly summarized by Meillón (2001: 156-157) describes the realization by many at the United Nations Beijing + 5 conference that this debate will not be resolved in the near future and that therefore these conferences are not the place to come to conclusions about whether sex work is *per se* trafficking. This third view has emerged in other discussions of trafficking, including the Crimes Commission negotiations, and led to the compromise in this definition, in which each nation legislates its own view of prostitution.

Meillón's (2001) synopsis of the positions addressing trafficking in persons at the United Nations Beijing + 5 conference holds here - that two sides are effectively diametrically opposed. Meillón describes a third view, that such arenas as conferences and negotiations of legal protocols are not arenas in which it is possible to conclude one way or another, they are therefore not the right places for such discussion. However, these nuances are crucial in some policy such as the Trafficking Protocol and therefore, while a "conclusive decision" would be impossible to achieve, in these instances it is necessary to discuss what constitutes trafficking and whether this includes prostitution *per se*. An additional concern is that policies that restrict travel, and especially women's travel, actually encourage the practice of trafficking in persons by closing legal avenues of

¹This has been the case at other meetings, such as Beijing + 5 (Mitchell 2000) and the United Nations Working group on Contemporary Forms of Slavery (Ditmore, forthcoming).

migration, which promotes the use of the services of traffickers and smugglers by would-be migrants. (Meillón 2001, Kwong 1997).

Few delegates were experts on trafficking, although many were involved in law enforcement. This lack of expertise among some delegates points to a need for better education for the delegates. Lobbyists can help delegates understand unfamiliar issues, but lobbyists are inherently interested parties. Trafficking in persons and alien smuggling were sometimes confused by both delegates and translators.¹ The finer points were still more misunderstood. Even as lobbyists were consulted on these issues, this confusion contributed to the appeal of the simpler stance against prostitution put forth by the Human Rights Network.

The fact that trafficking is a complex issue is demonstrated both by its long definition and the specific views of trafficking described above. One Caucus member sees a "need to present trafficking as a simpler issue." Although lobbying literature addresses difficult issues and includes complex recommendations, simpler analysis is tempting. Some delegates may prefer shorter documents with less analysis, even at the expense of specificity and accuracy. While simplifying issues may help some people understand them, this is to the detriment of complex problems - an overly simplistic solution is not a solution but a seed for new problems.

Without people versed in the issues or the legal instruments and ramifications, international or domestic law will be crafted errantly. During the last week of negotiations, the delegate from New Zealand stated that some aspects of trafficking were addressed in other international law, specifically the law of the sea. She went on that these laws should not be contradicted and should be cited in

¹In French, *traite humaine* is the slave trade, or traffic in persons, while *le trafic* is transport or smuggling. This is mirrored in Spanish and is exactly the opposite of what English speakers expect the terms to mean. Paolo Longo at one 1999 meeting spoke to the translators to explain these differences.

the Article listing other pertinent documents. The chair, the Mexican ambassador to Austria, did not grasp this no matter how the delegate explained, and the Chair blocked discussion of this saying that she did not see how it mattered. This demonstrates not only a lack of expertise in international law but also how this lack can preclude important considerations. Similarly, the anti-prostitution stance also represents a too-simple and inefficient analysis that claims moral high ground while eclipsing the plight of many trafficked people in other industries and trafficked men. This is too great a sacrifice.

Despite the protracted debate about the definition of trafficking in persons and the lack of human rights protections in the Optional Protocol on Trafficking in Persons, Especially Women and Children, there are reasons for optimism in light of this document. Radhika Coomaraswamy, U. N. Special Rapporteur on Violence Against Women, has rightly referred to this definition of trafficking as a "breakthrough"¹ because of its establishment of trafficking as a crime that extends beyond the realm of prostitution and of which men are possible victims. This is enabled by the move to actual conditions and crimes against persons as opposed to sexuality and morality.

¹Talk delivered at Columbia University Law School, April 2001.

Chapter Four: New US Trafficking Law: From the Sublime to the Ridiculous

This chapter details the passage and possible use of the Trafficking Victims Protection Act (TVPA), passed in the fall of 2000. Unlike previous legislation, which tended to focus exclusively on the sex industry, the Act's definition of trafficking has a wider scope, and also includes workers in sweatshops and other types of employment. Yet it manages to maintain a lurid image of the sex industry, both in its language and with its differential, even biased treatment of all forms of work within the sex industry. The differential treatment of the sex industry can be justified to some extent by the fact that not all sex work is legally deemed labor. However, the act fails to make the distinction between licit and illicit forms of sex work, thus potentially affecting the entire sex industry. Ramifications of this play out in the protections offered to victims, which exclude voluntary sex workers. This chapter discusses the Act and some of the process that led to its passage. Additionally, it will cover the protections and assistance offered by the Second Violence Against Women Act (VAWA), which was attached to the Act as a rider. Other riders to this bill are not discussed.

Genesis of new legislation

The Trafficking Victims Protection Act of 2000 (TVPA), was passed at a very specific time, a time of increased immigration, increased publicity about trafficking in general and increased political action addressing violence against women. The first recent article addressing trafficking in women appeared in *The New York Times* January 11, 1998 and described the plight of Russian women in Israel. The pictures accompanying the article featured young, blond women. This and follow-up articles were remarkably redolent of the anti-semitism and xenophobia in the white slavery tracts produced a century ago (Donovan 2001, Connolly 1980: 60 and 116, Grittner 1990: 90, Langum 1994: 17-19). The term "white slavery" originally referred to wage labor and only later came to be

associated with prostitution. White slavery was held to be a greater evil than black slavery (hence the distinguishing adjective) because white slaves "would grieve more" (Grittner 1990: 119). An earlier chapter discusses the racism inherent in the term, the history of previous "white slavery" panics and their impact on immigration policy. Alarm about white slavery is, however, far from being a thing of the past. Stories of Asian women trafficked into the US to work in brothels and sweatshops never entirely disappear: the present political concern with trafficking, which ultimately led to the creation of new anti-trafficking legislation, is closely linked to the spread of media accounts of blonde, white women from Eastern Europe as victims of trafficking.¹

Passage of these Acts

This discussion of contemporary American efforts to address trafficking in persons via legislation examines some of the issues discussed during the negotiating process, as well as the final documents. These issues include the hotly contested definition of trafficking and what level of protections and services should be provided to trafficked persons. Negotiations were often politically driven, with alliances formed and broken based specifically on these issues.

The history of recent bills that were initially introduced to address trafficking is long. These bills have gone through numerous versions and each has had great changes, ultimately becoming the Trafficking Victims Protection Act. Initial versions of the bill were drafted by Senator Wellstone, widely regarded as the most liberal member of Congress. The drafts were read by sex workers' and other advocates, including the International Human Rights Law Group and independent scholars. Their comments were well received. Based on these comments, trafficking was expanded in some versions to include labor abuses

¹ See, for one example of many, *The New York Times*, A1, January 11, 1998.

both within and without the sex industry. As other legislators became more aware and active, the definition again became contested. Some later versions of the bill saw the definition reduced once again to trafficking for sexual purposes. In the final version, the bill has two levels of traffic in persons, one specifically involving force and another involving exclusively voluntary sex work.

This would seem to be a workable compromise but it is not without problems. By making a distinction that features extreme abuse on one hand, and sex work on the other, the bill implicitly classifies all kinds of sex work as abuse. Such a classification leaves the Act open to misapplication in much the same way as the Mann Act. The appeal of this compromise for legislators, however, can be seen in terms of public relations: they were able to be seen to be taking a stand against trafficking while, at the same time, not seeming soft on crime and appearing morally "upright." The need for legislators to be perceived as morally "correct" is a major factor in promoting the specific treatment of the sex industry as different from other industries. This will be discussed in greater detail later in this chapter.

TVPA itself was not a controversial act and enjoyed wide popular and congressional support. Congress largely wanted to pass legislation in light of the growing concern with trafficking in persons and this version of the bill was amenable to many. It was in fact so amenable that lawmakers including Senator Orrin Hatch, one of the most conservative members of Congress, chose to sponsor the bill with Wellstone, which certainly facilitated the passage of TVPA with wide, bipartisan support.

One issue that was potentially controversial was TVPA's stance on labor. Conversations with the staff of Senator Strom Thurmond, another very conservative member of Congress, about this bill before its passage focused specifically on the labor aspects. The Senator and some of his colleagues were

concerned not to pass a more general labor bill, preferring instead to address trafficking in persons as an issue involving only the most extreme abuses of labor so as to maintain the support of the business community.¹ Sweatshop owners have been charged with trafficking for ill-treatment of foreign workers; corporations who purchased from them, including such large names as Donna Karan and Gap, have been sued for back wages for unpaid sweatshop workers. CITATION Other businesses anticipated similar threats if the bill were to become a more general labor bill. So long as TVPA was not viewed as a general labor bill, the only source of potential controversy was likely to come from riders attached to the bill.

In the event, the TVPA had a dramatic passage, even though the bill itself was uncontroversial. The controversy surrounding the bill's passage was indeed the product of riders attached to the bill for political reasons.

Riders in US law-making represent an opportunity to compromise or to stonewall. Attachment of riders to a bill typically indicates either that the bill to which riders are attached has a good likelihood of being passed – certainly a better likelihood than that of the riders which have been fastened onto it – or that there is a political compromise in the making. The riders attached to TVPA included the second Violence Against Women Act (VAWA), which was so uncontroversial as to be passed without amendment, and the much more hotly contested bill to forbid sales of alcohol on the Internet, sponsored by Senator Hatch. This latter was eventually removed after a great deal of debate, specifically in order to allow TVPA and VAWA to be passed. Had this rider not been removed, it could well have jeopardized the passage of TVPA and all its riders, including VAWA. While some of the bills attached as riders might have found another possible route through Congress, because TVPA was debated at the very

¹Conversations with Thurmond's staff in my lobbying capacity with the Human Rights Caucus, 2000.

end of Congress's 2000 session, VAWA and some other riders would have had no further chance of passage. As will be shown later, VAWA holds important statutes for trafficked persons.

Details of the Trafficking Victims Protection Act

TVPA is far too long to address paragraph by paragraph, as done with the United Nations Optional Protocol (UNOP) in the following chapter. I will thus address only certain specific aspects of this law including the purposes and findings sections, the definition of trafficking and the protections conditionally offered to trafficked persons.

The Trafficking Victims Protection Act of 2000 (TVPA) opens with findings describing proliferation of the problem of trafficking in persons especially into the sex industry, and recognizes that there is no legislation specifically intended to combat this problem. It then lays out definitions, assistance to victims, penalties for traffickers and pertinent foreign policy. This chapter will give a brief summary of each of these sections, and discuss their implication and motivations.

Purposes and Findings

The "Purposes and Findings" sections in TVPA offer insight into the trafficking framework used here. I am particularly interested in the ways this document addresses trafficking into the sex industry and how it has expanded the definition of trafficking away from the use of the Mann Act of 1910 with a broader definition that includes other industries. Even so, it maintains a somewhat lurid focus on the sex industry with its troublesome distinctions between "serious forms of trafficking" and "sex trafficking." A common understanding of this issue would probably hold any form of trafficking to be a serious violation of a person's autonomy.

Section 102 (b) (2) reads "Many of these persons are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism, and other commercial sexual services. The low status of women in many parts of the world has contributed to the burgeoning of the trafficking industry." This rhetoric has little bearing on the direct effects of this legislation, but foreshadows the definition of trafficking and the conditions for protections and assistance to come later. The following paragraph, 102(b) (3) reminds us that "[t]rafficking is not limited to the sex industry" and "includes forced labor and involves significant violations of labor, public health, and human rights standards worldwide."

The focus upon women and girls, as in the United Nations Optional Protocol addressing trafficking in persons, highlights a viewpoint in which women are duped victims of trafficking while men are possibly more criminal in their intent but less likely to be so duped. Some of this is reflected in statements which exclude men, such as "Approximately 50,000 women and children are trafficked into the United States each year" (from section 102 (b) (1)) and "Current practices of sexual slavery and trafficking in women and children are similarly abhorrent to the principles upon which the United States was founded" (from section 102 (b) (22)). The figure of 50,000 people in section 102 (b) (1) is from a CIA report (Richard) that includes men. The report also talks about trafficked men, but neither it nor the TVPA given any estimate of numbers.

Government offices are consistent in emphasizing women while downplaying the issue of trafficked men. The statements also clearly identify women and children as the people that the report writers and the drafters of the legislation had in mind. This paternalistic attitude has the side effect of rendering

men invisible. Trafficked men are acknowledged to exist, but after this acknowledgement they are invisible in these reports and legislation. This echoes the United Nations trafficking Protocol with its constant refrain, "especially women and children" and reflects the perception that trafficking is something that happens to women and children. In this view, women and children are necessarily victims, but men are not and can not be. The Crimes Commission completed two Optional Protocols, one addressing trafficking in persons, and the other addressing alien smuggling. The Trafficking Protocol was initially intended to address "Women and Children" and was only later amended to read "Trafficking in Persons, Especially Women and Children," while the Smuggling Protocol addresses men, women and children. The fact that it has no such coda, unlike the trafficking Protocol, may indicate that in the minds of its drafters, it initially addressed men.

This view of women and children as victims is further expressed in the consistent emphasis on the sex industry, which takes precedence over consideration of other, broader aspects of trafficking. This is reflected in the TVPA's own categorical breakdown of trafficking into sex trafficking and serious forms of trafficking. The term "trafficking in persons" covers men and women and children, who may be trafficked for migration and labor purposes of all kinds (Asia Watch 1993, 1997a, 1997b; Richard 2000), but what captures the minds and imaginations of the media, the general public and policy makers remains the specter of women and children trafficked for purposes of sexual slavery. Such a simplistic and narrow view further disregards evidence that people trafficked are not necessarily or even usually involuntary or duped participants (Finkel 2001b, Lin 1998, Kempadoo and Doezema 1998), that they work in many industries and that trafficked persons come in all genders.

Definitions

Let us examine the definition of trafficking in persons used in the TVPA with the variety of experiences of trafficked persons and the focus on sex exhibited in the Purposes and Findings specifically in mind. The definition must be understood with reference to a consistent assumption within the act that commercial sex and the sex industry are not to be condoned or tolerated, much less approved, as in the Purposes and Findings. Thus each mention of trafficking includes sex trafficking and serious forms of trafficking, with aspects related to the sex industry preceding any discussion of more general trafficking for recognized labor or services. This bias against the sex industry will be discussed at length shortly.

Section 103 (3) says "The term 'commercial sex act' means any sex act on account of which anything of value is given to or received by any person."

Section 103 (8) defines severe forms of trafficking in persons as

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

This makes the use of force and/or deception a necessary condition for any activity to be considered a serious form of trafficking in persons. Considering employment more generally, this is entirely reasonable. In the absence of force or deception, advertising for or hiring an employee would not normally be considered criminal.

The drafters of the legislation were obligated to treat sex work as a separate case for practical reasons. A definition of "trafficking" that defines trafficking simply as forced labor must exclude prostitution, on the grounds that prostitution is not recognized as a form of labor. Accordingly, a double-headed

definition that brings both recognized and non-recognized forms of labor (i.e. prostitution) under the single heading of trafficking is required.

While "serious forms of trafficking" address all situations of abuse, "sex trafficking" was used to include all forms of sex work, licit or illicit. Section 103 (9) defines sex trafficking as "the recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act." Such a definition seems overly broad. On the one hand, it can be applied – redundantly – to activities that are already defined elsewhere as criminal, such as "procuring another for prostitution." On the other hand, it could also be applied against non-proscribed activities, such as advertising for legal work in the licit sex industry (i.e. stripping), or marriages in which one party is guaranteed any kind of dowry, property, or gift upon marriage.

Why "serious forms" and "sex" trafficking?

There are advantages and disadvantages to treating sex work including prostitution separately. If all sex work were recognized as labor, a separate treatment would be unnecessary. So long as some sex work remains unrecognized, this exclusion is a very good legal reason to address the sex industry separately. The term "trafficking" refers to both the sex industry and to recognized forms of labor, making it legally necessary to address prostitution separately. If trafficking is defined as forced labor or labor in slavery-like conditions, the fact that prostitution is not a recognized form of labor would automatically exclude it from the definition of trafficking. Additionally, the exclusion of illicit sex work from recognized labor creates a paradox, in that while illicit sex workers are actually working, they are unable to access the protections afforded by Occupational Safety and Health Standards, Workmen's Compensation, and this legislation.

