

ANTI-TRAFFICKING AND THE HYPER-CRIMINALIZATION OF SEX WORKERS

by

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(Under the Direction of Amy Ross)

ABSTRACT

The anti-trafficking movement is experiencing a crisis of legitimacy, unable to produce arrests of traffickers in the numbers promised for the past decade. In this historical moment, a troubling phenomenon has emerged: anti-trafficking organizations have begun endorsing legislation so broad in scope that it enables the prosecution of consenting adult workers. The November 2014 expansion of Oakland's Nuisance Eviction Ordinance to require landlords to evict suspected prostitutes and the 2013 formation of New York's Human Trafficking Intervention Courts are symptomatic of this hyper-criminalization of adult workers in the sex industry. Both legal apparatuses: target poor women, trans women, women of color, and survival sex workers; conflate prostitution and trafficking with little to no regard for consent; and undermine sex workers' agency. The objective of this research is to understand how the anti-trafficking movement has shaped this atmosphere of hyper-criminalization and what forms of resistance are most effective in fighting criminalization.

INDEX WORDS: trafficking, law, sex, gender, sex work, sex industry, policing,
gentrification.

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For my father, John Robert McGibbon

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CHAPTER 1

INTRODUCTION: ANTI-TRAFFICKING IN CONTEXT

The Anti-Trafficking Movement is experiencing a crisis of legitimacy, unable to produce arrests of sex traffickers in anywhere close to the numbers promised for the past decade. In this historical moment, a troubling phenomenon has emerged: the moral panic around trafficking, combined with the failure of the tough-on-crime approach, has engendered anti-trafficking initiatives so broad in scope that they enable the prosecution of consenting adult workers. The November 2014 expansion of Oakland's Nuisance Eviction Ordinance (NEO) to require landlords to evict suspected prostitutes and the 2013 formation of New York's Human Trafficking Intervention Courts (HTIC's) are symptomatic of this hyper-criminalization of adult workers in the sex industry. The objective of this research is to understand how the anti-trafficking movement has shaped this atmosphere of hyper-criminalization and what forms of resistance are most effective in fighting criminalization.

The anti-trafficking movement is a powerful coalition of right-wing Christian organizations and self-described "radical" feminists. Christian organizations oppose the sex industry on religious grounds and "radical" feminists oppose it because they believe that paid sex exploits women. Both groups operate under the assumption that prostitution is inherently harmful and that no sane person would consent to paid sex. To quote well-known radical

feminist Andrea Dworkin: "Prostitution in and of itself is an abuse of a woman's body...In prostitution, no woman stays whole." ¹

Due to this pervasive assumption that sex work is inherently violent, the anti-trafficking movement makes little to no distinction between consenting adults in the sex industry and victims of trafficking. This increases the vulnerability and criminalization of both groups. Within this framework punishment is disguised as rescue. And with the exception of the Coalition Against Trafficking in Women, which advocates a somewhat more moderate approach, the majority of anti-trafficking organizations are explicitly abolitionist. This means that they believe it is possible to eradicate the sex industry and are actively working towards this goal. "Among those leading the charge to abolish the sex trade are evangelicals. They seek, through the power of the Gospel, to restore survivors to wholeness." (Blankey, 2013:1)

This thesis is a critical analysis of anti-trafficking. It uses anti-trafficking legislation and writings by anti-trafficking organizations as well as responses from harm-reductionist sex workers in order to illuminate the link between the contemporary social and political movements associated with anti-trafficking, and specifically the perverse consequences of legislation which claims to 'rescue.' Through my reading of these legal and socio-political texts, I argue that many of the policies endorsed by anti-trafficking organizations further endanger both victims of trafficking and consenting adult sex workers. This research will contribute to a better understanding of the complex relationship between the fantastical anti-trafficking rhetoric and the legislation that impacts the actual humans that make up the sex industry. This work constitutes a meaningful intervention into the anti-trafficking narrative by questioning and re-

¹ Andrea Dworkin in the debate "*Should Prostitution be Legal?*" at the University of Michigan Law School, October 31, 1992

evaluating the goals and methods of racialized, gendered “rescue” activities, and the efforts by the anti-trafficking movement to eradicate the sex industry entirely. Such a critique of anti-trafficking rhetoric and the policies it engenders constitutes a difficult but important intervention.

I aim to facilitate a shift toward reimagining survival sex workers as complex, multi-faceted humans. Sex workers are capable of consent, and capable of making logical decisions given their circumstances. I believe it is important for survival sex workers to be central in any discussion of legislation, which disproportionately impacts them. By positioning survival sex workers at the center of the anti-trafficking debate, I hope to complicate the notion of consent within sex work and capitalism, and to therefore uncover potential avenues for resistance to the hyper-criminalization of the sex industry.

1.1 The Contemporary Anti-Trafficking Movement

In her book *Economies of Violence: Transnational Feminism, Postsocialism, and the Politics of Sex Trafficking*, Jennifer Suchland (2015) outlines the emergence of anti-trafficking as a legal category, beginning with the 1949 U.N. Convention on the Traffic in Persons and the Exploitation of the Prostitution of Others. In this early document, however, human trafficking is treated as a social vice.

In 1979, the publication of two books would galvanize the anti-sex industry radical feminist movement: Kathleen Barry’s *Female Sexual Slavery* and Andrea Dworkin’s *Pornography: Men Possessing Women*. In *Female Sexual Slavery*, Barry paints an extreme and gruesome picture of the sex industry in which young girls regularly “...serve 80 to 120 customers a night.” (Barry, 1979:4) In her text paid sex is violent, omnipresent and unwanted. In *Pornography: Men Possessing Women*, Dworkin’s most well-known work, the anti-pornography crusader argues that all paid sex constitutes the abuse of women and that exposure to pornography causes men to

become sexually violent. By equating all sex work to rape, consent within the sex industry becomes unimaginable and even impossible. In this way, radical feminists aim to control women's sexuality in the name of sexual liberation.

It isn't until the 1980s that trafficking becomes recognized as a "women's issue" at the U.N. level (Suchland, 2015:43) In 1993 the U.N. convened the World Conference on Human Rights and "violence against women" becomes an officially recognized category within the field of human rights with the Declaration on the Elimination of Violence Against Women. Suchland argues that this is an important juncture in that: "Exposing sex trafficking as 'violence against women' has been a powerful tool to advocate against forced labor, but it has also helped create a perverse distinction between victims and losers – between individual and structural violence." (Suchland, 2015:9) Deeming all sex work "violence against women", removes a woman's ability to consent to sex. And, in Suchland's critique, the distinction between "victims and losers" describes sex industry involvement that is seen as either the result of isolated, individual tragedies such as being kidnapped and forced into prostitution (victims) or being forced into survival sex work in order to pay rent and feed your kids (losers in the game of capitalism). In other words, a meaningful critique of trafficking and sex work must take into account the structural violence of capitalism.

1.2 The Contemporary Sex Workers Rights Movement

In 1980, self-identified prostitute and sex workers rights advocate Carol Leigh coined the term "sex work" (in its modern usage)² and argued for the inclusion of sex workers perspectives

² According to the Oxford English Dictionary the term "sex work" first appeared in a 1970 article in the New York Times to describe the work of Dr. William H. Masters (one half of the well-known sex research team Masters and Johnson). I should add that the usage here is, of course, very different from the current usage of the term. Sex work is now only ever used to describe people who work in the sex industry rather than sex research.

in feminist discussions of the sex industry. She describes her discomfort with the sex-shaming of second wave feminism. She says “I longed for an analysis that would incorporate my contradictory needs: to be free of sexual shame, and also to criticize and change the sexual imagery in our culture.” (Leigh, 1997:227) It was in this context that Carol Leigh suggested to the women assembled at a conference of the Women Against Violence in Pornography and Media in San Francisco that they change the title of their workshop on the sex industry from the “Sex Use Industry” to the “Sex Work Industry” with the aim of shifting agency from the client to the worker. She went on to use the term in a one-woman show premiering in 1980 called *The Adventures of Scarlet Harlot*.

Though the term sex worker was being adopted within Bay Area activist communities, it wasn't widely used by prostitutes' rights activists until the 1987 publication of the two-volume anthology edited by Frederique Alexander and Priscilla Delacoste entitled *Sex Work: Writings by Women in the Sex Industry*. The next foundational text to be published in the sex workers rights movement was *A Vindication of the Rights of Whores*, an anthology edited by Gail Pheterson and published in 1989. (The title is, of course, a play on the 1792 *Vindication of the Rights of Women* by Mary Wollstoncraft). The essays in Pheterson's book utilize the term sex worker infrequently, favoring a politicized reclaiming of the word prostitute. The appearance of the word 'whores' in the title is also indicative of this radical reclamation of derogatory terms.

In 1985 the First World Whores' Congress met in Amsterdam. The Congress was made up of sex workers rights organizations from various nations, with the U.S. contingency being COYOTE (Call Off Your Old Tired Ethics), one of the first prostitutes rights organizations in the U.S., founded by Margo St. James in 1973. The First World Whores' Congress resulted in the formation of the International Committee for Prostitutes' Rights (ICPR) and drafted a Charter for

Prostitutes' Rights calling for, among other things, the "Decriminalization of all aspects of adult prostitution resulting from individual decision." (Pheterson, 1989:40) In 1986, the Second World Whores' Congress convened in Brussels. The primary focus of this congress was the growing AIDS epidemic. (Pheterson, 1989:49)

1.3 Thesis Outline

In this thesis, I investigate policy advocacy texts produced by anti-trafficking organizations as well as sex workers rights organizations, rhetoric produced by anti-trafficking activists as well as sex workers rights advocates, and finally, the laws meant to curb sex trafficking and punish traffickers. Currently anti-trafficking laws in the United States result in the hyper-criminalization of consenting adult sex workers and have very little impact on sex trafficking. I will argue that anti-trafficking and sex workers rights need not be mutually exclusive. In fact, effective public policy can and should protect the rights of sex workers while supporting the victims of sex trafficking and allowing for effective prosecution of traffickers.

The thesis is organized into five chapters: this introduction which provides a brief history of the anti-trafficking movement and sex workers rights movement; a second chapter on major non-profit organizations involved in anti-trafficking and sex workers rights advocacy; a third chapter on the narrative texts produced by anti-trafficking activists and sex workers rights advocates; a fourth chapter on the laws endorsed by anti-trafficking organizations and enacted by a population enamored of "rescue" rhetoric; and finally a conclusion summarizing my analyses and several tenets of effective anti-trafficking and sex workers rights protections based on the texts I've studied for this project.

CHAPTER 2

CRIMINAL, VICTIM, OR WORKER?