The two-tiered definition of trafficking that includes all sex work, regardless of the presence or absence of abuse, greatly compromises sex workers' rights. It denies sex workers the autonomy to choose employment in the licit sex industry and potentially criminalizes all sex work, including even currently legal activities such as stripping and producing pornography. Workers in the licit sex industry do not consider themselves to be "trafficked persons" unless they are also subjected to violations such as coercion or slavery-like conditions. The stipulation of slavery-like conditions is in keeping with other labor-oriented laws and bodies including Workman's Compensation, unions such as the Exotic Dancers Alliance and Occupational Safety and Health Standards that apply to sex work. TVPA could potentially *remove* legal protections for workers in the licit sex industry. This is because the employment relationship in the US is legally interpreted as a type of contract, and contract law mandates that contracts to perform illegal acts are void. If TVPA is used to prosecute licit sex industry employers for trafficking in persons, the licit sex industry may become illicit. OSHA and other protections are unavailable to workers whose trade is legally proscribed.

The differential treatment of prostitution remains problematic. In the specific case of the TVPA, the separate treatment means that protections offered by the legislation are not available to people trafficked into prostitution. As an example, the option to sue employers for back pay – seen in other trafficking cases – is not available to prostitutes, because their "work" is not recognized as such. In cases involving prostitution, this is impossible because without recognizing prostitution as work, there are no legally recognized back wages. Therefore, in trafficking cases involving prostitution other strategies for prosecution are sought.

Recall that "serious forms of trafficking" include all situations involving children or physical violence. Victims of serious forms of trafficking are able to

avail themselves of the protections and assistance afforded by this Act, while sex workers are defined as victims of sex trafficking, without the use of force, but excluded from any assistance or protections. As these would be voluntary sex workers, it is only in severe conditions that they would be deemed victims of "serious forms of trafficking." This is so widely defined as to include licit businesses advertising for strippers, dancers, and porn models. The problem is twofold: first, a person can elect to be a prostitute or sex worker, and still be a victim of trafficking (because working conditions are not acceptable, for instance.) Sex workers do not see themselves as victims unless there is abuse, but TVPA deems them victims. The second problem is the impact on others who are not trafficked, but possibly to be tried for trafficking, i.e. the owners/operators of technically legal sex industry operations that may be prosecuted under trafficking law for advertising for employees. This essentially punishes sex workers for their occupations.

Focusing only on the sex trafficking aspects of trafficking would be misguided and dangerous. The CIA report (Richard 2000) covers 18 cases, only half of which are related to sex trafficking. The TVPA definition is broad enough to cover all these cases. Unfortunately, by continuing to treat sex trafficking as a separate case – and repeating the old sensationalist attitudes and "moral" distinctions applied to sex trafficking – it deprives people trafficked into sex work of essential protections. TVPA cannot remedy the omission of a criminal act from employment and labor protections. However, the specific inclusion of all sex workers in TVPA could have been used specifically to avoid just this legal exclusion. TVPA instead singles out the sex industry in a way that hinders the rights even of licit sex workers. The distinction made by the Act is essentially the old distinction, relying on archaic stereotypes, between good women to be

rescued and bad women to be punished. It remains to be seen how enforcement will follow.

Protection, prosecution and punishment

Trafficking in persons is a human rights violation of the highest order and is a crime composed of other crimes. All recent legislation against trafficking in persons is largely prosecution-oriented and protections and assistance for victims are linked to cooperation with prosecution efforts. Efforts to assist prosecution of criminals are a political asset; no politician wants to be seen as "soft on crime," least of all organized crime. Domestic anti-crime efforts include increased sentencing for some forms of trafficking. Because successful prosecutions require witnesses, some protections and assistance are made available to trafficked persons, although this does not enjoy the political support associated with more direct anti-crime measures (i.e. prosecutions of organized crime or drug dealers).

Punishment of individuals

TVPA stipulates punishment for individuals involved in trafficking in persons. TVPA sanctions are applicable to people *suspected*, not yet convicted, of severe forms of trafficking in persons (section 111 (d)). This creates a category of people who are not "innocent until proven guilty" in American cliché but who may be punished without conviction. These sanctions may include denial of visas to enter the US and seizure of assets within the US.¹ The consular office or the Attorney General has the responsibility of determining the individuals subject to the terms of the Act. Who will be sanctioned and what actions will be taken are to be determined by the President (111 (b) (1)). It would be impossible to use only convictions from other nations to determine whether an individual has committed the crime of trafficking in persons, as it has been noted that "[i]n some countries, enforcement against traffickers is also hindered by official indifference, by

¹Seizure of assets is applicable to US citizens as well as non-nationals.

corruption, and sometimes even by official participation in trafficking" (section 102 (b) (16)). Unfortunately, this does leave open the possibility that the specific reports (sometimes classified, section 111 (b) (3)) to determine and designate suspects may be used with bias.

Section 112 strengthens laws addressing prosecution and punishment of traffickers, in some cases by amending existing laws. This includes adding separate sections, numbered 1589-1594, to Chapter 77 of title 18, US Code. Section 1592 (a) (3), "Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor" makes it a crime punishable by up to five years imprisonment or a fine to confiscate, destroy or otherwise deprive a person of their travel documents "to prevent or restrict or to attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel, in order to maintain the labor or services of that person" This makes it a crime to withhold or destroy a person's passport or other documents. This is an aggravated form of theft and should be so treated. However this statute specifically refers to situations in which a person is not allowed to leave, situations in which a person's mobility is intentionally restricted. In some cases this would be akin to kidnapping. The statute goes further and links this restriction to the purpose of servitude and forced labor - in other words, slavery. This language, including "purpose" means that the "mens rea" or intent to force labor must be proven in court as well as the acts themselves.

Such action is more than appropriate to the crime of trafficking, which is often reported to involve the attempt to gain control over another by limiting their movements including theft or destruction of travel papers. It is the single most important aspect of this anti-trafficking legislation, as the serious forms of trafficking are already defined by other crimes, i.e., kidnapping, fraud and slavery.

Section 1593, "Mandatory restitutions," provides restitution to trafficked persons by payment of wages or losses incurred. This is an extremely important provision, but by specifying wages this excludes prostitutes, which is ironic in the light of the Act's focus on the sex industry. As previously discussed, prostitution is not recognized as labor and therefore not subject to payment of wages under the law. The Department of Justice has sought damages for trafficked prostitutes in the Northern Marianas Islands.¹ It remains to be seen whether this will still be possible in light of this new legislation.

TVPA and the licit sex industry

The definitions of trafficking given earlier are likely to have a potentially significant impact on the sex industry in both its illicit and licit forms. Recall that a "commercial sex act" means "any sex act on account of which anything of value is given to or received by any person" (section 103 (3)) and that sex trafficking is defined as "the recruitment, harboring, transportation, provision, or obtaining of a person for a commercial sex act" (section 103 (9)). This opens the possibility that trafficking law might be applied both to activities that are already criminal, such as pandering, and to activities which are currently legal, such as stripping. Only the sex industry is singled out for this exceptional treatment. No other industry is addressed as comprising trafficking in and of itself, not even those in which trafficking is a clear and documented problem such as sweatshop work and domestic labor (Richard). "[T]he recruitment, harboring, transportation, provision, or obtaining of a person" for a technical job, a trade, or menial labor, would never be considered trafficking without the additional condition of force or deception. This discrepancy highlights an anti-sex bias and a conflation of prostitution and trafficking.

¹Human Rights Caucus meeting with the Department of Justice, 2000.

Sex trafficking as defined in this new law does not include coercion, and defines a commercial sex act as one in which there is any exchange or reward for any party. This is a very broad definition of commercial sex, broad enough perhaps to encompass casual sex and conventional dating wherein a woman is taken to dinner by a man, perhaps followed by sex. It could even include many marriages. In this way, it is a return to the original 1910 Mann Act, which was only amended by the sexually conservative Meese Committee in 1986 to apply exclusively to illegal activity rather than to the "immoral activities" referred to in the original language. The Mann Act was sometimes applied to people who were, to modern sensibilities, dating (Langum 1994). Outright prostitution, an agreed upon exchange of a specific amount of money for specific types of sex, was not made illegal until later.

Historical experience has shown that laws focusing on prostitution and sex work invariably have greater effect on women than men (Gilfoyle 1992, Hobson 1987, Walkowitz 1984). Laws addressing sex work are not conceived with male sex workers in mind, nor are they usually so enforced. Even the Mann Act, which purported to protect women, was extensively used against them (Langum 1994, Grittner 1990). I fear that this focus on sex will again be used against women and render trafficked men invisible.

How could the TVPA, affect the licit sex industry? Some strip clubs maintain apartments for use by traveling dancers. Would this suddenly constitute sex trafficking as harboring a person who will perform a commercial sex act? If so, this service for traveling entertainers could be punished by 20 years imprisonment. Such ambiguity should be addressed before grave unintended consequences occur. There is legal precedent for this in a case in which the owners of The Playpen, a New York City peep show, paid for the round-trip air tickets of two women from the Czech Republic to come and work for them in

New York. The women worked as nude dancers. All their expenses were paid, their earnings were not taken from them and they were not held in debt bondage or servitude. Nevertheless, the owners were prosecuted (under immigration rather than trafficking law), and news coverage related the story of "Girls Forced to Dance Naked" (Grant and Soderlund 199?).

The definitions in the Act view any act of commercial sex or seeking commercial sex as trafficking. This could include advertising or working with a partner.¹ Given the severity of penalties for trafficking, the question of what constitutes a commercial sex act is of considerable importance, and here the law is unclear. Is a client who tips a dancer in a go-go bar paying for a commercial sex act? Might the distinction be made in terms of the amount of clothing worn or not worn? Recently-enacted legislation in New York requires (formerly topless) dancers to wear tops. A conviction for the serious crime of trafficking might thus hinge on as small a detail as whether the dancer is topless or not. Dancers in some clubs use latex painted over the nipples to evade regulations requiring tops. Such points of detail become of enormous importance if they become relevant to determining whether a "commercial sex act" has taken place or not, and thus whether a client might be open to prosecution under trafficking law. The application of this statute to non-violent clients of voluntary prostitutes and other sex workers would be a travesty of justice. The recent innovation of "John School," in which men convicted of soliciting prostitutes are berated for a day and pay a \$500 fine (Nieves 1999) to have the incident removed from their records is positively lenient by comparison.²

¹Some sex workers prefer to not to work alone because they believe it is safer to work with others.

²Alternatively, could corrupt police officers and other law enforcement personnel who extort sex from women they arrest and charge with prostitution be tried as traffickers because they coerce sex from prostitutes? (Flynn 2001).

As noted previously, it is even conceivable that – according to the letter of the law – certain marriages would fall within this definition, much as occurred under the Mann Act. Every religious conception of marriage includes sex, and much religious tradition about sex is aimed at ensuring the conception of children, which necessarily requires some form of sexual intercourse to take place.

Marriage is so entwined with sex that in many states there is no possibility of prosecuting marital rape – rape within marriage is not a crime because marriage is assumed to guarantee sexual access. Following from this and from the terms of the TVPA, any marriage involving an exchange of presents for the accepted promise of the conjugal connubial bed could be viewed trafficking. Anna Nicole Smith's marriage to an elderly billionaire, by which Smith became the heir to her husband's fortune, is one marriage that might possibly be prosecuted as an instance of trafficking (Jablon 2001). So is the prenuptial agreement of cinema stars Catherine Zeta Jones and Michael Douglas, by which Jones will receive \$1 million from Douglas for every year of marriage should the pair split up. Given the financial incentive¹ involved, should Mr. Douglas thus be prosecuted for trafficking? Will the giving of wedding presents suddenly transform every marriage into a felony?

These are extreme, even seemingly absurd examples, but they expose the inherent absurdity of the law. By focusing on the notion of "commercial sex acts," the Act attempts to revive the age-old distinction – an unnecessary distinction – between "good" women and "bad." The irony is that the application of the law's own definition of commercial sex act might potentially transformed some "good" (i.e. married) women into "whores!"

Protections and assistance to trafficked persons under TVPA

¹Incentive here is ironic: the agreement was forged in order to avoid the situation of Douglas' recent divorce, in which he ceded \$44 million to his former wife. (Associated Press Television News 2000, Towndrow 2000)

Although there are grave flaws inherent in TVPA, there are some positive features of this Act. These include the protections and assistance provided for trafficked persons, limited though they are. Most protections and assistance granted to trafficked persons under TVPA are guaranteed only for the time necessary for prosecution and are geared towards law enforcement's need for witnesses. The TVPA does not distinguish between US citizens and foreign nationals, yet the protections are available only to foreign nationals. What happens to Americans trafficked within the US?¹ Will they be offered witness protection? As a measure designed to promote cooperation with the authorities, this is unlikely to prove adequate, especially for foreign nationals: people worried about eventual deportation will always fear retribution, both toward themselves and their families at home. The protections and assistance provided by the TVPA, section 107, include 5,000 visas annually, designated "T" visas (section 107 (2) (e)). These visas are only for those who cooperate with the prosecution, and only for victims of severe forms of trafficking (section 107 (b) (1) (A)). They are not offered to trafficked persons who have entered the sex industry voluntarily (note that a person may choose to work in the sex industry, but then be deceived or coerced into working in ways or in conditions that are not of their choosing, and their freedom of movement or freedom to leave may be restricted: their original choice of activity may have been voluntary, but they are nonetheless victims of trafficking), but only to those who have been forced into either the sex industry or other labor. The allocation of 5,000 does not include visas for family members who may legally enter the US (section 107 (2) (e) (2)). After five years residence in the US, the holder of a T visa may apply for permanent residency.

¹For example, US national Jo Weldon discussed being trafficked to sell magazines for the Union Circulation Company of Texas. Union Circulation was closed down for this. Presentation at the Beijing + 5 conference in New York, June 2000.

The Act itself uses the CIA figure of 50,000 women and children trafficked into the US (Richard 2000), thus making visas available for one-tenth those who might possibly be eligible, subject to their meeting the criteria of the use of force and their cooperation as witnesses for the prosecution (see section 107 (b) (E)). Ten percent may be accurate and adequate for the numbers who meet these requirements, although in light of the sheer numbers reported by the CIA, 5,000 visas may prove inadequate to the task of ensuring credible witnesses for prosecution of all trafficking cases.¹ Successful prosecution of traffickers, however, depends crucially on the availability of credible witnesses. In recognition of this, the final version of the Act includes provisions that recognize witnesses as victims of crime and worthy subjects for protection, with a view to encouraging them to take the stand. Such assistance is exceptional as many witnesses are immigrants, often illegally in the US, and therefore very afraid of any arm of law enforcement agencies.

The fact that trafficked persons can be considered criminals as well as victims raises numerous complex issues. Protections for victims of crime are a political hot potato when the victims themselves may possibly be criminals. In the case of trafficking in persons, victims may include illegal aliens and sex workers engaged in illegal activities such as prostitution. The legal response to such people may vary greatly: in some cases, their status as victims is recognized and their rights protected; in others, they may be subject to immediate incarceration or deportation.

Deportation and/or incarceration hinders the pursuit of justice by depriving prosecutors of witnesses and discouraging any cooperation with the authorities. For this reason, not only the definition of the crime of trafficking in persons, but also protection of the rights of victims is of great concern to

¹This figure assumes that the government will not find the majority of trafficked people in the US.

advocacy groups. However, such issues do not usually fall within the political aims of legislators. Trafficked persons may be seen as undesirables, even more so than their traffickers as they do not have the advantages of money or citizenship that traffickers may have.

Promoting adequate protections for victims of trafficking carries a political liability for politicians for two main reasons. The first has to do with immigration. At the time the TVPA was passed, the US enjoyed some of the lowest unemployment rates in years, leading last year to the addition of 70,000 H1B visas for employment of skilled immigrants. Moreover, the US was itself founded on immigration, and the concept of migrating in search of a better life – as exemplified by current immigrants, especially illegal immigrants – is very much part of the national tradition. Despite this, current residents of the US do not generally welcome new immigration. As a result, legislators do not willingly risk being seen as advocating overly open immigration policies (which may include providing protection for trafficking victims), or failing to do enough to protect US jobs.

Secondly, legislators are afraid to be seen as "soft on crime." Protections and assistance for people who may have committed crime is still a difficult political issue. At the very least, trafficked people are likely to be guilty of having entered the country illegally; if they work in the sex industry, they may also have engaged in other activities that are currently classed as criminal. Reflecting this, the Act specifically excludes voluntary sex workers from the protections provided (section 107 (b) (C)).

The inherent bias of the Act (and its authors) against the sex industry is made clearer in the discussion of protections and assistance for trafficked persons. Protections and assistance are made available for "victims of serious forms of trafficking" without mention of the less serious form of "sex trafficking." The

provision of visas leading to permanent residency for those who act as witnesses for prosecution of traffickers includes a stipulation that the grantee "has, throughout such period, been a person of good moral character" [section 107 (b) (2) (f), appended as (I) (1) (B) to an immigration act, (8 U.S.C. 1255)]. This is usually interpreted to mean that the applicant has committed no crimes during the US immigration process and frequently prior to beginning the immigration process. However, this can be used to deny these visas to sex workers. This implies that only those who have not chosen to be prostitutes or other sorts of sex workers will be eligible for any assistance and that no voluntary sex workers will be eligible for permanent residence. The double standard is evident: the law defines sex workers (voluntary or not) as victims of trafficking simply because they are sex workers; simultaneously, it denies them the right to protection – for the same reason!

The definition of trafficking itself reflects a double standard. Sex trafficking as defined by the Act involves no activity which would be considered a crime in the context of any other business, much less any activity that merits the same level of concern as any situation involving force, deception or coercion. No other business, from large corporations to the corner sandwich shop, could be penalized simply for advertising for employees. The underlying assumption is that the sex industry is inherently "bad" and "sinful." From that, as the language of the Act shows, those who participate in it voluntarily are also "bad," and less deserving – in fact, undeserving – of protection. The age-old distinction between "good girls" and "bad girls," between innocent victims and wilful participants, surfaces once again.

What does this binarization signify for trafficked persons, sex workers and women in general?

This binary system of classifying women as good or bad is ultimately a rehash of the long-standing and too familiar “madonna/whore” dichotomy. Ellen Willis compares sexual morality and its options for women to a “good cop-bad cop” scene, in which marriage, motherhood and traditional feminine roles function as the “good cop” while rape and the threat of it function as the “bad cop” awaiting women who do not toe the line. This kind of morality is what prompted Dierdre English (1984) to write “In the past, the community of women has often been hard on those who ‘give away’ for free - or for money - what the rest trade for love and marriage.” This type of divisiveness is, sadly, still visible not only in general society but within feminism.

Throughout my experience with organizations addressing trafficking, reading feminist and law enforcement reports about the sex industry, the question that continually surfaces, whether merely hinted at or asked outright, is how to discern innocent victims forced into the sex industry against their will and subject to the lust of evil men, from evil, meretricious prostitutes and gold-digging sex workers untroubled by the nasty demands of male lust. This question could be more clearly stated “how will we know which ones to punish as whores and which ones to protect as martyrs?” This is what Gail Pheterson refers to as “the whore stigma” (Pheterson 1996).

At an April 2001 planning meeting for the United Nations Special Session on AIDS, one attendee, a member of the clergy, repeated that stigma about HIV and AIDS is tied to transmission, which is linked to sex and therefore to sin. Aside from the grave issue of HIV transmission, this sexual stigma also applies to sex work and other “immoral acts.” The language of TVPA is a clear transformation of this moral outlook into legal language.

TVPA is a return to earlier, sexist values. Women have worked very hard to overcome this good/bad binarization but TVPA has retained it. At the very end

of the 20th century, a major piece of legislation still makes the separation between good women, who deserve protection and assistance, and bad, who will be jailed and deported. The limitations of either aspect, both madonna and whore, cannot compare to a freedom from this dichotomy in which women would be judged as people, referring to their achievements rather than their perceived sexual morality. This moral division is purely in keeping with the perception of women as in need of protection rather than empowerment. It is in keeping with an ideology that lumps “women and children” together as beings in need of protection, and one in which women who do not toe the line are to be punished for their infractions rather than seen as reasonable, self-determined adults. It is a patronizing, infantilizing, patriarchal and misogynist way of thinking. It is critical for feminists and their supporters to recognize from this kind of legislation how tightly linked sexuality and sexism continue to be.

Additionally, legislation and other writing that separates good women from bad along axes of sexual behavior is not only retrograde, but also ignores the economic realities faced by women. Women do not enjoy monetary parity with men: in the US, they earn on average about 20 percent less than men do, and the wage gap is often much larger in other places. This alone may make it worthwhile for a woman to consider migrating in order to earn more. Differing economic opportunities between the sexes also make it more likely for women to be drawn into the sex industry – money is the most common reason for people to work in the sex industry.

The Violence Against Women Act of 2000

At this point, I will leave my discussion of the TVPA to consider one of its riders, the Violence Against Women Act of 2000 (VAWA). This is the second VAWA, the first having been passed in 1994. VAWA focuses upon domestic violence and sexual assault and includes budget appropriations for projects and

the construction of a database of networked projects and their services. The portion of VAWA pertinent to trafficked persons is far smaller than TVPA. However, a small portion of the second half of this Act specifically addresses immigrants in the US and makes visas available for victims of crime and abuse, which is intended to include but not be limited to trafficked persons (Section 1513). Aside from the creation of visas and their attendant requirements, VAWA addresses the number of visas, and makes clear that the allocation specified includes only visas issued to immediate victims of a crime. Visas allocated to family members are not counted against this total, and there are provisions to allow entry of family members. People who obtain these "U" visas are to be informed by the government of non-governmental organizations that can help them. I will address these provisions of the second VAWA exclusively, as the other topics, while interesting and important, do not touch upon the subject of trafficking in persons.

The presence of protections intended for trafficked persons in VAWA does reflect the conception of trafficking as something that happens to women rather than men, similar to domestic violence and sexual assault, the main focuses of this bill. The exact text from the findings in the section on "Battered Immigrant Women" is:

Immigrant women and children are often targeted to be victims of crimes committed against them in the United States, including rape, torture, kidnaping, trafficking, incest, domestic violence, sexual assault, female genital mutilation, forced prostitution, involuntary servitude, being held hostage or being criminally restrained. (Sec. 1513 (a) (1) (A))

Considering the reference to "[i]mmigrant women and children," it is interesting that the assistance made available under VAWA is gender neutral and without any reference to women and children, unlike the more restrictive TVPA or UNOP. It reads

The purpose of this section is to create a new nonimmigrant visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in section 101(a) (15) (U) (iii) of the Immigration and Nationality Act committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States. (Sec. 1513 (a) (2) (A))

This hints at the intent to assist those who will aid prosecution; the following paragraph is more explicit.

Creating a new nonimmigrant visa classification will facilitate the reporting of crimes to law enforcement officials by trafficked, exploited, victimized, and abused aliens who are not in lawful immigration status. It also gives law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions. Providing temporary legal status to aliens who have been severely victimized by criminal activity also comports with the humanitarian interests of the United States. (Sec. 1513 (a) (2) (B))

VAWA was not intended to solely address trafficking in persons, but as a more general act to aid women, as listed in both quotes from the Act itself above. However, VAWA includes new aid provisions, and trafficking was cited, along with domestic violence and sexual assault, in the list of crimes VAWA is intended to redress. These provisions for assistance include 10,000 new visas, designated U, in addition to the 5,000 T visas allowed by the trafficking bill. Despite the fact that VAWA's title refers to women, the protections and assistance provided include no reference to gender, as demonstrated in Section 1513 (a) (2) (B) above. Therefore, any trafficked person is eligible to benefit from these visas. The visas, like the T visas created by TVPA, require certification, but this is made easier under VAWA. U visas are intended for people whose certification from the Department of Justice declares them someone who has been helpful, is or is likely to be helpful to prosecutions. This generally designates cooperation as a witness in efforts to prosecute cases, here and as above in TVPA, trafficking cases.

Permanent residency is not generally made immediately available, but the Attorney General is given wide discretion in converting some of these visas to permanent resident status. Sec. 1513 (a) (2) (C) includes

this section gives the Attorney General discretion to convert the status of such nonimmigrants to that of permanent residents when doing so is justified on humanitarian grounds, for family unity, or is otherwise in the public interest.

Humanitarian grounds as described in VAWA include human rights issues and family members. Granting someone such a visa "in the public interest" could indicate that the person has cooperated with prosecutions. U visa holders are also eligible to apply for permanent residence after only three years, compared with the five year period for holders of T visas. These visas are to be "justified on humanitarian grounds" which renders them similar to asylum. Family members may also be eligible in conditions of "extreme hardship," such as the need for medical care.

Section 1513 (b) establishes the Humanitarian/Material Witness Nonimmigrant Classification U visa and Section 1513 (b) (3) (i) specifies the conditions for the granting of such visas. Whether an alien meets these conditions is at the discretion of the Attorney General. Conditions include having suffered physically or mentally as the victim of a crime (Section 1513 (b) (3) (i) (I)) specifically addressed in Section 1513 (b) (3) (iii) (discussed below), which occurred on US territory (Section 1513 (b) (3) (i) (IV)), possessing knowledge of this criminal activity (Section 1513 (b) (3) (i) (II)), "the alien ... has been helpful, is being helpful, or is likely to be helpful" to authorities investigating or prosecuting criminal activity. These requirements can even be waived if "an investigation or prosecution would be harmed without the assistance of the spouse, the child, or, in the case of an alien child, the parent of the alien" (Section

1513 (b) (3) (ii)). These last two clauses quoted here render the U visa far more obtainable than the T visa created under TVPA.

Why VAWA is better for trafficked persons

The absence of any attempt to identify voluntary prostitutes in order to prevent their obtaining visas is a big step away from the madonna/whore dichotomy present in TVPA. This is in keeping with a bill that focuses on crime rather than morality. Despite the very limited focus of this section of VAWA, I maintain that VAWA has a great deal to offer trafficked persons, and in some cases, far more than TVPA.

Section 1513 (b) (3) (iii) specifies that these provisions apply exclusively in cases of crimes, specifically the crimes of

rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

The list of criminal activities is quite thorough and spans many schools of thought. This list includes not only trafficking but also a number of activities that could be deemed trafficking, such as peonage, involuntary servitude and the slave trade. Other activities that may comprise part of the crime of trafficking are included, for example, being held hostage, kidnapping, abduction, false imprisonment, blackmail and extortion. It is in keeping with some (but not all) feminist thought to include a wide variety of sexually oriented activities in this list, including sexual exploitation, which has no legal definition and is therefore unenforceable, and prostitution, which may be voluntary, alongside female genital mutilation, incest, rape and sexual assault. However, VAWA has no possibility of being widely applied in order to eliminate even the licit sex industry. Contrasting

TVPA, VAWA does not emphasize any particular business but rather seeks only to aid victims of crime.

As the assistance and protections included under the second Violence Against Women Act are restricted to victims of crimes without other stipulations of prosecution or punishment, unlike TVPA, it is sufficiently restrictive that the inclusion of prostitution in this list will not provide a means to attack the legal sex industry and those who work in it. This is not to say that VAWA is immune to misapplication. However, VAWA does not suffer from the disempowering tendencies of TVPA because it offers protections without conditional morality or assistance to prosecution. This section of VAWA, like the protections afforded by TVPA, applies only to immigrants, and so it is again unclear what support is offered to trafficked persons who are US citizens.

Conclusions

Unlike VAWA, the trafficking bill makes a distinction between sex trafficking and other forms of trafficking that involve force or fraud (such as sweatshop labor or the case of deaf Mexican vendors in NYC). This distinction reflects the fact that trafficking happens in many varied industries, but it also exposes the sensationalism that still surrounds consideration of sex work, a sensationalism that is reminiscent of earlier "white slavery" panics. VAWA avoids making such moral distinctions and yet is able to assure the rights of trafficked persons. VAWA has brought feminists and legislators beyond categorization of women into good and bad. It is gratifying but unsurprising that it is a bill promoted by feminists has made this leap, rather than a bill motivated by sensationalist news coverage such as that described in "Girls Forced to Dance Naked" (Grant and Soderlund 199?) and seen in *The New York Times* January 11, 1998 front page article. Trafficked persons involved in any aspect of the sex industry should seek VAWA's U visas, while only certain trafficked persons,

specifically men and women uninvolved in sex work, should seek help under TVPA.

The TVPA presents a dichotomy between sex work in general and serious forms of trafficking, covering both but applying different responses. To make such a distinction is not only to enforce a specific moral agenda, but also to disregard the economic realities of a situation in which limited choices may lead to sex work being, at times, the best option available for some people. Grace Mitchell writes that women who choose to remain in the sex industry may be labeled as having "false consciousness," when their decision may actually be a conscious critique of other available opportunities. A change of work venue, for example from brothel to sweatshop, factory, or domestic service that results in lower wages, possibly longer hours and no better conditions is not necessarily a change for the better. "Whether a person is a high-class call girl, street prostitute or investment banker, the decision to enter into that work was not made independently of social, cultural, historical and technological influences that have agencies of their own, intra-acting with individual agency." (Mitchell 2000: 10).

In Calcutta Even Sex Workers Organize¹

Introduction

The Durbar Mahila Samanwaya Committee (DMSC) was founded in 1992 when Dr. Smarajit Jana began working on this United Nations-funded project to promote the health of sex workers in Calcutta's largest red light district. This project has expanded from Sonagatchi to all of Calcutta's 12 red light districts and has expanded its focus to be an overall, empowering effort for Calcutta's prostitutes. Additional efforts by the DMSC include a credit union, negotiating with politicians to lessen violence against prostitutes, literacy projects, schools for the children of prostitutes, and a condom buying cooperative. Their international conference of sex workers (2001), the Millennium Mela, was a renowned success. DMSC members who are sex workers number over 40,000 and the Network of Sex Work Projects cites the DMSC as a model project for its inclusion of sex workers at every level of the organization. This chapter describes some of the organizing projects and strategies utilized by the DMSC, emphasizing their anti-trafficking work. The term "trafficking in persons" is used by many anti-trafficking organizations to refer to situations in any industry where a person has been deceived about the work or its conditions, or coerced, including all situations of bonded labor or indentured servitude.²

Legal context

Prostitution itself is not a criminal activity in India, unlike most of the United States. It is, however, highly stigmatized, and sex workers' rights are therefore compromised. Prostitutes' rights advocates sometimes declare the decriminalization of

¹I traveled to Calcutta, India, for January-February 2000. This was generously sponsored in part by the Jewish Foundation for the Education of Women.

²Trafficking in persons is defined as "All acts involved in the recruitment and/or transportation of a persons within and across national borders for work or services by means of violence or threat of violence, abuse of authority or dominant position, debt-bondage, deception or other forms of coercion" (Skrobanek et al 1997: 111). This is used by Foundation Against Trafficking in Women, Foundation for Women, Global Alliance Against Trafficking in Women, Human Rights Watch, International Human Rights Law Group, and the Network of Sex Work Projects, among others.

prostitution their ultimate goal (see for examples Pheterson 1989 and Delacoste and Alexander 1998). In a situation where police hunt sex workers with the backing of the law, as in the United States, this is a logical conclusion. However, it is erroneous to imagine that ideal working conditions begin upon the achievement of this worthy goal. While decriminalization is an excellent goal, as the situation in Calcutta shows, it is wrong to assume that ideal working conditions will follow automatically once this goal is achieved. Reality is more complex.

Legal prostitution is not a complete solution to the difficult situations of some prostitutes. With formal recognition of the sex industry comes taxation and regulations. More marginal groups, such as migrants, may have greater difficulty in a recognized industry. Greater government recognition and regulation may serve to elevate the condition of nationals and legal workers but have the opposite effect on migrants.¹ Such actions, as seen in brothels in the Netherlands, create a situation in which natives and legal immigrants are legal employees, while those who do not have legal permission to work are forced underground. Those denied entry to a formal sector will find underground employment, which is unregulated and unsupervised and therefore potentially more dangerous with more opportunities for abuse of participants.² Whatever one's opinion of migrants or prostitution, it is unconscionable to promote human rights violations and unnecessarily harmful situations.

Just because prostitution is not against the law does not mean that the law will not be used against prostitutes. In the case of Calcutta, laws against prostitution of minors (which is classed as a trafficking offense) are used as a pretext to raid legal brothels. In the context of such raids, legal prostitutes are also exposed to illegal abuse of authority

¹TAMPEP (Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe) documents this phenomenon in Europe.

²Problems in informal labor sectors sometimes include a lack of safety standards and an inability to report abuses including long hours.

including graft and theft (Pal et al 1998). It is worth noting that these laws are often formulated (by legislators) or enforced (by police) in such a way as to target prostitution specifically. Yet the intent of the laws - or the scope of the problem - is generally much broader, and their selective application allows other, equally serious abuses involving trafficking, to go unchecked. Children in debt bondage make carpets (Asia Watch 1997b), while men have been enslaved as beggars (Richard 2000) and people of all ages and every gender suffer in sweatshops, but sensational attention to trafficking into prostitution eclipses these other tragedies. A more efficacious treatment would be to address working conditions and situations of servitude or slavery regardless of industry.

Addressing prostitution as labor¹

Sex workers in many countries are denied decent working conditions by the lack of regulatory mechanisms which address other industries. This enables exploitation of sex workers at the hands of employers and law enforcement while ignoring illegal practices that would be subject to correction in other businesses. As a consequence of this oversight, sex workers are often denied legal recourse in the face of abusive practices. Workers in the sex industry remain unlikely to seek legal recourse even if abuses exist as long as they have reason to fear law enforcement. Sex workers remain unlikely to report abuses if they are themselves in jeopardy of prosecution.