In this chapter I examine three different organizations and their approaches to anti-trafficking advocacy. The organizations are the Polaris Project, The Coalition Against Traffic in Women, and Amnesty International. Each organization has analyzed the issue of sex trafficking and come to very different conclusions. My purpose in analyzing the documents that detail the positions of these organizations regarding trafficking, is to demonstrate the linkage between the policies and legislation that ultimately impacts consenting adult sex workers.

2.1 The Polaris Project:

The Polaris Project is one of the largest and most influential anti-trafficking Non Government Organizations (NGOs.) It endorses and lobbies for the passage of legislation aimed at eradicating “modern slavery”. According to the website (www.polarisproject.org) the organization runs six types of programs: hotlines for victims of trafficking, direct client services based in Washington D.C., government relations, advisory services, data analysis, and strategic interventions (aimed at “disrupting human trafficking networks”³). My analysis of their work will focus on the government relations sector of their massive enterprise. As part of their government relations programing, The Polaris Project endorses and lobbies for the passage of legislation aimed at preventing trafficking and prosecuting traffickers.

³ <http://polarisproject.org/theory-change> (accessed 6/11/2016)

Uniform Act on Prevention of and Remedies for Human Trafficking (2013)⁴

This is the document that the Polaris Project provided as its position on trafficking and the sex industry. It provides crucial insights into how the organization attempts to influence laws concerning trafficking, and fails to distinguish between victims of trafficking and consenting adult workers. Though the Polaris Project has distanced itself from explicitly abolitionist rhetoric in recent years, the policies advocated by the organization still assume the entire sex industry to be inherently harmful, and are aimed at increasing surveillance and criminalization of those involved in the industry. This same ideology, and even some of the same phrasing, is reflected in the laws I analyze in chapter 4.

Article I: General Provisions

The Uniform Act on Prevention of and Remedies for Human Trafficking (hereafter UA) opens with definitions of key terms including “debt bondage”, “state” and “minor”. I will highlight five of these definitions here.

The National Conference of Commissioners on Uniform State Laws defines “commercial sexual activity” as follows: “sexual activity for which anything of value is given to, or received by a person.” (UA, 2013:2) The document goes on to define “labor or services” as: “activity

⁴ The document that I cited in my thesis proposal has since been removed from their website. I emailed the Polaris Project and got a response from the Director of Government Relations and Public Policy, Keeli Sorenson, who referred me to the *Uniform Act on Prevention of and Remedies for Human Trafficking*, produced by the National Conference of Commissioners on Uniform State Laws, as the replacement for the Polaris Project document I had previously cited (the *Model Provisions of Comprehensive State Legislation to Combat Human Trafficking*). Sorenson stated that the Polaris Project was heavily involved in the production of this newer document which outlines the state-level policies relating to prosecution of trafficking related crimes and victim protection endorsed by the Polaris Project.

having economic value”. (UA, 2013:2) This definition in particular is alarmingly vague and open to interpretation.

“Person” is defined as: “an individual, estate, business or nonprofit entity, or other legal entity. The term does not include a public corporation, government or governmental subdivision, agency or instrumentality.” (UA, 2013:2) This definition of “person” is interesting because it explicitly includes nonprofit and business entities and excludes corporate and government agencies. In the case of the Human Trafficking Intervention Courts in New York this definition could potentially implicate the non-profit organizations which run the court-mandated diversion programs for abuse, but not, apparently the courts themselves or the arresting police officers.

“Sexual Activity” is “[to be defined in each state by cross-referencing existing state statutory provisions or listing specific sexual activity, either or both], or sexually-explicit performances.” The inclusion of sexually explicit performances in this otherwise somewhat convoluted definition potentially implicates those working in the sex industry beyond the realm of prostitution (as does the aforementioned definition of “commercial sexual activity”). This extremely broad definition could be read to encompass various legal areas of the sex industry including stripping, camming⁵, and porn production.

Finally, “victim” is defined as “an individual who is subjected to human trafficking or to conduct that would have constituted human trafficking had this [act] been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted, or

⁵ Camming refers to the sale of access to webcam shows which are usually sexual in nature and mediated by third-party websites such as MyFreeCams, Chaturbate and CamGirlCentral. Camming has, for the most part, replaced phone sex with the exception of the popular erotic phone service NiteFlirt, a modern variation of phone sex hotlines which allows the workers set their own schedules, and work from home, utilizing their personal cell phones. To ensure safety and privacy Niteflirt blocks the caller from seeing the cell phone number.

convicted.” (UA, 2013:3) This definition is troubling for at least two reasons. First, it allows the definition to be applied retroactively to acts that may not have been labeled trafficking (and may not have even been criminalized) at the time that they occurred. Second, it allows for the legal category of victim to exist independent of a perpetrator. As with the definition of “person”, this is especially significant in the case of New York’s HTICs. Women who would have been charged with prostitution related misdemeanors such as loitering or solicitation can (and are) now charged with the felony crime of trafficking (themselves).

Article II: Penalties

Article II of the document outlines the criminal charges for trafficking and related crimes such as patronizing a trafficking victim. Notably, “sexual servitude” does not appear in the previous General Provisions section. Section 5 of the document details the penalties for sexual servitude and provides three different examples of what sexual servitude may entail but it is not clear how sexual servitude differs from “human trafficking” or “commercial sexual activity” except that it is listed as a subset of trafficking (the two types of trafficking listed in this section being forced labor and sexual servitude).