The existence of abuses within the sex industry does not equate all sex work with abuse, but highlights the need for the application of labor regulations to the sex industry. Where sex work is recognized and labor violations are absent in sex work as in any work, there is no crime. As a person cannot consent to abusive conditions, including violence, coercion, debt bondage or confinement, abuses in

¹This section is excerpted from an oral presentation by the author to the United Nations' Working Group on Contemporary Forms of Slavery during a consultation with non-governmental organizations, June 21, 1998. The entire text is available from the Sex Workers' International Media Watch web site (<http://www.swimw.org>).

any such instance remain a crime regardless of the industry in which they are committed. The reaction to similar abuses in other areas of work led to worker organizing and the initial introduction of occupational safety regulations.

The International Labour Organization (ILO) report, *The Sex Sector* (Lin 1998), recommends recognition of the sex industry as labor in light of the economic and social realities of the sex industry. It is fitting that the ILO recommends recognition of the sex industry as labor as ILO statutes governing minimum standards of working conditions could be applied to the sex industry, and modified where necessary to accommodate conditions specific to sex work. Examples of such specifics include the right to decline a client.

Sex workers deserve the same rights and protections as are enjoyed by other workers. Sex workers enjoy more of the basic civil rights afforded workers in other areas where sex work is recognized. The marginalization of sex work in most countries worldwide denies sex workers' their basic right of access to legal recourse in the face of violence. When violence is committed against sex workers, the problem is violence, not the victim's occupation. It is imperative to recognize that in no other occupation do we so incessantly blame the victim of violence. People who are protected rather than prosecuted by law enforcement are more likely to report cases of abuse than people who are themselves subject to criminal sanctions.

Benefits of an extralegal approach to abuses

In locations with an ineffective or potentially hostile or biased judicial process, an extralegal solution to problems within the sex industry may be preferable to legislative change or court cases. This is especially appropriate in prostitution cases, as prostitutes rarely enjoy protection of law enforcement and may be afraid or unable to seek police aid, and even have been denied police attention in cases of violence (Ditmore 2001). Prostitutes in places where their work is a criminal activity have good reason not to want police involvement. Poorly drafted or improperly enforced legislation can lead to

unanticipated difficulties such as the problems with law enforcement described above. I visited the DMSC to learn about their approach to misenforced anti-trafficking legislation, but came away with new regard for the effective organizing of what is widely known as "the Sonagatchi project."

Why Calcutta?

My previous encounters with the DMSC led me to believe that this project was at the forefront of organizing for sex workers' rights. I realized that I would not be able to learn enough about the DMSC's efforts without traveling to Calcutta. In particular, learning that their anti-trafficking efforts were carried out by sex workers, as opposed to the more usual attempts by the authorities to close red light districts, further compelled me to visit.

Walking through Sonagatchi, Calcutta's largest red light district

My second day in Calcutta, before visiting the DMSC, I took a walk through Sonagatchi, the largest red light district in Calcutta. I arrived at about 4:30 in the afternoon and was immediately surrounded by a group of non-English speaking men, who were possibly shocked that any woman who was not working in the red light district would venture there and who definitely wanted to help me leave the area before I was shocked by the red light district itself. One man asked what was I looking for. I said, in my probably incomprehensible Bengali, that I was looking for the Durbar Mahila Samanwaya Committee. Eventually, after some Bengali conversation which I found impenetrable, he said, "Social services for women? There, and to the left." I never made it to the office he recommended, because fifty feet further down the street some of the women on this road approached me. Our limited conversation mostly relied on gestures and smiles, despite attempting Bengali and English. People come from many places to work in Calcutta, and this is especially true of Sonagatchi. The largest number come from nearby Bihar, Orissa and Bangladesh, but significant numbers also hail from further away in India and Nepal as well, and so may speak other languages better than Bengali, just

like myself. "What language is she speaking?" came from Nepali and Hindi speakers, seven of us standing in a circle. Perhaps I was being questioned to discover whether I had been brought there against my will.

They were as curious about me as I was about them. Most of our rudimentary conversation, which was almost incomprehensible to me, focused on me. I became an object of curiosity, turning tables on my intentions of questioning them. Our basic conversation covered where I was from, our dresses, the color of my eyes, and whether I was Hindu.

I could not accurately guess how old most prostitutes there were, but the overwhelming majority of sex workers I saw outside looked healthy and clean, qualities valuable to a prostitute's business. Conditions were not those of Indian slums, but to my western eye, conditions were frequently unsanitary and not dressed up to advertise as they are in the west. The prostitutes themselves however, were dressed up, certainly more so than the middle-class women in the neighborhood where I stayed. Some of the women wore saris, often quite fancy, while others wore more western-style tops and skirts. They wore strong makeup, painted lips and lined eyes, in contrast to my straw hat and plain dress. While none of them would look risqué to western eyes, the bright lipstick worn by some might make them stand out.

Eventually our numbers grew until I was surrounded by women working in the district, one of whom held my right hand tightly in hers while we tried to communicate. These women were vibrant and friendly and smartly dressed, as full of questions as I was. They had the freedom of movement to waste time that could be spent working talking to me. At this time, I was unable to distinguish the different types of sex workers there. This is, in part, because attracting clients (no matter which venue) largely consists of standing by one's doorway, visible to potential clients. This makes it difficult to distinguish between those who work for themselves or alone, those who work in a brothel, and those who work on the street.

Working conditions in Calcutta's red light districts

Prostitutes in India and elsewhere around the world can be categorized in a number of ways. When discussing prostitution and trafficking it is efficacious to distinguish between independent contractors, brothel workers and indentured prostitutes; these categories were used by the DMSC representatives with whom I spoke. The following descriptions of my observations were clarified by interviews and discussions with DMSC members and other representatives, but these descriptions are applicable generally, not just to prostitution in Calcutta but to many forms of sex work throughout the world.

Independent contractors enjoy the best conditions. They rent their rooms and work for themselves. Independent contractors negotiate with their clients themselves, usually without a third party. This means that they do not give part of their earnings to anyone else. They may parallel call girls elsewhere or window girls in the Netherlands. To make a parallel with other industries, they are most like self-employed people, perhaps working as consultants or freelancers, who accept jobs with conditions that are acceptable to them, for wages, time commitments and scheduling.

Brothel workers live with and work with a madam, or brothel manager, and keep approximately half their earnings. This is not unlike brothel work elsewhere. However, while brothel work in the United States is more discreet, relying perhaps on regular clientele or on advertising in local media, some brothel girls in India stand outside to meet clients. Negotiations may be made by brothel management. This can restrict a sex worker's autonomy, while on the other hand it can remove the responsibility of a difficult task. Brothel management can be actively good, neutral or malevolent, for example, denying the right to decline clients or the use of condoms. Again, to parallel other industries, it is useful to think of brothel workers as employees, who may work under varying conditions and whose level of autonomy is largely dependent on their supervisors.

The workers with the least autonomy in every field, including sex work, are indentured workers. Indentured workers are often held in debt bondage, which is illegal and defined as a contemporary form of slavery in international law (United Nations Convention Against Slavery). Conditions vary and may be inhumane, including the use of force. They may not be allowed to turn down clients, or difficult and/or unsafe requests. These are the people most supervised and who have the least time away from their employers. These abusive cases are certainly examples of trafficking. In other cases, indentured workers may enjoy good conditions, seek to work off their debt and move on. These are people unlikely to view their condition as criminal and see the person to whom they are indebted as providing a valuable service, such as assisting in migration. This difference points to the necessity of addressing conditions of work more earnestly than field of work. Other instances of debt bondage or outright slavery include the unpaid sweatshop workers in the United States Territory of the Northern Marianas Island and the deaf Mexican peddlers in the New York City subways.¹

Visiting Bowbazar², another red light district

A few days later, a project employee from SHIP/DMSC accompanied me to the Bowbazar neighborhood, another red light district. Each of twelve red light districts in Calcutta has a branch office of the DMSC. We visited the one in Bowbazar, which held both a small medical clinic and a branch of their credit union, which was busier than any other financial institution I have ever seen. The building had a concrete floor and painted walls, and all volunteers and staff wore smocks - white smock in the clinic and blue smocks in the credit union. It was clear that these services were valued and utilized by an incredible number of people, mostly women, but also men at the clinic, mostly the lovers and clients of the prostitutes in the district. The women all wore saris with the exception

¹Meeting with the Department of Justice, 1999.

²Bowbazar is linguistically interesting and means "wife market" because it was historically the site where women were sold. Now it is a red light district. In Bengali, it is pronounced /bo-bajar/. Bazaar was introduced to Bengali (and other languages) from Hindi. I am grateful to Ananya Mukherjee for pointing this out to me.

of one doctor in slacks. Some carried children. The sheer numbers of people coming and going demonstrated to me the enormous popularity of the credit union, while the small talk and interactions between people indicated that the office is a community hub.

From here, we went to a brothel, which was apparently a typical brothel there. On the way to the top floor brothel, we walked to the rear of an entryway and across a muddy, puddled, dirt ground floor to an uncovered stairway that would be condemned anywhere in the developed world. Nonetheless, according to my sources, the sex workers in the areas I visited live in much better conditions than what would be deemed Indian slums.¹ The area was crowded, but certainly not overcrowded, especially when one considers the luxurious privacy and space of the first world and the lack of space or privacy afforded the middle classes elsewhere. For example, the middle class neighborhood where I stayed on the south side of Calcutta included many families who slept together in one room.

We went up three flights to the madam's room, where she and the three brothel workers welcomed us. We discussed her business over tea. The brothel had one room, with two beds and a curtain to draw between them. This room was not large, possibly 150 square feet, about the size of a small studio apartment. The four women, three workers and the madam, all slept here as well. There was a small stove at the end of the room close to the doorway. This room was painted yellow but could have done with a touch up, and the beds were neatly made with plaid spreads. There were other rooms accessible from the landing at the doorway, but I was not shown them and do not know even if they were also held by the madam in addition to the room in which we met.

I was grateful to my quartet of hostesses for taking time out from business to speak with me. The madam spoke more than her workers, which is typical of any situation when management is present with workers.² The four women wore saris, mostly

¹This is not to paint an overly rosy picture of the brothel but to remind the reader that the women I met often earned more and lived better than their neighbors and clients.

²I interviewed others in less formal settings, without their supervisors, outside the brothel.

in shades of red, and they wore red bindi (a dot of makeup or a sticker, worn on the forehead, usually indicating that the wearer is Hindu) as well. To my eye, they looked much like the women I had seen elsewhere in Calcutta--no one wore a lot of makeup, and each wore her long dark hair pulled back. I am sure that I was unable to discern whatever it might be that would mark an Indian woman as a prostitute, as no one dressed provocatively and they lacked western material trappings like designer bags and tiny cell phones. The madam and the worker share the client's fee, splitting it 50-50. The worker lives at the brothel and the madam provides food and lodging. The three workers were each from different areas, but I do not know where from. None of them were trafficked and all of them looked well fed and healthy. I believe this was an exemplary brothel because the madam and the women were well known to the DMSC and were presented as members and allies who participate in DMSC projects. Working conditions seemed good but I did not speak to any one from this brothel individually, without the madam present, and so cannot speculate about interpersonal issues and how the four got along in their home.

Condom use is encouraged by the DMSC both with sex education and negotiation training. Some members have begun a condom purchasing cooperative with a social marketing plan to sell condoms retail to others in the red light districts, at a profit but below prices charged by others in the districts. (Prices for many things were reported to be frequently much higher in red light districts than elsewhere.) In the developing world, condoms can cost up to 40 percent of the price of sex, (Overs and Longo: 42) making them prohibitively expensive. The prostitutes I met in this brothel used condoms; there were condoms in a waste basket and fresh condoms on hand.

Advertising seemed not to play a role beyond standing outside and bringing clients back to the brothel. As Bowbazar is a red light district, this may be advertising enough and possible clients can find their way there. This was made clear by a woman we spoke with after leaving the brothel. She was outside, standing in her doorway in a

mid-calf length skirt and a three-quarter sleeve shirt, and worked for another madam. She hoped to save enough money to eventually rent her own room and work independently. She was one of the very many members of the DMSC who are interested almost solely in improving working conditions and getting on with her work, as opposed to devoting more time to activism. She exemplified the practical prostitute for whom the DMSC's efforts are undertaken.

What makes the DMSC different from other projects?

The DMSC project is different from other efforts to help prostitutes and from exit-programs generally for many reasons, but three stand out and merit description as hallmarks of the DMSC plan. First, the DMSC is comprehensive and addresses far more than only one issue, i.e. health or trafficking or "rescue." Second, the DMSC involves working prostitutes at every level and in all decision making, planning and outreach. Many "rescue" efforts are actually antagonistic to working prostitutes. Most projects are unable to focus on more than one issue--some are anti-trafficking efforts, like western Europe's TAMPEP (Transnational AIDS/STD Prevention Among Migrant Prostitutes in Europe), while others, like NYC's FROSTD (Foundation for Research on Sexually Transmitted Diseases), solely address health. Finally, the size of the DMSC enables them to address a variety of issues because it has the sheer numbers of participants to do so, over 40,000. Other projects are generally much smaller and have neither the personnel nor the long-standing relationships with other local organizations that enable such exceptional operations.

Empowerment issues

Sex workers' involvement at all levels is part of the empowerment scheme promoted by DMSC strategy. The DMSC started as an HIV prevention program but was expanded when the original director of the program better understood the situation he faced. Knowledge alone has long been understood not to be enough to change behaviors, therefore knowledge about condom use is not enough to promote safe sex. This points to

a need for the DMSC efforts to increase self-respect, self-reliance and responsibility for the residents of the red light districts. Ultimately, all DMSC empowerment efforts rely on increasing the self-determination of the sex workers and negotiating ability by working as a bloc to improve conditions. This highlights the distinction between individual empowerment or self-esteem and empowerment as a labor issue, which leads to better working conditions.

Empowerment and self-esteem

Empowerment schemes sometimes focus on prostitutes' "self-esteem." Regarding self-esteem here, it is important not to think in terms of self-hatred, but in terms of self-determination. The DMSC strategy of empowerment includes expanding the realm of women's agency. My experience meeting sex workers in Calcutta, Bangkok, Durban and in the developed world does not point to a lack of self-esteem or a consistent self-loathing. Rather the opposite - the women, men and transgender persons with whom I have interacted have demonstrated enormous ingenuity and confidence. This is not to say that all sex workers have high self-esteem, but that this is not often expected or sought by researchers who may put forth a self-fulfilling prophesy of low self-esteem. For example, a presenter at the 2000 International Conference on AIDS, in Durban, South Africa. The presenter from Laos (C. Phimpachanh et al) cited a lack of self-esteem in sex workers as an obstacle to safe sex.¹ Network of Sex Work Projects representative Jo Doezeema then asked whether self-esteem was at the crux of the issue, or was it that poor working conditions led to difficulty practicing safe sex, and did the researcher's own expectations, enforced by widely held stereotypes of sex workers, lead to this conclusion.

Sex workers' self-esteem may be affected by the knowledge that some others imagine them to be tainted, untrustworthy, oversexed, dumb, duped, helpless, and so on.

¹Phimpachanh, C.; Philavong, B.; Sayabounthoung, K.; Vangvan, B.; Southamiraxay, S.; Sisourath, K.; Keomoukda, P.; and Bennett, T. (2000) "HIV and STD risks among vulnerable groups in Laos: results of a 1999 technical assessment." Oral presentation, Wednesday, July 12, 2000, XIII International AIDS Conference, Durban, South Africa.

Indeed, sex workers and others would be blind not to realize that their work will color some peoples' opinions in ways that other work would not. Additionally, this almost certainly contributes to the phenomenon of telling researchers, journalists, and others what they seem to want to hear, as in the example described by Dr. Jana, founding director of the DMSC. These nuances may be a key to understanding research on self-esteem, which usually examines the individual, but which may address at the social structural level. In other words, the key may not be whatever level of self-esteem an individual prostitute maintains, but societal views of sex work.

My interpretation of the use of the term self-esteem in such cases is less the lay person's sense of that contrasting self-hatred or disgust, but links self-esteem directly to empowerment and self-determination and is thus intrinsically social and material. The lack of self-esteem highlighted by research cited here seems to refer to a reasonable reaction to poor conditions, including depression and despair. It is important to remember that migrants in many and even the majority of cases are not necessarily duped but often the go-getting, challenge-seeking and ambitious members of their home communities. The sad irony is that these same people by virtue of their efforts to emigrate, may end up in poor working conditions in informal or illegal employment. For those people in any labor sector who have less control over their working conditions, one finds less satisfaction and more denigration. This is aptly described by TAMPEP.

This empowerment of women is one of the first goals of TAMPEP's fieldwork. By making the women more assertive and raising their self-esteem, the TAMPEP worker is able to convince them they can resist the pimp and to decide the future course of their lives. TAMPEP knows of many women who have set themselves free from pimps (often with the help of a TAMPEP worker) and who have remained in prostitution. Their working conditions have drastically improved, they seem like completely different persons and they take better care of themselves. This suggests conclusion [sic] that AIDS prevention should start by improving the working conditions of the women concerned (Brussa 1999: 69).

A person in a desperate situation with little autonomy has every reason to be depressed. The TAMPEP, DMSC and other project goals to raise self-esteem are properly linked to

improving working conditions, even as the term self-esteem may not adequately address the core problem. The women described by TAMPEP seem not to feel bad about themselves but rather about their circumstances; therefore remedying these circumstances by empowering them to improve their own situations is the best possible action.

Sex researcher Ivan Wolffers makes a useful distinction between three types of empowerment and evaluates the benefits they offer. The first and most limited is personal empowerment, empowerment at the individual level. He defines this as "making people aware of their skills, possibilities and choices and giving them control over ways to change things that cause them problems" (Wolffers 2000: 2). This is the tack taken by many projects that focus on health and distribute condoms. However, knowledge alone is not sufficient to address HIV and has never been sufficient to explain human sexual behavior.

Second is community empowerment, which Wolffers (2000) defines as "the strengthening of the sex work community as a whole to demand changes in their communities and to call for a supportive environment." This is where the DMSC begins. Wolffers (2000) points out that community empowerment does not inherently include sex workers themselves in decision-making, nor in direct control of projects. His example of community empowerment is a situation wherein sex workers approach the police as a bloc when one has been harassed by an individual officer. This is demonstrated by the DMSC's negotiations with police and politicians.

Third, Wolffers (2000) continues "[s]ocial empowerment, defined as empowering sex workers to fight for their rights and for acceptance of their profession by the larger society, is a more ambitious goal." He points to sex workers' organizations and the demand for recognition of sex work as labor as steps in social empowerment for sex workers. The DMSC clearly embodies this "ambitious goal" with the sex workers themselves controlling the agenda of the organization. Overlap among these three styles of empowerment exists and the DMSC uses all forms, but it is the third, social

empowerment, the ability to define the agenda and use community empowerment to negotiate as a bloc that are the exceptional and crucial aspects of the DMSC empowerment scheme. Prostitution is certainly not morally acceptable in India (or almost anywhere else) but the DMSC has achieved the ability to rely on the support of other organizations and influential bodies, a sign of the group's greater acceptance at some level.

Empowerment versus rescue

Antagonism between rescue efforts and active prostitutes is not new. This was a feature of anti-trafficking efforts in Victorian England. In short, Josephine Butler, who spearheaded efforts against "white slavery" in Victorian England, was appalled by prostitutes who favored regulation of prostitution (because it freed them from the risk of arrest) over the abolition of all prostitution (Walkowitz 1980). It is unreasonable to expect women who make their living from sex work to advocate the abolition of their livelihood. This underscores the basic divide between many privileged feminists and working prostitutes. This schism continues with the political divides between some feminists and sex workers that continue to this day (Ditmore forthcoming, Cabiria 2000). DMSC efforts are a specific example of how prostitutes can be involved in anti-trafficking efforts, demonstrating that prostitution itself is not *per se* trafficking and that involvement of sex workers can enhance anti-trafficking endeavors. This contrasts the assertion by some proponents of the belief that all prostitutes are unwilling victims and that sex workers' rights advocates and licit sex work encourages and enables trafficking in women and children (Dubois and Gordon 1984, Rubin 1984). Sex workers are part of the solution to problems within the sex industry.

Empowerment efforts, rather than traditional exit or rescue programs, are longer lasting. The three aspects of empowerment elaborated above demonstrate both that different empowerment tacks lead to different levels of success, and that they can be

combined with efforts like to remove minors and trafficked women from red light districts.

There are difficulties with other employment schemes. One of these difficulties is creating employment in which people can earn a living wage without glutting a market with too many people offering the same services. People leaving the red light district need to generate income for their own expenses and to not feel obligated to their helpers. This is not to say that people should be encouraged to stay in the red light districts, but that they should not be looked down upon if they decide to do so. Many of the women in India's red light districts earn more money than their clients and this must be acknowledged as a viable economic choice. Nonetheless, it is clear that women in the red light districts do suffer consequences as demonstrated in the difficulties arranging marriages for their children and their rejection by larger civil society.

Despite the social difficulties, the women I met displayed no evidence of a lack of self-esteem. They were energetic and vibrant, as curious about me as I was about them. They approached me with their questions about my work in the US and why I was interested in them. Project workers and policy makers should be careful not to project their low estimation of sex work and sex workers onto the people in the red light district. Societal shame is not equivalent to the absence of self-respect.

Contrast such efforts addressing self-esteem with the improvement in conditions for workers remaining in the red light districts because of the autonomy generated by credit unions and self-surveillance as opposed to *goondah* ("so-called mafia," in Jana's words) and police surveillance/exploitation. This is a sea-change for the workers in these districts. Credit union membership was preferred to a more traditional bank as there are "good moral character" requirements for property holders in Indian law, as well as a large and established bureaucracy in Indian banking. This organization now holds approximately sixty thousand accounts and is run by local community members. It has removed a vulnerability from the local women, who were formerly harassed for money

by police and goons. The removal of the police from anti-trafficking surveillance, which has been undertaken by the residents of the districts, has eliminated another opportunity for harassment. Additionally, while police may have made some successful interventions, the comprehensive surveillance by community members is more thorough and effective. Sex workers can now work with the police to combat abusive conditions and trafficking, instead of fearing the arrival of police.

How DMSC empowerment efforts address problems

The DMSC empowerment scheme is comprehensive and addresses many issues. They aim to address problems defined by the residents of the red light districts. Other aspects of the project include literacy training, peer education about safe sex, schooling for children of sex workers, and self-representation at local, national and international events (Pal et al 1998). Their Millennium Mela gatherings in February, 2001 and March 2002 were reported to be rousing and successful meetings of sex workers from all over Asia.¹

Safety in numbers

The large number of DMSC participants enables distribution of tasks on a grand scale. Additionally, it fosters impetus to tackle difficult issues which may be less compelling were fewer people affected. For example, if the numbers of people subjected to violence and extortion were not in the tens of thousands, it is possible that the DMSC efforts to address these issues would have received less attention. Enough people are interested to support a credit union and a condom-buying cooperative, endeavors that would be unlikely with numbers in the hundreds, like most western sex workers' organizations. While such numbers of participants are not available to replicate such a project in many other places, other aspects of this project are more easily transferable.

¹Sex work listserv reports by Malaysian activist Khartini Slameh and Victoria Schneider, who attended the *melas*.

Similar to police problems described above are those caused by the *goondah* or *mastan* ("so-called mafia," in Jana's words). These include violence such as rape, abuse, extortion and theft or robbery. *Goondah* remained a large problem in Dhaka at the time of my visit but had been largely curtailed in Calcutta by the DMSC going above them to local politicians with support from other organizations. (The politicians are closely linked to the goons who depend on them.) By going over the heads of the *goondah* to their superiors, the politicians themselves, the DMSC has curtailed goon problems in the red light districts. The encouragement from the DMSC and other supporting groups for the prostitutes themselves to negotiate with politicians and to go over the heads of those who harass them is itself empowerment. It is additionally truly empowering in that rather than functioning as indirect advocates, the sex workers represent their own interests and demonstrate to others how articulate and informed and strategic they can be when working as a bloc.

Other problems included shakedowns of prostitutes for money and jewelry, as most women carry their savings at all times, sometimes in the form of jewelry. This has largely been alleviated by the operation of a credit union specifically for sex workers, which now has between forty and sixty thousand members. Without banks in the red light district and usually without the papers necessary to open an account, there was no way for sex workers in the red light districts to save their money except upon their person, leaving them prey to attack and robbery. The foundation of this credit union may be the single most effective project of the DMSC. This has eliminated the need to save money in the form of jewelry and cash and has therefore eliminated the risk of losing one's life savings to a single event.

Anti-trafficking efforts

Trafficking in persons is a real problem, involving children, adolescents and adults in many industries, including sweatshops, agriculture and even begging (Richard 2000), but it is widely associated with prostitution. Trafficking in India

includes all prostitution by a person under the age of 18 and all situations of deception or forced prostitution.

Deception upon entry into prostitution is a difficult issue. One interesting point Dr. Jana, founding director of the project, made was that at the outset, he asked if the women knew they would be prostitutes when they came to the red light districts, and they all said no. Later it came out that they all did know, but social strictures prevented them from ever saying that they understood that they would be prostitutes. He asked them why they lied to him, and they said they wanted to give the answer he wanted to hear and that this answer gave them less shame as "bad" women. The level of stigma and the social context leads to odd conversational lies when daughters are leaving their families. Jana described that everyone knows, including the daughter herself, that she will be a prostitute in a red light district, but no one says so overtly. All conversation proceeds as if she will do something else and none had made a contract to be a prostitute.

The fact that the women did not initially speak truthfully highlights the need for confidence that the interviewer will not look down upon women who enter the sex industry. Honesty is even less likely when there are substantial reasons beyond social acceptance to claim that one was duped into prostitution, i.e. securing a visa and evading deportation in the U. S. (see the earlier chapter on the TVPA). Additionally, this indicates that the overwhelming number of workers in the districts are not duped.

A grass roots anti-trafficking effort

Many minors in India work, but it is illegal for them to work in the sex trades, in contrast to the legal status of prostitution by adults. The possible presence of under-aged girls in brothels was used by law enforcement (who, it was reported, often have limited knowledge of the laws which they are actually charged with enforcing) to raid brothels in the red light districts. During these raids, women were arrested even where there were no minors present. Other forms of police abuse included violence, graft and sexual harassment. Other

industries are not usually targeted in this way even when minors are illegally employed.

The DMSC responded at the grassroots level to the use of legislation aimed at curbing trafficking in children to harass sex workers in two ways: one, with the creation of a committee on trafficking without police membership and two, with a grassroots approach to ensuring that no minors work in the red light district. This approach is unique in both effectiveness and in style, involving trafficked persons, prostitutes and non-governmental organizations. Their success, simultaneously addressing trafficking and alleviating police abuse of authority demonstrates two positive outcomes of their involvement. This hands-on, grassroots approach has proven uniquely effective, unlike most legislation. Legislation can only address existing situations of abuse, while this approach seeks to prevent abuse of minors and coercion.

Negotiating by committee

A non-judicial and even non-prosecutorial solution was sought in Calcutta, unlike the United States' and United Nations' focus on law enforcement. This kind of effort was desirable specifically in India where court cases may drag on literally for decades. Bureaucratic solutions including trials are unlikely and unusual to pursue due to expense and the extremely time-consuming nature of such actions. Instead, direct negotiations with police and politicians were turned to for efficacy. A 12-person committee conducts these negotiations.

The DMSC approached other non-governmental organizations in order to form a bloc for negotiations with police in the red light districts. Participants formed a twelve-person committee made up of sex workers, non-governmental organizations and politicians. The committee on trafficking is now 50% sex workers, but this took a long time to work up to. Initially, the non-governmental organizations involved were health oriented. They have effectively removed the police from the issue of trafficking into brothels within the red light districts,

unless they are called upon. This kind of coalition involving politicians and sex workers is unimaginable in the United States.

Politicians accept negotiations because of the wider support of the DMSC by a base of non-governmental organizations. Politicians require the support of members of these groups that back DMSC efforts. Without the support of more general civil society associations, such negotiations would fail. Jana described the difficulties attempting to forge such a bloc in Dhaka, Bangladesh and the inability to progress until such alliances are formed.

Brothel organizing

Sex workers survey their own neighborhoods in the red light districts in order to prevent the introduction of underage persons and coerced adults from entering the trade. Because this organizing is conducted by long-term residents of the district who are very familiar with the area, they are able to determine who is new because they know who has been in the district before. Sex work in this context is both transient and permanent in that while many sex workers come from other parts of India and neighboring countries and may not intend to settle permanently, they frequently stay for a number of years. These sex workers become established members of the neighborhood community and are able to discern who is new in the area. Dr. Jana, the former director, stressed to me that preventive efforts need to be initial and immediate because it may be difficult or even impossible to return to general society after any time spent in the red light district. This is one reason to address young women upon entering the district, before they have lengthy experience in prostitution. For this reason, such efforts in the red light districts focuses on new arrivals, with veteran residents interviewing them to discern their ages and that they have undertaken this work without coercion.

Self-regulation and subsequent surveillance can be a form of self-restriction and self-censorship (Foucault 1995). It is important to recognize this possibility, which can encourage greater and more pervasive inhibition than strict adherence to rules when someone else, in this case, the police, is watching. This concern cannot be disregarded and is well founded. Regarding the DMSC, I have no doubt that some self-censorship may be greater than the letter of the law requires, but the removal of an abusive police presence trumps concern about the possibility of self-repression at this stage. This is not to discount these valid concerns, but to recognize the triumph over earlier repression. Additionally, the new surveillance by prostitute residents of the districts uses well defined legal guidelines, as opposed to the individual fear of punishment because of the arbitrary standards of any individual, including police officers who do not always know the letter of the law they are commissioned to enforce and who may therefore commit egregious abuses of their power.

Initially, I intended to focus on the story of one Bangladeshi girl trafficked to Calcutta and returned to her family with the involvement of the DMSC in order to illustrate an innovative method to counter trafficking in persons. Mala Singh, a very active DMSC member, met a young girl in the red light district and took it upon herself to help this girl to leave prostitution.¹ This girl was eventually reunited with her family outside Calcutta. This individual case is not unlike others addressed by the DMSC in which young girls under 18 years old are discovered in the red light districts. This was not in fact an isolated case but an example of the DMSC's innovative approach to combat trafficking in persons.

¹This is in stark contrast to the numerous attempts to expose trafficking by attempting to buy women and girls, as in the Victorian London newspaper series "The Maiden Tribute of Modern Babylon" (Walkowitz 1980, Pearson 1972) and more recently the Global Survival Network's video "Bought and Sold," in which the filmmakers secretly videotaped their interviews with people with whom they tried to negotiate the purchase of Russian women.

When a minor is found working in a brothel, she is taken to a residence outside the red light district. If an adult is found to be in the red light district under duress, she too is helped to leave. Leaving the red light district for both minors and legal adults means being accompanied away from the district and away from prostitution. She is supported for a short time while deciding what to do next. This can mean returning to her family or starting in another line of work, and in some cases, in situations involving those who have attained the age of majority, returning to the red light district. Youths are accompanied back to their families if and when they choose to return. However, not all of them choose to return to their families; returning home is not always a solution. As of June 15, 2001, 43 trafficked persons had been assisted by the DMSC, 35 of whom were minors. The majority of people who have found job training with the DMSC have turned to health care training (417) while others have entered nursing, care for people living with HIV and AIDS, food production, manufacturing and research.¹ (This training is not limited to trafficked persons.)

Those who do enter and stay in prostitution do so for a number of reasons. Unfortunately, some people who have left the red light districts then feel indebted to their helpers and may feel pressured to return to the red light districts to repay this debt, as there is little other work for migrants. In this situation, there can be perilously few options. A person who has incurred expenses for food, lodging and basic care, as well as perhaps transportation to one's village or to another location may feel indebted or even bonded. In such instances, even help can be interpreted as social coercion. While the decision of what to do next is hers, money is certainly a pressing concern and influences these decisions. She may be concerned not only with their keep but additionally with personal situations, including unemployment, that could be alleviated by the income provided by

¹ All figures from the DMSC's Background Report on Trafficking (2000).

prostitution. Despite such difficulties, the strategies and actions of the DMSC are the best examples of truly helpful projects. Many other projects provide inadequate vocational training and the women they help are expected to be grateful to leave prostitution despite the fact that leaving sex work may significantly decrease their incomes. Many return to sex work for the viable wages offered.

DMSC efforts are not typical of "exit" or "rescue" programs. Few vocational programs teach skills that can provide income comparable to prostitution, and some who benefit from these programs supplement their "legitimate" incomes by doing sex work on the side, often to the consternation of exit program administrators. Most rescue programs require prostitutes to leave the sex industry, sometimes accompanied by vocational training for less lucrative businesses, such as seamstress work, and occasionally help securing new housing. Some programs will not accept anyone who continues to do sex work, or who occasionally returns to sex work when they need extra money.¹ This disregards the fact that not everyone wants to leave the sex industry but may welcome some social services.