Though felony charges vary significantly by state, most states use a ranking system depending on the severity of the crime, with an A or 1 classed felony indicating the most heinous or violent crime. In this document the NCCUSL recommends that the crimes of trafficking an individual, forced labor and sexual servitude carry B and C felony charges (with B pertaining to cases in which the victim is under the age of 18). These recommendations vary slightly for the crime of patronizing a victim of sexual servitude. For this crime NCCUSL recommends C and D class felonies (with C pertaining to cases in which the victim is under the age of 18).

The final three sections pertain to aggravating circumstances (which can include cases in which “the defendant recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless.” (UA,2013:6)

In addition to descriptions of which types of restitution may be required of people convicted of trafficking related crimes the final passage of the section also recommends that “If the victim is unavailable for [five] years from the date of the restitution order, the restitution ordered under subsection (a) must be paid to the [Human Trafficking [Council] created under Section 19 for operational costs].” The passage goes on to suggest that if the state does not have a human trafficking counsel the restitution should be paid to the states “crime victims compensation fund”. It is worth noting that in California the state’s Victims Compensation Fund explicitly excluded anyone arrested for prostitution-related offences until members of the Bay Area and Sacramento chapters of the Sex Workers Outreach Project (myself included) advocated for and won the inclusion of prostitutes in the text of the state’s Victims Compensation Fund in 2013. (Thompson, 2013)

Article III: Victim Protections

Section 12 of Article III of the document sets the suggested statute of limitations for trafficking related offenses at 20 years after the commission of the offense. Section 13 ensures that victims names will be kept confidential unless “...disclosure is necessary for the purpose of investigation or prosecution, is required by law or court order, or is necessary to ensure provision of services and benefits for the victim and victim’s family.” (UA, 2013:9)

Section 14 specifies that:

“victim’s past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim is not admissible unless the evidence is:

- (1) admitted in accordance with [cite state’s rape shield evidence rule or statute]; or
- (2) offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant” (UA, 2013:9)

Sections 15-17 are the most significant to my work. Section 15 states that minors engaged in prostitution “as a direct result of being a victim of human trafficking” or who engaged in other commercial sexual activity should not be charged with the crime of prostitution and instead should be presumed to be in need of services under child protection statutes (UA, 2013:10). However, the section concludes with the caveat that the immunities granted to minors do not apply in a prosecution for prostitution or patronizing a prostitute. (UA, 2013:10) Because of this wording, the onus is on the judge to determine whether a case constitutes trafficking or prostitution. These two legal categories are increasingly nebulous with definitions overlapping and contradicting one another. And the stakes are high: in this instance, trafficking is a felony offense but the victim is protected from prosecution, whereas prostitution is a misdemeanor in which a minor can be implicated.

Sections 16 and 17 of the Article on Victims Protections explain that an individual charged with prostitution or other related non-violent offence may move to vacate the conviction if they can demonstrate that their actions were “a direct result of being a victim of human trafficking” (UA, 2013:10-11). In other words, even for an adult defined as a trafficking victim in the General Provisions section of the document, the performance of victimhood is required to escape sentencing for prostitution.

Article IV: State Coordination

Section 19 of Article IV states that The Governor should appoint a chair and members of a council on human trafficking within U.S. Department of State, a division of the executive branch of the federal government which deals primarily with international relations. Article IV states that the council should meet regularly to:

- “(1) develop a coordinated and comprehensive plan to provide victims with services
- (2) collect and evaluate data on human trafficking in this state and submit an annual report to the [Governor] [and legislature]
- (3) promote public awareness about human trafficking, victim remedies and services, and trafficking prevention.
- (4) create a public-awareness sign that contains the [state, local, and] National Human Trafficking Resource Center hotline information.
- (5) coordinate training on human trafficking prevention and victim services for state [and local] employees who may have recurring contact with victims or perpetrators; and
- (6) conduct other appropriate activities.” (UA, 2013:12-13)

Section 20 specifies that the trafficking awareness sign is to be displayed “in every transportation station, rest area, and welcome center in the state which is open to the public.” (UA, 2013:13); as well as in strip clubs and any other sexually oriented businesses, entities found to be a nuisance for prostitution under state nuisance law, job recruitment centers, hospitals and emergency care providers. (UA, 2013:13)

Section 21 outlines victims eligibility for services. And finally, Section 22 outlines Law Enforcement Agency Protocol which allows individuals which law enforcement reasonably believes are victims of “a severe form of trafficking” to qualify for a nonimmigrant T or U visa

and allows the law enforcement officer to request their continued presence in the country. (UA, 2013:14-15)

To sum up, I studied the document in order to determine how The Polaris Project endorses this framework as a best-practices model for combatting human trafficking. The organization also maintains rankings for each state based on their effectiveness in combatting human trafficking, with the highest rankings reserved for states with the most aggressive anti-trafficking and anti-prostitution policies.

The Coalition Against Traffic in Women

The Coalition Against Trafficking in Women (CATW) is a multinational NGO which endorses the Nordic Model of partial decriminalization of prostitution.

The Nordic Model was first implemented in Sweden in 1999, followed by Norway, Iceland, Canada, Northern Ireland and, most recently, France. The Nordic Model criminalizes the purchase of sex but not the selling of sex. The slogan used by politicians and activists advocating for the passage of the law in Sweden was “Our women are not for sale.” As Don Kulick points out, this rhetoric is very nationalist and paternalistic (Kulick, 2005) However, the Nordic Model is considered by many activists on both sides of the anti-trafficking debate to be a reasonable compromise between abolition of the sex industry and full decriminalization of prostitution.