The DMSC, in contrast, effectively incorporates sex workers at every level and includes prostitutes in their solution to trafficking into the red light districts. Many other rescue efforts target all prostitutes in their area and sometimes become strident opponents of the sex industry, but the DMSC has worked to include active prostitutes in their program to help minors and trafficked persons to leave the red light districts before they become established in the districts. This fosters a level of cooperation that is impossible with efforts that may be viewed as antagonistic to sex workers. This approach

¹ Such programs include health programs in the US, such as the Foundation for Research on Sexually Transmitted Diseases, which does outreach to street prostitutes in New York City and employs some former prostitutes. The former director of this project once fired one of her employees for prostituting on the side to supplement her income. Covenant House, a national US organization intended to help street teens, expels teenage prostitutes from their shelters. This expulsion effectively sends them back to the streets.

additionally enables sex workers to form blocs with the support of organizations in order to influence local authorities.

Comparing the DMSC blueprint to other efforts

Most anti-trafficking efforts include increased border patrols, which create more opportunity for alien smugglers to profit and discourage few would-be migrants. This approach does not address internal trafficking at all. The numbers of sex workers from other Indian states such as Bihar and Orissa is clearly an important issue in Calcutta as elsewhere. Nor does it address the conditions of labor overseable by community members. While recent United States Department of Justice cases¹ demonstrate that there is a role for law enforcement in trafficking cases, the combination of these oversights with the abuse of authority in Calcutta and elsewhere forces me to question the viability of plans to address the problem of trafficking with an exclusively law enforcement based approach.

The DMSC offers a blueprint for future efforts. This blueprint is distinct from traditional rescue efforts, with sex workers very active in its implementation and the coalition efforts to achieve good working conditions (as opposed to the more common tack, for would-be rescuers to shun prostitutes until they are convinced to quit sex work). It is grassroots and not judicial which makes it not only practical in this context but practical in effect - the intent is to make a real change as opposed to changing legislation, which often has inadequate or even detrimental effect on the people involved. What this non-legislative model cannot effect are large numbers of individual cases requiring negotiations with powerful players. It is crucial to recognize the limitations of any method chosen in order to enable other efforts and to encourage those in the position to address these issues to do so.

¹Recent successful cases include sweatshop and brothel workers in the in the Northern Mariana Islands and deaf vendors in New York City.

Legislative change is unfortunately no panacea for abusive conditions and the use of force. It is for this reason that the holistic approach of the DMSC is a welcome alternative to legislative and law enforcement based anti-trafficking approaches. This approach addresses not just one individual or case but many in its effect on working conditions addressing minors and the use of coercion. Actual conditions have changed as opposed to obtaining justice for one individual or amending legislation without practical effect, or worse, with detrimental effects. Overall conditions have improved for everyone in the red light districts with the lessened threat of police abuse and goon violence and theft. The districts are safer not only for trafficked persons but for all residents.

The involvement of sex workers at every level of organization within the DMSC exemplifies that sex workers are part of the solution to troubles within the sex industry, including trafficking. It is not productive to address sex work itself as the entire problem in this (or any) context. This work challenges the cultural feminist supposition that all prostitution is human trafficking and instead demonstrates that sex workers can successfully use their skills of presentation, sales and communication to prevent abuses in the sex industry.¹ Additionally, it is important to highlight the involvement of sex workers in order to create effective partnerships in confronting such difficult situations.

Such partnerships are easier where sex workers are numerous enough to support a comprehensive organization, as in Calcutta, and with projects that compensate sex workers for their efforts similarly to project staff. It is unreasonable to expect anyone to take valuable time away from work in order to contribute to any effort without any benefit.

Working in tandem with other organizations offers greater negotiating power, currently unavailable to many sex work projects. Pursuing associations

¹See Cabiria 2000, Chancer 1998, Ditmore forthcoming, and Dubois and Gordon 1984 for descriptions of some feminist differences on the subject of sex work.

with feminist organizations, health projects and like-minded political groups may avail a level of social empowerment like that described by Wolffers (2000) and experienced by the DMSC. This is a step that can be attempted anywhere.

Lessons to be learned from the DMSC approach

Different approaches may be used as opportunities to demonstrate untried techniques that may be useful when reproduced elsewhere, especially extra-judicial approaches. Well-intentioned efforts may be better conceived if they involve sex workers themselves, and empowerment efforts may be the most successful projects over the long term. Evaluation must incorporate not only what has been or may be accomplished but also what cannot be accomplished by a specific method. Sex workers can and should be part of the solution - it is imperative to build on the strengths of the population served, whatever their field.

Drusilla Cornell noted that the "porn wars" within feminism offered two unwavering positions - one, hard line First Amendment adherence, the second, the view that pornography victimized women - both of which neglected to ask women in pornography what they would like to see happen in their business.¹ The same could be said of other forms of sex work, especially prostitution. The greatest step the DMSC has taken is to ask what prostitutes would like to change in their businesses and their lives, and then encouraged prostitutes to work toward these changes with larger support from a base of non-governmental organizations. Others organizing elsewhere have a great deal to learn from the DMSC.

¹Talk delivered April 20, 2001, at the Graduate Center of the City University of New York.

Conclusions: Reflections on the Responses to Trafficking

History repeats

Historical efforts to combat trafficking and prostitution resemble more recent events like the drafting of recent legislation, including the Trafficking Victims Protection Act and the United Nations Optional Protocol. New and old efforts to address trafficking demonstrate that this attention is a periodic concern, focusing on women and sexuality rather than the more salient issues of economic opportunities and migration. My historical examination exposes the conflation of trafficking with prostitution.

I have addressed the delusions of the Victorian crusaders Stead and Butler. Stead's leering exposé with its moral veneer of rescue corresponds well to recent journalism and documentaries about trafficking like *Bought and Sold* (1997) and *Selling of Innocents* (1997). Like Stead's "Maiden Tribute of Modern Babylon" series, these documentaries emphasize wretchedness at the expense of realism. Reform efforts to retrieve prostitutes from the streets have never abated, from Josephine Butler's home to Bangladesh's Tanbazar brothel, forcibly closed and its inhabitants forcibly removed, in 1999 (*The Bangladesh Daily Star* and Reuters 1999 articles) and the lobbying efforts discussed earlier to define prostitution *per se* as traffic in persons.

The moral vision behind such efforts creates a dichotomy between prostitutes - the guilty willing whores who prefer to carry on (and so endure the enmity of women who claim to help) and the repentant Magdalene who relies on her "big sisters" for guidance (Young 1913). Mitchell (2001) delineates similar conflicts between Korean "comfort women" and contemporary brothel girls, highlighting that this vision is perennial and world-wide rather than specific to time and place.

I have addressed selective enforcement of trafficking policy, especially the Mann Act to further other political goals. This selective enforcement is most clearly demonstrated by J. Edgar Hoover's use of the Mann Act first to further his career even after white slave rings were deemed crushed (Langum 1994: 157). I have discussed newer responses that offer slight variations on older work, both in the legal realm and the efforts of non-governmental organizations.

None of the responses to trafficking explored in this work are perfect. They all have drawbacks. The repetition of history with slight variation in the types of solutions proposed to counter trafficking bring me to the inevitable conclusion that few anti-trafficking efforts are well thought out and most responses are the products of emotional reactions without reflection. These unhelpful actions should be cast aside to promote more truly helpful responses to trafficking.

No bad women, only bad laws

Examples like the Victorian anti-trafficking efforts and lobbying coalitions discussed in this work demonstrate that changes in legislation can occur when feminists align with others to further political goals. However, examples in this work demonstrate the importance of choosing allies with care. Anti-trafficking efforts aligned with sexually conservative positions continue to lead to legislation promoting ideas about morality above women's self-determination. This limits women's movements and employment options and has in reality been used against women rather than to protect women. This situation is typical and examples of such activity come from around the world. Calcutta's Durbar Mahila Samanwaya Committee of tens of thousands of prostitutes and its effective anti-trafficking movement have been attacked by feminists who want to close all the red light districts. Western sex worker activists have been misrepresented as the "pro-prostitution lobby" (U. N. Consultation 1999: 63).

Liberal feminists who have aligned with the right to produce protectionist legislation seem to have succumbed to what sex worker activist Carol Queen (1997) calls a "politics of ick," by which she refers to the tendency of some feminists to address iniquity by emphasizing the crimes committed against women rather than remedying them. Additionally, it even appears that some would prefer to emphasize horrors at the expense of credibility, freedom and progress. Examples of this include popular media like the play "The Vagina Monologues" as well as the anti-trafficking films mentioned above. The only conclusion this avails is that the politics of horror is titillating to some, titillating enough to promote exaggeration, alarm and even hysteria. Repeating a litany of crimes does nothing to remedy them nor to prevent more. Instead, it smacks both of voyeurism and a preference to see harm continue in order to further the politics of horror. This tactic sometimes seems related to a desire to blame men rather than to work with them - even as some liberal and cultural feminists are willing to work with moral patriarchs in politics in order to further legislation on which they agree, such as the US Trafficking Victims Protection Act.

Women are restricted by legislation that results from efforts to protect women from such violence by restricting what can be done. For example, Canadian anti-pornography law, rather than prevent violence against women, instead urged the closing of gay and lesbian bookshops (Chancer 1998: 64) and prevented the importation of feminist books deemed pornographic (Smith 1995). Women have suffered from efforts to punish perpetrators of violent crimes, in the name of their protection. Lower-class London women were surveilled and kept in their homes at night by male vigilantes who claimed to protect them from Jack the Ripper who targeted prostitutes rather than other women (Walkowitz 1980: 213-214). Victorian reformer Josephine Butler commented that male reformers

preferred to "let the pressure fall almost exclusively on women" (Walkowitz 1980: 213-214). This has not changed.

Structuralist arguments that all legislation will be used to the ends of male domination are not adequate to explain either the lack of outrage at such policies and their enforcement or the compliance with a conservative moral agenda that has always restricted women. One way this restriction occurs is the division of women into moral categories of good and bad, when reality and people's individual situations are far more complex. As the old prostitute's rights movement slogan says, "there are no bad women, just bad laws."

Feminist debates about trafficking have centered on how to frame prostitution and whether to include other work. The irony of creating a madonna/whore schism within feminism, which has in other realms worked against such dichotomies, is only exceeded by the alliance of some feminists with the radical right when addressing this and similar issues. Empowerment feminists would do better to figure out how to take back the moral high ground without forging compromising alliances. One way to do this could be to make an issue about women's sexual freedom, while simultaneously avoiding the morass of defending ourselves against accusations of immorality and slanderous labels like "the pro-prostitution lobby."

Why is sex work singled out?

Victorian efforts to rescue prostitutes, the modern alliance of protectionist feminists with the far right, and old and new sensational attempts to purchase women all illustrate that sex work has been singled out for attention and reproof. Whatever the motivation, it is clear that sex work, especially prostitution, evokes strong emotions. This research has led to a recurring question for me: why is sex work singled out? What is it that makes some people imagine consensual work in a brothel is worse than forced labor in a sweatshop, with usually longer hours and

less pay? One sex worker responds to such assumptions by saying "your fantasy is not my reality."¹

Some anecdotal conversations have indicated that this vision of sex work hinges upon the idea that sex is "more intimate" for women than men, which seems to mean "more invasive" as traditional sex includes male penetration of the female partner. The assertion that sex is more intimate for female or "receptive" partners is offensive - it implies that the penetrating partner is somehow detached from the activity, even as penile penetration requires more obvious "intent" by the penetrating partner than by the receptive partner. These assumptions also disregard the variety of human sexuality and practices, which need not be detailed here. This assumed emotional investment, or "intimacy," implied in the statement is spurious, based on social norms rather than fact. This construct of male-female mutual exclusivity hinders sociological explorations of sexuality (Vance 1983). Rubin (1975) writes "far from being an expression of natural differences, exclusive gender identity is the suppression of natural similarities" between men and women. This is echoed by Epstein's *Deceptive Distinctions*, which addresses gender issues in the workplace. When someone mentions health concerns, such as the receptive partner's greater risk for transmission of infections, they need to recall that this is a valid health concern for people who have sex, with or without payment. Cheryl Overs, co-founder of the Network of Sex Work Projects and co-author of *Making Sex Work Safe*, frequently reminds people "It's not as if the disease is passed on the [bank]notes."

Why is sex work not deemed labor?

Protectionist feminists and politicians cite the lack of "dignity" in sex work, which they somehow see as lacking in a field that offers people flexibility and remuneration not found in the alternatives they offer - domestic labor, manual

¹Private correspondence, February 2002.

labor and sweatshop work, all grueling and without social capital or respect. One U. N. representative of non-governmental organization advocating the prohibition of prostitution, pornography and pedophilia asked me "Do you think anyone with an education and other options would consider doing that?" I responded that I had met many American university students and graduates who do sex work. Eastern European women, who are generally well educated, Filipinas (who must have a Master's degree before traveling for most work, even as maids), and many American university students and graduates meet their expenses and support their families as prostitutes, strippers and other sex industry personnel. How do these impressions feed such ideas and how are these stereotypes of sex workers as duped and unable to care for themselves perpetuated? How can such notions be perpetuated with the presence of well-educated women in the sex industry?

One answer is that it may be impossible for a majority of people to accept, without "evidence" in the form of well-adjusted public figures who are prostitutes, that anyone, let alone "the fair sex" would find the occupation acceptable. Claire is a prostitute and formerly salaried employee with Cabiria, a prostitutes' health project in Lyons, France. She is pretty, articulate, outspoken and public about her work. This is possible in France, where prostitution is not illegal but this openness is new in France, where prostitution is pathologized akin to alcoholism (Cabiria 2000). This means that there are non-mandatory social reintegration programs with vocational training including sewing classes. Such programs are actually an industry in France; this cannot continue if prostitution is not deemed a sickness (Cabiria 2000). Pathologization is an institutional response that grew out of an emotional response to prostitution. Therefore, Cabiria, with its political program of normalizing the public idea of the prostitute, is ostracized by organizations that implement these reintegration programs. Illegality, social stigma and ostracism prevent prostitutes from being more overt about their work, while the everyday

business transactions occupy the time of those who might otherwise be more visible.

A second answer to the perpetuation of stereotypes of sex workers is that such ideas seem to come in cyclical waves and that they will recur, eventually be a source of skepticism, and fall out of favor before recurring again (Donovan 2001). The New York Times coverage of trafficking from 1998-2000 exemplifies this. January 11, 1998 featured a front-page article about women from the former Soviet Republics captive in brothels in Israel. September 2000 coverage of trafficking in persons stated outright that trafficking is not just sex work and that prostitutes are not necessarily or even usually duped with lures of other, too-good-to-be-true employment (Cohen 2000, Sachs 2000). Walkowitz (1980) and Pearson (1980), Connolly (1971) demonstrate this same phenomenon of hysteria followed by skepticism in their descriptions of the backlash after William Stead's "Maiden Tribute of Babylon" series in Victorian London. Perhaps there *is* a limit to what the masses will uncritically accept.

Emotional reactions to trafficking and prostitution should not be ignored. In fact, these emotional reactions impel well-intentioned efforts. Unfortunately, not all good intentions result in their aims and most well intentioned efforts have unintended consequences. A lack of foresight about the unintended effects of policy can have serious unanticipated consequences¹ like those demonstrated with the selective enforcement of the Mann Act, the ineffective protections for trafficked persons under the U. N. Optional Protocol and the ridiculous possible inclusions, like marriage, under "commercial sexual exploitation" in the otherwise very well-drafted United States Trafficking Victims Protection Act. The first step

¹"Unanticipated consequences" is a term first used by Robert Merton in "The unanticipated consequences of purposeful social action," *American Sociological Review* 1936, 1: 894-904. Unanticipated consequences are discussed in Merton 1957: 51, 66 and 128.

necessary after emotions are high is to assess what kind of help would result in actual help.

Where sensationalism meets feminism

Sex work in Calcutta, modern day slavery as in sweatshops and debt bondage in the US and elsewhere, historical moral panics and the vigilante reactions (including, of all things, attempting to buy women!) are part of a repeating pattern. The DMSC's efforts against abuses within the sex industry demonstrate a welcome breath of sanity and clear-headedness amid examples of oppressive and ill-conceived "rescues" (Bangladesh Daily Star July and August 1999). Only when addressing traffic in women is it acceptable to literally attempt or to buy women and girls in order to demonstrate the existence of trafficking. I remain appalled by efforts to purchase girls, such as Stead's, as well as the Global Survival Network's documentary *Bought and Sold* (1997) displaying their unsuccessful efforts to purchase Russian women. What does it signify that such efforts are accepted and even awarded when undertaken with women and girls for prurient videos? No one attempts to purchase sweatshop or domestic workers out of debt bondage (modern slavery), and no one should attempt to purchase people in any situation, especially not for voyeuristic and sensationalist productions.¹ The films, *Bought and Sold* (1997) and *Selling of Innocents* (1997) repeat Stead's antic for which he was discredited and jailed. Issues of female sexuality are consistently given differential treatment, to the disadvantage of women. It is erroneous to put the onus for this difference on patriarchal government structure as the overwhelming majority of lobbyists and activists addressing new legislation were female, and women (as well as men) enforce codes of female morality

¹ Charities purchasing slaves in the Sudan come under fire for promoting slavery and for buying slaves to free them, but who would then be re-enslaved. It turns out the charity was duped by many who "sold" them anyone around, including neighbors, friends and relatives (Kahn 2002).