For this research I will engage with a document from the CATW website: *The Links between Prostitution and Sex Trafficking: A Briefing Handbook*.

The Links between Prostitution and Sex Trafficking: A Briefing Handbook (2006)

This 35-page document is the result of a collaboration between the Coalition Against Trafficking in Women and the European Women’s Lobby. Both groups endorse the Nordic

Model of prostitution regulation, as a means to “...prevent prostitution and trafficking.”

(O’Connor and Healy, 2006:3) Monica O’Connor is an activist and independent research consultant. She was a member of the first Irish Government Task Force on Violence Against Women and co-author of several national studies on domestic violence, sexual assault and transitional housing for women in Ireland. Grainne Healy is an activist and social policy analyst. She has chaired the European Women’s Lobby’s Observatory on Violence and the National Women’s Council of Ireland. (O’Connor and Healy, 2006:39)

Several flaws appear throughout the document. The most extreme and horrific examples of abuse are presented as the sex industry norm. And the authors fail to distinguish between trafficking and prostitution, lumping all male figures (traffickers, pimps and clients) into one group, and, rejects the term ‘sex work’ as a romanticization of the industry, ignoring the fact that this is the term preferred by the prostitutes and other workers who make up the sex industry. In O’Conner and Healy’s simplified view, all paid sex is abuse. (O’Connor and Healy, 2006:5) This removes the possibility of agency and consent from the female participant, rendering her at best docile and duped and at worst, a tragedy.

Perhaps most egregiously, however, the authors dismiss the distinction between women and children as irrelevant. O’Conner and Healy state “It may be a child, of either gender, a young woman, an adult woman, the prostituted woman or child, the trafficked woman or child. The sex industry is not discriminating and does not concern itself with those false distinctions.” (O’Connor and Healy, 2006:5) Dismissing the distinction between consenting and non-consenting, of age and underage, as a “false distinction” is violence in itself.

Interestingly, however, the authors present a cogent, though limited analysis of the economic context which creates and perpetuates sex trafficking. They state early in the document

that “Gender inequality, globalization, poverty, racism, migration and the collapse of women’s economic stability are global factors, which create the conditions in which women are driven into the sex industry.” (O’Connor and Healy, 2006: 6) I wholeheartedly agree that those are significant factors and should not be ignored. Those of us who are critical of the rescue industry need to begin to incorporate economic analyses in our writings on trafficking and the migrations which get labeled ‘trafficking.’ Unfortunately this single line represents the extent of the authors’ economic analysis and their racial analysis is limited to three short paragraphs which essentialize specific races, explaining why each group is either biologically or culturally at risk for trafficking. This includes a line explaining that Nigerian girls are most at risk because they are susceptible to “...specific magic voodoo rites.” (O’Connor and Healy, 2006:9)

The authors’ analysis of the state’s role in sex trafficking is interesting, but misguided. They argue that “The State [sic] facilitates and regulates on behalf of the client and operates as a facilitator/pimp in ensuring the supply is continued under the guise of protecting the rights and health and safety of the victims.” (O’Connor and Healy, 2006:5) The authors support this statement with one example: they describe a program in the Netherlands which provides state-sponsored or state-subsidized (the language is vague) sex surrogacy to elderly and disabled citizens. (O’Connor and Healy, 2006:13) This situation represents an outlier rather than a standard practice in countries where prostitution is decriminalized or legalized. In order to support their argument that the state is a pimp, it would make much more sense to argue that requiring prostitutes to pay federal taxes is a form of economic coercion akin to pimping. (And that argument only holds if the reader is willing to buy into the idea that prostitution can only ever be abuse and never work.)

This fascinating handbook also highlights several points that I would like to see taken up more actively by the sex workers' rights movement, including connections between globalization and an increase in sex trafficking, the conflation of migration and trafficking and the foster care to prostitution pipeline⁶.

The authors mention the foster care to prostitution pipeline only in passing, in the form of a single personal anecdote from a 16 year old in England. (O'Conner and Healy, 2006:8) Tara Burns, whom I cite in this piece, has written extensively on the subject, as an activist, scholar and survivor of the foster care to prostitution pipeline.

Ironically, much of this document can be read as an argument for decriminalization. For example, O'Conner and Healy argue that: "Male abusers can act with impunity because they know that women in prostitution will not be believed or taken seriously by the criminal justice system." (O'Conner and Healy, 2006:10) This quote describes one of the flaws of criminalization, *not* a failure of decriminalization. They also cite a quantitative study of 1,600 female prostitutes in the United States which revealed that the group had the highest risk of death by murder than any other female cohort. (O'Conner and Healy, 2006:14)

The United States is not only an example of criminalization, but one of the most extreme examples of prostitution criminalization (owing in large part to the passage of draconian anti-trafficking laws championed by anti-trafficking organizations, which mistake all prostitution for trafficking). The fact that prostitutes in the United States face such extreme risk should be interpreted as an indication that criminalization and now hyper-criminalization, is not only *not* a best practice model, but an utter failure. Rather than comparing murder rates in criminalized

⁶ Tara Burns addresses this phenomenon in a few of her essays, including the one I've cited in my bibliography.

versus decriminalized countries, however, the authors rely on very limited analyses of very limited narratives and statistics.

Throughout the document, O’Conner and Healy strategically restrict their analysis to a disconnected collection of facts and figures, drawing their own fantastical conclusions which appear to be only occasionally linked to bits of evidence, of which few can be said to support their actual argument. The authors also rely heavily on the popular fantasy of the rescue of victims and punishment of traffickers. But when this ideology is written into law, a complex problem emerges: in most trafficking cases there is no trafficker since trafficking is being redefined to include numerable prostitution related crimes. This results in increased criminalization of consenting adults as they are charged with the bizarre, dystopian crime of trafficking themselves.

2.2 Amnesty International

Amnesty International is an international non-profit organization dedicated to protecting human rights around the world. The organization was founded in 1961 by Peter Benenson with the goal of improving the world one injustice at a time. In 1977 Amnesty International won the Nobel Peace Prize. The organization has been a global leader in human rights advocacy for decades.

Amnesty International Policy on State Obligations to Respect, Protect and Fulfil [sic] the Human Rights of Sex Workers (2016)⁷

This is a 17-page document divided into 9 sections. I will focus primarily on the 7th section, which outlines suggested sex industry policy guidelines for states to adopt and adhere to. The document pertains to sex work, defined as “...the exchange of sexual services (involving sexual acts) between consenting adults for some form of remuneration, with the terms agreed between the seller and the buyer.”(Amnesty, 3) The organizations definition explicitly excludes exotic dance and pornography.

Entry into Sex Work

Amnesty International emphasizes that any entry into sex work should be freely chosen rather than out of duress and that structural inequalities need to be address to ensure the rights of sex workers. (Amnesty, 2016:8) States have an obligation to “...ensure the right to an adequate standard of living and the right to social security, so that no person has to rely on sex work as their only means of survival...” (Amnesty, 2016:8) and to “Guarantee and enforce legal protections to ensure that no person is compelled to sell sex against their will, ensuring that such protections do not conflate sex work (including that involving migrants) with human trafficking and do not violate sex workers human rights...” (Amnesty, 2016:8) This section includes a brief overview of some of the factors which can compel a person to enter the sex industry when it is not freely chosen, but does not constitute trafficking as there is no third party acting to force or

⁷ I had listed a different document in my proposal the (*Policy to Protect the Human Rights of Sex Workers* (2015)), but after my proposal defense the organization released a more comprehensive version of their policy analysis and recommendations. That document is the *Amnesty International Policy on State Obligations to Respect, Protect and Fulfil [sic] the Human Rights of Sex Workers* (2016) I will be reading and analyzing this document instead.

coerce the sex worker, but rather a situational inequality such as unequal access to employment or education or economic need.

Participation in Sex Work

Section a: Stigma, Stereotyping and Discrimination

According to Amnesty International, states also have an obligation to “Ensure that policies and programmes [sic] on stigma and discrimination against sex workers and their families are developed through meaningful participation and consultation with sex workers, including those facing multiple forms of discrimination.” (Amnesty, 2016:9) and to “Take measures to eradicate and oppose harmful stereotypes and stigma against sex workers and their families, including through programmes to promote respect for sex workers dignity and human rights among law enforcement officials, and ensuring legal support for sex workers exercising their rights.” (Amnesty, 2016:9)

I have seen numerous campaigns by sex workers rights organizations in Australia, and New Zealand featuring current and former sex workers as a means to help eradicate stigma against the sex industry. But it is much more difficult to present decent depictions of sex workers when they are labeled as criminals, with the associated dangers and stigmas. I know of one such campaign by activists at the St. James Infirmary in San Francisco which presented positive and nuanced images of sex workers in the form of posters. (Akers and Evans, 2010)

Additionally, states have a responsibility to “Provide sex workers with access to health, housing, education, social security and other services or government programmes without discrimination; and halt measures which serve to penalize sex workers for their engagement in sex work.” (Amnesty, 2016:9)

Section b: Criminalization and other Penalties

Amnesty International argues that states should “Repeal existing laws and/or refrain from introducing new laws that criminalize or penalize directly or in practice the consensual exchange of sexual services between adults for remuneration.” (Amnesty, 2016:11) Again, criminalization and penalization are characteristic of U.S. anti-trafficking initiatives.

Section c: Physical and Sexual Violence

The organization encourages states to “Ensure that sex workers enjoy full and equal protection under the law as well as effective remedies, including for offences involving rape and sexual violence, abuse of authority, assault, extortion and all other crimes.” (Amnesty, 2016:13) The myth that sex workers, especially prostitutes, are un-rapeable is a dangerous and harmful fallacy that the organization is working to undermine. It is directly linked to stigma against sex workers and gendered cultural standards of sexual conduct.

Section d: Protection from Exploitation

Amnesty International is very clear throughout this document that sex work and trafficking are two entirely separate phenomena and should be treated as such. They advise that: “...criminal laws...should not be applied in a way that conflates all sex work with violence and/or exploitation or acts as a *de facto* prohibition on sex work.” (Amnesty, 13 emphasis original) The organization also emphasizes that states are obligated under international law to suppress and punish human trafficking. (Amnesty, 13)

Section e: Regulation of Sex Work

Though Amnesty refrains from directly endorsing any particular regulatory framework, the organization supports the states’ authority to regulate the industry, providing that any regulation: “Respect and protect the right of sex workers to just and favourable conditions of

work...Ensure the meaningful participation of and consultation with sex workers, including those facing multiple forms of discrimination, in the development of any regulatory frameworks...[and] recognize the rights of sex workers to associate and to form and/or join trade unions.” (Amnesty, 2016:14-15)

Leaving Sex Work

On the subject of leaving the sex industry Amnesty advises states to “Guarantee that sex workers are not compelled to participate in coercive ‘rehabilitation’ programmes” (Amnesty, 2016:16) and to “Take measures to remove common barriers to alternative and supplementary forms of employment that sex workers face (such as issues relating to criminal records or employment history checks), remove any legal barriers to exit from sex work and protect former sex workers from discrimination on the basis of their previous sex work” (Amnesty, 2016:16). Criminal records and employment history checks (as well as exorbitant fines) are cited as some of the primary barriers to leaving the sex industry.