(Willis 1984, Dubois and Gordon 1984). Carole Vance¹ described the fact that these filmmakers have very nuanced understandings of traffic that are far more informed than the films they have made but only when addressing "sexual slavery" do they become sensationalist yellow journalists.

In these films, there is a sensationalist bent that verges upon fiction. The Global Survival Network's *Bought and Sold* (1997) uses hidden cameras to film the American filmmakers negotiating the purchase and delivery of women with Russian traffickers. The would-be traffickers say they have made such arrangements before but no such girls are present and the only evidence we have of this is the filmmakers' attempt to purchase Russian women. In the end, the Global Survival Network does not purchase anyone, but it is unclear whether this is because the Russian would-be traffickers could not deliver any women or because the Global Survival Network representatives came to their senses. In other instances, the Global Survival Network has researched and reported on sweatshop and brothel workers in the Northern Marianas Islands and their work has been invaluable in the subsequent court cases. It is only in popularizing the issue of trafficking in persons with this award-winning documentary that they display a less nuanced and less ethical stance.

Ruchira Gupta's Emmy-winning *Selling of Innocents* (1997) opens with a scene of someone reading the World Sex Guide on the internet, which offers information about how to find prostitutes for clients, would-be clients and voyeurs. It is especially geared for western men. The rest of the film examines a red light district in India, a sort of district in which no westerner is expected, much like the districts I visited in Calcutta. These were not the prostitutes described on the website of the World Sex Guide, but prostitutes who serve local

¹Presentation at the Graduate Center of the City University of New York, department of anthropology, spring 2001.

men. The film elides this fact in order to tap into the emotional response of the uninformed viewer. The rest of the film details the rescue of children in the red light district, some by force. It is unclear to me, after having seen the film, whether all the children were trafficked or whether some were the children of prostitutes. The final scenes show a room of children sleeping with a voiceover describing the children of prostitutes as the prostitutes of tomorrow. This is not inaccurate - children frequently enter their parents' occupations in every field - but Carole Vance disclosed that this footage is from a well-regarded and highly progressive day care center! To call this misrepresentative is an understatement. And yet Gupta demonstrated that she does have a more nuanced and developed understanding of trafficking than her film displays when she spoke during the United Nations Commission on the Status of Women, March 4, 2002.

Comments on the anti-trafficking framework

Seemingly good solutions like the compromise definition of trafficking in the U. N. Optional Protocol and the protections and assistance to trafficked persons afforded by the TVPA lack support. At times, instruments with the same goal do not support the same approaches and outcomes. How does international legal reform as embodied by the U. N. Optional Protocol help the anti-trafficking efforts of Calcutta's prostitutes? The U. N. Optional Protocol enjoyed wide support and yet many nations have not signed on, even as the law was constructed so no nation need change local law addressing prostitution, a large concern in light of the 1949 Convention and its implementation. Yet, without teeth, this legislation is rendered mere feel-good legislation for it does not help the witnesses necessary for successful prosecution.

Can domestic efforts to combat trafficking, as defined by the Trafficking Victims Protection Act and with the assistance and protections it assures, utilize a grass roots style response like that of Calcutta's prostitutes? TVPA fails in this

respect, in part because TVPA discourages the cooperation of the licit sex industry or even sex workers' support groups for fear of prosecution under the sex trafficking provisions, which potentially classify all sex work as traffic in persons. Therefore, sex industry workers and employers have everything to lose by bringing attention to their work, even as they are the people with the most access to trafficked sex workers. Even with this limitation, TVPA is helpful to sweatshop workers and other trafficked persons, including all situations unrelated to sexual services. TVPA will help some people, but they could have helped more trafficked persons had they been drafted without a moral agenda at play.

United Nations Optional Protocol summary

One of the legislative approaches I've discussed is the U. N. Optional Protocol on Trafficking, which resulted in a workable compromise on the definition of trafficking, under which each nation's domestic policy would determine how to deal with prostitution. Whether to include all prostitution under the heading of trafficking in persons was the subject of contested debate and ultimately, each nation will determine this under domestic law. In situations of force and debt bondage, trafficking law would always apply. However, its lack of strong protections and assistance (including visas, stays of deportation and guarantees of human rights) for trafficked persons undermines prosecution. Many nations with recognized trafficking problems, such as Japan and Australia, have opted not to sign this Protocol. It remains to be seen whether the US will ratify this document, which would not affect trafficked persons in the US one way or another as the US TVPA exceeds protections included here.

Trafficking Victims Protection Act summary

New US trafficking law, the TVPA is not without its good points, such as strong protections for victims of serious forms of trafficking. However, the TVPA includes all situations involving coercion, fraud and debt bondage, and extends

welcome assistance and protections for trafficked persons. Protections and assistance includes visas, stays of deportation and witness protection in extreme cases. The aspects of this document addressing "severe forms" of trafficking are near-perfect. However, the "sex trafficking" portions of this law not only demonstrate a moral stance essentially permitting the persecution of foreign women in the sex industry, ending with the deportation of these women. Additionally, the definition of a commercial sex act is so broad that it could be interpreted to include nearly all sex, including dating and marriage. TVPA includes both the sublime and the ridiculous.

In fact, the second Violence Against Women Act, a rider to TVPA, avoids the moralizing of TVPA by addressing only abusive situations. VAWA may be a better choice of legislation to use in order to seek assistance for trafficked prostitutes (some of whom would be deported under TVPA).

There is a problem with both TVPA and VAWA, however. The protections and assistance for trafficked persons under both of these laws is intended only for foreign nationals in the US. This raises the question of what will be done for trafficked Americans. Earlier cases¹ have resulted in the closing of companies that trafficked people within the US, but in the cases of both citizens and aliens, it remains to be seen whether assets seized from traffickers will be used to compensate trafficked persons or will be retained by the government.

Reflections on Calcutta's Durbar Mahila Samanwaya Committee

It is a crude irony that, after working with legislators and lobbyists on international and domestic legislation to address trafficking in persons, the best program to combat trafficking grew not out of policy but out of Calcutta's red light districts. On one hand, this is my sentiment, but I can also appreciate the new legislation as the "breakthrough" Radhika Coomaraswami describes. Domestic

¹Presentation by Jo Weldon during the Beijing + 5 meeting in New York City, June 2000.

legislation is worthwhile for its protections for victims of "severe forms of trafficking," even as I prefer the empowering approach of the DMSC. It is rare to learn of an extralegal approach to emotionally charged issues without approaching vigilantism. The most innovative aspect of this anti-trafficking effort is the inclusion of the community addressed. In reality, this innovation grew directly out of the community to be addressed, the red light districts. This approach could be reproduced in many other situations, such as sweatshops and factories, although people who see the "trafficker" as providing a service (emigration and job placement) at an acceptable cost (which may include debt bondage for some individuals) may not want this. The DMSC's method may be widely replicated, but will not be any kind of panacea. This approach would probably not be effective with more isolated workers like domestic servants, who comprise a significant number of trafficked persons. An additional advantage of the DMSC's strategy is that it avoids the bifurcation of two classes of women - "willing whores" and innocent victims - by addressing conditions and actual crimes rather than intended activities. My hope is to see this approach combined with law enforcement, such that officers of the law would address actual crimes committed against persons rather than intended activities.

What kind of help is truly helpful?

The above examples illustrate some efforts to help trafficked women that do less to help trafficked persons, with the exception of Calcutta's DMSC. The DMSC is the exception in that it grew out of the needs of women persecuted by efforts to help them rather than from the initial horrified reaction to sex work and to trafficking in persons. Emotional reactions to trafficking and sex work are preyed upon by sensational attempts to highlight the issue. However, rather than stopping at such emotional appeals, it is preferable to use these emotional reactions to drive a more clear-headed approach to combat trafficking.

There is no method that is proven to deter or prevent trafficking in persons. Many responses have actually exacerbated the problem, by forcing those deemed "at risk," usually the young and the poor, to contract the "services" of a smuggler or trafficker sometimes to be allowed to leave their own nations (i.e. Thailand) or to enter another (i.e. the United States). The only thing that would in the best possible world be a real solution would be an increase in standard of living everywhere, eliminating the need for trafficking. In this idealist view, as it were, all work, including prostitution, would be a choice as opposed to a violation because other viable work would be available. This is not something that the United Nations Optional Protocol or US legislation can effect. Training people for low paying jobs does not provide a solution. The other alternative, that of free movement of people, much as for goods, is unpalatable to the governments and populations of receiving nations. However, it would prevent the exploitation of illegal laborers which forces down wages for all (Kwong 1997). If everyone were allowed to work legally, there would be no reason for anyone to accept underpaid work in poor conditions. Yet the laws discussed here are not labor laws but criminal laws, which may be the wrong tack to take in addressing trafficking. Certainly without pervasive international cooperation and incentives to witnesses (i.e. victims of trafficking) to expose their situations, this will fail.

The only guarantee of freedom from coercion (including "soft" economic coercion) into any field is the presence of valid alternatives; in other words, real economic choice between different occupations paying livable wages. Rather than working to suppress prostitution or other businesses, it would be more efficacious to promote job creation at living wages. Poverty level wages are not viable, least of all for people supporting families. Economic parity and equal opportunity employment would create better opportunities without the shrill debates over the nature of sex work. In such circumstances, sex work and any other work would

clearly be only one within a range of choices, as opposed to many people's current situation where sex work may be one of very few available options. Expanding the range of viable employment options is a more helpful response than limiting women's access to work, including sex work, and would address trafficking in men as well as women. It would also empower both men and women but not at the expense of either sex.

Implications for future research

Much work is needed in future research addressing trafficking in persons and sex work as two separate entities. Such efforts will extend the bona fide exploration of sex work while research into trafficking must include cases involving a broad range of industries including the sex industry. One opportunity for future investigation based on this work would be to evaluate the use of the UN Optional Protocol and the Trafficking Victims Protection Act, including numbers of people assisted, numbers prosecuted and sentences of those convicted. It will be interesting to compare these legal approaches with the DMSC's grassroots operations over time, and to compare areas undergoing differing degrees of economic development and job creation. Additional work could be done to determine whether more trafficking into prostitution occurs in different areas and whether these areas are determined by geographic proximity, different policies on prostitution or ease of border crossings. Such research will enable approaches to trafficking in persons that will limit trafficking rather than women's autonomy.

Appendix: Timeline

1880--Britain passes Contagious Diseases Act (CDA)

1882—US Chinese Labor Exclusion Act

1883--CDA put on hold

1885--"The Maiden Tribute of Modern Babylon" in *Pall Mall Gazette*;

William Stead purchased Eliza Armstrong

CDA repealed

1903--US Immigration Act passed

1904--US Immigration Act passed

1907--US Immigration Act passed

1910--Mann Act passed in US

1913--Jack Johnson convicted under Mann Act--interracial sex cited

**1917--Caminetti case ruling makes clear that Mann Act refers to all sex out of
wedlock**

**1920--Alabama ruling makes trend in interpreting "prostitution" to mean "loose"
women**

1924—US Oriental Exclusion Act

1926—Frank Lloyd Wright charged under Mann Act (charges dismissed 1927)

1943—Charlie Chaplin acquitted of Mann Act charges

1950--1949 Convention ratified

1960--France changes domestic laws to incorporate 1949 Convention

1960—Chuck Berry convicted under the Mann Act

1965—US Civil Rights Act ends Oriental Exclusion Act and Chinese Labor Exclusion Act

1992--Founding Of The DMSC In Calcutta

1998—Deaf Mexicans trafficked to New York uncovered

1999—Lawsuit filed against sweatshops in the United States Territory of the Northern Marianas Islands

January 1999-October 2000--UN Crimes Commission meets to discuss Convention on Transnational Organized Crime, including Optional Protocols on Arms, Smuggling Persons, and Trafficking in Persons, Especially Women and Children

October 2000--US Trafficking Victims Protection Act passed with Second Violence Against Women Act

December 2000--Signing ceremony in Palermo including United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children

Bibliography

Ali, Salma (1999). "Editorial: Why Prostitution? An Old Trade with a New Face." *Bangladesh Daily Star*, July 30.

Amnesty International (2000). "Germany: The Death During Forcible Deportation Of Aamir Ageeb." *AI Index: EUR*.
23ai.nsf/Index/EUR230042000?OpenDocument&of=COUNTRIES%5CGERMA
NY October 4.

Ashraf, Nazmul and Haque, Ehsanul (1999a). "Torrid tales of Tanbazar inmates." *Bangladesh Daily Star*, July 25.

----- (1999b). "Rehabilitation of sex workers: Govt agrees to involve all including NGOs." *Bangladesh Daily Star*, August 5.

----- (1999c). "Brothels to become training centres for sex workers." *Bangladesh Daily Star*, August 8.

Asia Watch Women's Rights Project (1993). *A Modern Form of Slavery Trafficking of Burmese Women and Girls into Brothels in Thailand* (New York: Human Rights Watch).

----- (1997a). *Rape for Profit* (New York: Human Rights Watch).

----- (1997b). *Contemporary Forms of Slavery in Pakistan* (New York: Human Rights Watch).

AsianWeek.com (2000). "Donna Karan Named in Sweatshop Suit." June 15-21.

Associated Press Television News (2000). December.
<http://www.aptn.com/aptn/events.nsf/events/798196A5D302CE6F802569AD005BB2C4?opendocument>

Baker, Elizabeth (1964). *Technology and Women's Work* (New York: Columbia University Press).

Bangladesh Daily Star (1999a). "Editorial: Dispersed Sex Workers." July 19.

----- (1999b). "Steps urged to stop movement of sex workers." July 21.

----- (1999c). "Editorial: Eviction Folly." July 26.

----- (1999d). "Tanbazar eviction termed illegal." July 26.

----- (1999e). "PM's directive Rehabilitate sex workers properly." July 28.

- (1999f). "Eviction of sex workers: HC rule on govt." August 2.
- (1999g). "Four hurt as sex workers clash at Kashimpur." August 3.
- (1999h). "Editorial: Welcome Turn in Rehab Tale." August 7.
- (1999i). "Indian sex workers protest eviction." August 8.

Barry, Kathleen (1995). *Female Sexual Slavery* (New York: New York University Press).

BBC News (2000a). "Zeta Jones's pre-nuptial climb down." October 9.
http://news.bbc.co.uk/hi/english/uk/wales/newsid_963000/963639.stm

BBC News (2000b). "Douglas had planned to be at the birth."
http://news.bbc.co.uk/hi/english/entertainment/newsid_872000/872092.stm

Bell, Laurie, editor (1987). *Good Girls/Bad Girls* (Seattle: Seal Press).

Bindman, Jo, with Doezema, Jo (1997). "Redefining Prostitution as Sex Work on the International Agenda." www.walnet.org/csis/papers/redefining.html.

Bishop, Ryan and Robinson, Lillian S. (1998). *Night Market: Sexual cultures and the Thai economic miracle* (New York: Routledge).

Brussa, Licia, editor (1999). *Health, Migration and Sex Work: The Experience of TAMPEP* (Amsterdam: TAMPEP International).

Cabiria (2000). *Rapport d'activité* (Lyon, France: Le Dragon Lune).

Chancer, Lynn (1998). *Reconcilable Differences* (Berkeley: University of California).

Chapkis, Wendy (1997). *Live Sex Acts* (New York: Routledge).

CNN News (2000). "Jones and Douglas wed in style." November 19, 2000.
<http://www.cnn.com/2000/SHOWBIZ/Movies/11/19/wedding.douglas/>

The Coalition Against Trafficking In Women (1998-2000). "CATW Debates Prostitution NGOS." *Coalition Report* v. 5-6: 8-9.

Cohen, Roger (2000). "The Oldest Profession Seeks New Market in West Europe," *The New York Times*, September 19.

Connolly, Mark Thomas (1980). *The Response to Prostitution in the Progressive Era* (Chapel Hill: University of North Carolina).

Coomaraswamy, Radhika (2000). *Report of the Special Rapporteur on Violence Against Women*. April draft.

Delacoste, Francoise and Alexander, Priscilla editors (1988). *Sex Work* (Seattle: Cleis).

Ditmore, Melissa (2001). "Report from the USA: Do prohibitory laws promote risk?" *Research for Sex Work* 4 (<http://www.med.vu.nl/hcc>).