Human Trafficking

The document concludes with this powerful statement, which merits quotation at length: “The conflation of human trafficking with sex work can result in broad and over-reaching initiatives that seek to eradicate all commercial sex as a means to end trafficking. Such approaches work in practice to violate sex workers’ human rights, and in general can make sex workers and people who have been trafficked more vulnerable to violence and harm. Additionally, there is a lack of evidence to suggest that such approaches are successful in addressing trafficking (in terms of preventing, identifying and protecting victims and supporting prosecution of perpetrators).” (Amnesty, 2016:16-17)

I argue that, by Amnesty International's standards, the United States is failing sex workers. I will explore this idea in greater detail in my analysis of select laws against trafficking and prostitution in the United States.

CHAPTER 3

IDEOLOGICAL BATTLES

3.1 Anti-Trafficking Texts

To understand moral panic and the laws which are born of that sense of emergency, it is important to understand the narratives which engender panic and urgency. (Polletta, 2006) Such narratives can be shaped, manipulated and, in some cases, fabricated entirely in order to make the most extreme instances of abuse appear to be the norm. (Doezema, 2010)

This strategic storytelling could be used to raise funds for services for victims of trafficking including: HIV prevention and/or treatment, shelters for survivors and direct monetary aid. But, in the case of anti-trafficking organizations, the money they raise is primarily spent on campaigns to raise awareness about trafficking (utilizing bizarre, fetishized images of young girls and fabricated numbers) and job-training programs, almost universally textile related. The extent to which this particular solution to the problem of trafficking goes unquestioned is troubling. It is very clear to me as well as many other scholars and activists that such interventions stem directly from a legacy of colonialism. (Suchland, 2015; Kempadoo, 2003; Doezema, 2010; Agustin, 2007; McClintock, 1995) Three of the activists who actively produce these narratives and profit from them are Nicolas Kristof, Sheryl WuDunn and Somaly Mam.

Nicholas Kristof and Sheryl WuDunn

Husband and wife Nicholas Kristof and Sheryl WuDunn are well-respected, high profile anti-trafficking activists and award winning journalists.

Kristof is a reporter for the New York Times. He has worked for the news outlet since 1984 and won two Pulitzer Prizes in that time. The first Pulitzer Prize was awarded to he and his wife Sheryl WuDunn in 1990 for their coverage of China's Tiananmen Square uprising; and the second was awarded to Kristof in 2006 for his reporting on the genocide in Darfur.

WuDunn is a banker, journalist, and author. She is the first Asian-American reporter to win a Pulitzer Prize (in conjunction with her husband for their aforementioned coverage of the Tiananmen Square uprising). They are also the first married couple to have won a Pulitzer Prize for journalism. WuDunn has also worked as an Investment Manager at Goldman Sachs and is currently a Senior Managing Director with Mid-Market Securities.

In the late 1990s and early 2000s Kristof and WuDunn wrote a series of New York Times opinion pieces championing sweatshops as unfortunate but necessary steps on the path of economic development. Then in 2009 the pair published the New York Times bestseller *Half the Sky: Turning Oppression into Opportunity for Women Worldwide*. The hugely successful book became a galvanizing force of the anti-trafficking movement. This work was followed six years later by *A Path Appears: Transforming Lives, Creating Opportunity*.

Outside of the anti-trafficking movement, Kristof has been criticized for his aggressive and non-traditional anti-trafficking tactics including two especially memorable incidents. In 2004

he made headlines when he purchased two reluctant teenage girls from a brothel in Cambodia in order to return them to their home villages.⁸ (Kristof, 2004)

Then in 2011 Kristof was widely criticized for live-tweeting a Cambodian brothel raid with Mam. His detractors argued that the coverage was an act of self-promotion and that the publicity may have further endangered the women they were ostensibly attempting to help. (Carmon, 2011)

Half the Sky: Turning Oppression into Opportunity for Women Worldwide (2009)

“*Half the Sky...*” is Kristof and WuDunn’s book on women’s rights in the global South. In it, they address issues such as female genital mutilation, girls access to education and, of course, sex trafficking. The book was also made into a PBS documentary of the same name. The title comes from a Chinese proverb: “Women hold up half the sky.” (Kristof and WuDunn, 2009)

Throughout the book, Kristof and WuDunn are explicit in their support of neoliberal development projects, calling women the “linchpin” of development. (Kristof and WuDunn, 2009:xix) In addition to citing well-known international NGOs such as UNICEF and Doctors Without Borders, Kristof and WuDunn also champion the charitable work of The Nike Foundation and Goldman Sachs. Their narrative tells the story of naturally happy, healthy girls taken down by backwards cultures, poverty or violent men. The introduction alone refers to both girls and adult women (survivors of various kinds of horrific violence) as “bubbly” or “ebullient” four times.