Ditmore, Melissa (forthcoming). "Feminists and Sex Workers: Working Together," in *Feminist Visions for the Twenty-first Century*, Wakeland, Amy Elaine, editor. (New York: Rowman and Littlefield).

Doezema, Jo (2001) "Ouch! Western feminists' 'wounded attachment' to the third-world prostitute." *Feminist Review* 67: 16-38.

Doezema, Jo (forthcoming). "Power and conflicts within transnational activist networks: feminists and the UN Protocol on Trafficking in Persons" in Piper, Nicola and Uhlin, Anders, editors (forthcoming). *Contextualising Transnational Activism Problems of Power and Democracy* (New York and London: Routledge).

Donovan, Pamela (2001). *Crime Legends in Old and New Media*. Graduate Center of the City University of New York dissertation.

DuBois, Ellen Carol and Gordon, Linda (1984). "Seeking Ecstasy on the Battlefield: Danger and Pleasure in Nineteenth-century Feminist Sexual Thought," in Vance, Carole, editor. *Pleasure and Danger* (Boston: Routledge & Kegan Paul), 31-49.

Durbar Mahila Samanwaya Committee (2001). "Background report on trafficking."

Dworkin, Andrea (1981). *Pornography* (New York: Perigee).

Echols, Alice (1984). "The Taming of the Id," in Vance, Carole, editor. *Pleasure and Danger* (Boston: Routledge & Kegan Paul), 50-72.

English, Dierdre (1983). "The Fear That Feminism Will Free Men First," in Snitow, Ann; Stansell, Christine; and Thompson, Sharon, editors. *Powers of Desire* (New York: Monthly Review Press), 477-483.

Epstein, Cynthia Fuchs. (1988) *Deceptive Distinctions* (New Haven: Yale University Press).

Finkel, Michael (2001a). "For Sale, Used Kidneys: Buyer Beware." *The New York Times Magazine*. May 27, 2001. Reproduced May 31 at <http://www.iht.com/articles/21515.htm>.

---- (2001b). "Is Youssef Male a Slave?" *The New York Times Magazine*. November 18: 43-47, 62.

Flynn, Kevin (2001). "Judge Cancels Firing of an Officer in a Sex Case." *The New York Times*. May 3.

Foucault, Michel (1995). *Discipline and Punish* (New York: Vintage).

Freeman, Jo (1990). "From Protection to Equal Opportunity: The Revolution in Women's Legal Status," in *Women, Politics and Change*, Tilly, Louise and Gurin, Patricia, editors. (New York: Russell Sage) 457-481.

Fusco, Coco (1998). "Hustling for Dollars: Jineterismo in Cuba," in Kempadoo and Doezema, editors, *Global Sex Workers* (New York: Routledge), 151-166.

Geffert, James A. (2000). "Anti-Prostitution Activity and Public Health", abstract of paper to be presented at "Answers to Action" conference, Grant MacEwan Community College, Edmonton, AB, Canada, May 4-6.

Gilfoyle, Timothy (1992). *City of Eros* (New York and London: Norton).

Global Survival Network (1997). *Bought and Sold* (video).

Goldman, Emma (1969). *Anarchism and Other Essays* (New York: Dover).

Goldstein, Avram (2001). "Instead of Sex, Johns Get a Lesson." *Washington Post*, July 23.

Grant, Emma and Soderlund, Gretchen (1998). "Girls (Forced to) Dance Naked! The Politics and Presumptions of Anti-trafficking Laws." *Bad Subjects* issue 40, October.

Grittner, Frederick K. (1990). *White Slavery Myth, Ideology, and American Law* (New York: Garland).

Gupta, Rachira (1997). *Selling of Innocents* (video).

Haque, Ehsanul (1999a). "Two-thirds of sex workers flee brothels: Exodus to spread deadly diseases in N'ganj town, fear people, experts." *Bangladesh Daily Star*, July 17.

----- (1999b). "Sex workers slam eviction." *Bangladesh Daily Star*, July 23.

----- (1999c). "2 pimps held at Kashimpur; 51 freed, none from Pubail home." *Bangladesh Daily Star*, August 2.

Haque, Ehsanul and Islam, Shaikh Nazrul (1999). "Sex workers allege rape, death from torture at vagrant home." *Bangladesh Daily Star*, July 23.

Hobson, Barbara Meil (1987). *Uneasy Virtue* (New York: Basic Books).

Hoigard, Cecilie and Finstad, Liv (1986). *Backstreets* (University Park, Pennsylvania: Penn State Press).

Hossain, Farid (1999a). "Bangladesh Prostitutes Rebuff Offer." The Associated Press: July 16.

----- (1999b). "Bangladeshi Prostitutes Protest Eviction." The Associated Press: July 22.

----- (1999c). "Bangladesh Cops, Prostitutes Clash." The Associated Press: July 27.

Hossain, Mustak (1999) "Bangladeshi prostitutes dig in heels over eviction." Reuters: July 11.

Human Rights Watch (2000). *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan* (New York: Human Rights Watch).

Institute for Women's Policy Research (1996). *The Status of Women in the States* (Washington, DC: Institute for Women's Policy Research).

Islam, Shaikh Nazrul (1999a). "Journalists still not allowed to visit Kashimpur home." *Bangladesh Daily Star*, July 29, 1999.

----- (1999b). "Minister says Sex workers fled, not driven out." *Bangladesh Daily Star*, August 8.

Issues Quarterly (1995) 1 (3).

Jablon, Robert (2001). "Anna Nicole Smith Back in Court." Associated Press, December 12.

Kahn, Gabriel (2002). "Soudan: Vrai trafic de faux esclaves," March 4.
<http://www.radiofranceinternationale.fr/>

Keefe, Timothy (1994). *Some of My Best Friends Are Naked* (San Francisco: Barbary Coast).

Kempadoo, Kamala, editor (1999). *Sun, Sex and Gold* (Lanham: Maryland: Rowman and Littlefield).

Kempadoo, Kamala, and Doezema, Jo, editors (1998). *Global Sex Workers* (New York: Routledge).

Kim, Lucian (1999). "Race a question in deaths of Africans deported from Europe." *The Christian Science Monitor*, June 11.

Kipnis, Laura (1999). *Bound and Gagged* (Durham: Duke).

Kwong, Peter (1997). *Forbidden Workers* (New York: New Press).

Langum, David J. (1994). *Crossing Over the Line: Legislating morality and the Mann Act* (Chicago: University of Chicago).

Leigh, Carol, AKA Scarlot Harlot (1997). "Inventing Sex Work," in Nagle, Jill, editor, *Whores and Other Feminists* (New York: Routledge), 223-231.

Lin Leam Lim, editor (1998). *The Sex Sector* (Geneva: International Labour Organization).

Maher, Lisa and Daly, Kathleen (1996). "Women in the street-level economy: continuity or change?" *Criminology* 34 (4).

Maher, Lisa, et al. (1996). "Gender, power, and alternative living arrangements in the inner-city crack culture," *Journal of Research in Crime and Delinquency* 33 (2).

Maxim (2000). "Customer Disservice: A day school for guys who like ladies of the night." June.

Meillón, Cynthia, editor, in collaboration with Bunch, Charlotte (2001). *Holding on to the Promise: Women's Human Rights and the Beijing + 5 Review* (New Brunswick: Rutgers).

Merton, Robert (1936). "The unanticipated consequences of purposeful social action." *American Sociological Review* 1: 894-904. Reprinted in Merton, Robert (1976). *Sociological Ambivalence* (New York: The Free Press), 145-155.

Merton, Robert (1957). *Social Structure and Social Theory* (Glencoe, Illinois: The Free Press).

Mitchell, Grace (2000). "Disputed Subjects in the Global Movement for Sex Workers' Rights." Unpublished paper.

Montaucieux, Christophe (2001). "'Prostitution étrangère: le fantasme.'" *Politix* 656, June 21 (28).

Nagle, Jill, editor (1997). *Whores and Other Feminists* (New York: Routledge).

Nieves, Evelyn (1999). "For Patrons of Prostitutes, Remedial Instruction." *The New York Times*, March 18.

No Border Network (2001). "Another 'deportee' killed in switzerland - update." July 26. http://www.noborder.org/item_archive.php?id=48

Norton, Jeannette Young. 1913. "Women Builders of Civilization" *Women's Political Civilization*, September 1, 1913, page 5, quoted in DuBois, Ellen Carol and Gordon, Linda (1984). "Seeking Ecstasy on the Battlefield: Danger and Pleasure in Nineteenth-century Feminist Sexual Thought" in Vance, Carole, editor, *Pleasure and Danger* (Boston, London, Melbourne and Henley: Routledge & Kegan Paul), 31-49.

Odzer, Cleo, (1994). *Patpong Sisters* (New York: Blue Moon Books).

Overs, Cheryl, and Longo, Paolo (1997). *Making Sex Work Safe* (London: Russell).

Pal, Minu; Mukherji, Sadhana; Jaiswal, Madhabi; and Dutta, Bacchu (1998). "The Winds of Change are Whispering at Your Door," in Kempadoo and Doezema, editors, *Global Sex Workers* (New York and London: Routledge), 200-203.

Pearson, Michael (1972). *The £5 Virgins* (New York: Saturday Review Press).

Peiss, Kathy (1983). "Charity Girls" and City Pleasures: Historical Notes on Working-Class Sexuality, 1880-1920," in Snitow, Ann; Stansell, Christine; and Thompson, Sharon, editors, *Powers of Desire* (New York: Monthly Review Press), 74-87.

Pendleton, Eva (1997). "Love for Sale," in Nagle, Jill, editor, *Whores and Other Feminists* (New York: Routledge), 73-82.

Pheterson, Gail (1989). *Vindication of the Rights of Whores* (Seattle: Seal Press).

Pheterson, Gail (1996). *The Prostitution Prism* (Amsterdam: Amsterdam University Press).

Phimphachanh, C.; Philavong, B.; Sayabounthoung, K.; Vangvan, B.; Southamiraxay, S.; Sisourath, K.; Keomoukda, P.; and Bennett, T. (2000) "HIV and STD risks among vulnerable groups in Laos: results of a 1999 technical assessment." Oral presentation, Wednesday, July 12, 2000, XIII International AIDS Conference, Durban, South Africa.

Prus, Robert and Irini, Stylianoss (1980). *Hookers, Rounders, and Desk Clerks* (Salem, Wisconsin: Sheffield).

Queen, Carol (1997). *Real Live Nude Girl: Chronicles of Sex-Positive Culture* (Seattle: Cleis).

Rees, Margaret (2001). "Australian immigration minister peddles anti-refugee propaganda in the Middle East." January 15.
<http://www.wsws.org/articles/2001/jan2001/imm-j15.shtml>

Reuters (1999a). "Bangladeshi prostitutes protest eviction move." July 22.

Reuters (1999b). "Police swoop on century-old Bangladeshi brothel." July 24.

Reuters (1999c). "Evicted Bangladesh prostitutes dislike new home." July 27.

Richard, Amy O'Neil (2000). *CIA report on trafficking*.
<http://www.cia.gov/csi/index.html>

Rockefeller, Abby (1973), "Sex: The Basis of Sexism", *No More Fun and Games: A Journal of Female Liberation*, 6 (May) 31, quoted in Echols, Alice (1984). "The Taming of the Id" in Vance, Carole, editor, *Pleasure and Danger* (Boston: Routledge & Kegan Paul), 50-72.

Rubin, Gayle (1975). "The Traffic in Women: Notes on the 'Political Economy' of Sex," in *Toward an Anthropology of Women*, Reiter, Rayna R., editor (New York: Monthly Review Press) 157-210.

Rubin, Gayle (1984). "Thinking Sex," in Vance, Carole, editor, *Pleasure and Danger* (Boston: Routledge & Kegan Paul), 267-319.

Sachs, Susan (2000). "Immigrant Smugglers, Too, Can Need a Lawyer's Help," *The New York Times*. September 23.

San Diego Tribune (1997). "Don't cry for feminism: It's still alive." August 24.

Sandford, Jeremy (1975). *Prostitutes* (London: Secker and Warburg).

Sante, Luc (1991). *Low Life: Lures and Snares of Old New York* (New York: Random House).

Seagraves, Anne (1991). *Soiled Doves* (Hayden, Idaho: Wesanne Publications).

Sharma, Gopal (2001). "Nepal sets controls on alcohol, but does not ban." Reuters: August 25.

Skrobanek, Siriporn; Boonpakdi, Nattaya; Janthakeero, Chutima. *The Traffic in Women* (London and New York: Zed Books, 1997).

Sloan, L.M. (1997). *A qualitative study of women who work as topless dancers*. University of Texas at Austin dissertation.

Smith, Joan (1995). "Speaking out against the new prissiness" March 5. <http://joc.mit.edu/docs/new.prissiness.html>

Sprinkle, Annie (1997). "We've Come A Long Way--And We're Exhausted!" in Nagle, Jill, editor, *Whores and Other Feminists* (New York: Routledge), 66-69.

Sweatshop Watch (2001). "Federal Court Judge Rejects Motion to Dismiss Landmark Sweatshop Class Action Against Saipan Garment Factories, The Gap, Target and Other Retailers." http://www.sweatshopwatch.org/swatch/marianas/update_oct2001.html, October 29.

Ting, Jan C. (1995). "*301 "Other Than A Chinaman" [Fnd]: How U.S. Immigration Law Resulted From And Still Reflects A Policy Of Excluding And Restricting Asian Immigration," *Temple Political and Civil Rights Law Review*, Spring.

Tone, Andrea (2001). *Devices and Desires: a history of contraceptives in America* (New York: Hill and Wang).

Towndrow, Jacinta (2000). "High Price: Catherine asked for cheat clause." *Daily Express* micro edition, 23 October. <http://www.lineone.net/express/00/10/23/news/n1540-d.html>

Tucker, Robert C., editor (1978). *The Marx and Engels Reader* (New York: W.W. Norton).

Tyler, Richard (1999). "Human Rights League lodges complaints over Belgian deportation methods." September 27. <http://www.wsws.org/articles/1999/sep1999/belg-s27.shtml>

United Nations Consultation with UN/IGOs on Trafficking in Persons, Prostitution and the Global Sex Industry (1999). "Trafficking in Persons and the Global Sex Industry: Need for Human Rights Framework"
<http://www.imadr.org/project/petw/seminarPETW.pdf>

United Nations Convention on Transnational Organized Crime (2000).

United Nations Development Projects (1998). *Human Development Report*.

United Nations Optional Protocol on Trafficking in Persons, Especially Women and Children (2000).

United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956).

U. S. Committee for Refugees (2000). "Country report: Germany"
<http://www.refugees.org/world/countryrpt/europe/2000/germany.htm>

United States Trafficking Victims Protection Act (2000).

United States Second Violence Against Women Act (2000).

Vance, Carole (1983). "Gender Systems, Ideology and Sex Research" in Snitow, Ann; Stansell, Christine; and Thompson, Sharon; editors. *Powers of Desire the Politics of Sexuality* (New York: Monthly review Press) 371-384.

Vance, Carole, editor (1984). *Pleasure and Danger* (Boston: Routledge).

Vitzthum, Virginia (2000). "Reform school A program for first-time johns lets offenders off the hook in exchange for their attendance at a daylong session taught by ex-hookers."
<http://www.salon.com/sex/col/vitz/2000/10/17/johns/print.html>

Wagner, Angie (1998). "Las Vegas counselors hope hard-hitting course reforms men who pay for sex." Associated Press: October 31.

Walkowitz, Judith (1980). *Prostitution and Victorian Society* (Cambridge: Cambridge University Press).

Walkowitz, Judith (1983). Male Vice and Female Virtue, in Snitow, Ann; Stansell, Christine; and Thompson, Sharon, editors, *Powers of Desire* (New York: Monthly Review Press) 419-438.

Walkowitz, Judith (1992). *City of Dreadful Delight* (Chicago: University of Chicago).

Weldon, Jo (2001). "How Janice Raymond Shut My Mouth."
<http://www.swimw.org>.

Wijers, Marjan, and Lin Lap-Chew (1997). *Trafficking in Women Forced Labour and Slavery-like Practices in Marriage Domestic Labour and Prostitution* (Utrecht: Foundation Against Trafficking in Women (STV)).

Willis, Ellen (1983). "Feminism, Moralism, and Pornography," in Snitow, Ann; Stansell, Christine; and Thompson, Sharon, editors. *Powers of Desire* (New York: Monthly Review Press) 460-467.

Winick, Charles, and Kinsie, Paul (1971). *The Lively Commerce* (Chicago: Quadrangle).

Wolf, Naomi (1993). *Fire with Fire, The New Female Power and How It Will Change the 21st Century* (New York: Random House).

Wolffers, Ivan (2000). "Empowerment of sex workers and HIV prevention," *Research for Sex Work* 3.