⁸ Fellow anti-trafficking activist Somaly Mam asserts repeatedly in her memoir, “*The Road of Lost Innocence: The True Story of a Cambodian Heroine*”, that children are rarely accepted back into their home communities after having been in the sex industry because they are considered dirty, and in fact may be in greater danger if returned to their families. In her account, the girls returned to their home villages are often disowned and abandoned. (Mam, 171-172)

The chapters which are most relevant to my work are chapters 1-3 and the profiles of individual victims which follow each chapter. Like much of their work *“Half the Sky...”* relies heavily on the stories of individual women. One such protagonist, Long Pross, is introduced and pictured in the first chapter. She also appears in the documentary.⁹ The tone of the writing is paternalistic and the text is written to appeal to white, Western Christians. It relies on a long history of missionary outreach to countries of the global south, using terms such as “savior” (to describe white, western NGO workers) and “resurrection” (to describe the recovery of a trafficking survivor). Several themes stand out in this text, including its definitions of sex slavery and trafficking, policing, victim blame, and treating women as either children or insensate resources.

First, in this book, Kristof and WuDunn favor the term “slavery” over the more specific crime of trafficking. They say: “Nor is the problem exactly ‘trafficking,’ since forced prostitution doesn’t always depend on a girl’s being transported over a great distance by a middleman. The horror of sex trafficking can more properly be labeled slavery.” (Kristof and WuDunn, 2009:9) In later works, they exchange slavery for a much broader definition of trafficking, which does not require any movement at all. This parallels the move within state legislatures to expand the definition of trafficking to any prostitution related offense, resulting in trafficking statistics going up as more and more adult women are arrested and convicted of “trafficking” themselves. (Burns, 2015; Ray and Catherine, 2014; Grant, 2013 and 2014)

⁹ Pross is the young woman it was later revealed to have been coerced by Somaly Mam into telling an entirely fabricated tale about having her eye gouged out by an angry pimp. Pross revealed years later that she had never spent any time in a brothel and that her eye was removed surgically due to a tumor. The doctor who performed the surgery, the hospital and her medical records all corroborate this version of the story. The hospital staff referred Pross to Mam’s organization ASEFIP after surgery for vocational training. (Marks, 2014)

Second, Kristof and WuDunn also briefly explain their politics. They endorse the “Nordic Model” of prostitution regulation as opposed to full criminalization, legalization or decriminalization. In short, the Nordic Model of prostitution regulation criminalizes clients but not prostitutes. Kristof and WuDunn admit that: “The police seemed unlikely saviors to girls in the brothels because police officers regularly visited the brothels and were serviced free.” (Kristof and WuDunn, 2009:7). Police brothel raids in Mumbai made it much harder for aid workers to distribute condoms and provide medical services to prostitutes. (Kristof and WuDunn, 2009:31) Yet, this is the model they endorse, arguing that though imperfect, this model allows police “to demand higher bribes” from brothel owners, thus flushing out those who can’t afford the bribes. (Kristof and WuDunn, 2009:27) This bizarre tactic would have no impact on the brothels which can afford to pay higher bribes, including brothels run by the most powerful and dangerous such as organized crime syndicates. Kristof and WuDunn conclude that “With such methods, [a version of the Nordic Model and police bribes] we can almost certainly reduce the number of 14 year-old-girls who are held in cages until they die of AIDS.” (Kristof and WuDunn, 2009:27)

Third, Kristof and WuDunn engage in victim blaming repeatedly. They argue that: “Rescuing girls from brothels is the easy part, however. The challenge is keeping them from returning...It’s enormously dispiriting for well-meaning aid workers who oversee a brothel raid to take the girls back to a shelter and give them food and medical care, only to see the girls climb over the back wall.” (Kristof and WuDunn, 2009:35) The girls are treated as if they are just silly, misguided and clearly don’t know what’s good for them. The possibility that they may be acting in their own best interest given their circumstance is never broached.

This disconnect is brought into chilling relief when Kristof relates the story of visiting a brothel, posing as a client; “Nick toured Sonagachi several times, entering the brothels seemingly as a potential customer. He saw many young girls but wasn’t allowed to take them off the premises, presumably for fear that they would flee. And because they spoke only Bengali, Nepali, or Hindi, and he speaks none of those languages, he couldn’t interview them.” (Kristof and WuDunn, 2009:29) This of course begs the question: what is the point of including this anecdote? What does it actually do for the women and girls he witnesses but is unable to help? To me, it looks very much like poverty porn.

Finally, in one of the concluding chapters entitled “What You Can Do”, Kristof and WuDunn argue that girls and women are essential to turning around the fate of “dysfunctional” countries. They argue that “...educating young girls and bringing them into the formal economy will yield economic dividends and help address global poverty.” (Kristof and WuDunn 2009:238) With blanket statements like this several key questions are elided in favor of a simplified, feel-good approach for well-intentioned Westerners. These questions include: Who will actually reap these “economic dividends”? And: Is the formal economy actually safer or better than the informal economy?

This theme runs throughout the book. Kristof and WuDunn present this troubling scene: “Consider the costs of allowing half a country’s human resources to go untapped. Women and girls cloistered in huts, uneducated, unemployed, and unable to contribute significantly to the world represent a vast seam of human gold that is never mined. The consequence of failing to educate girls is a capacity gap not only in billions of dollars of GNP but also in billions of IQ points.” (Kristof and WuDunn, 2009:239) Again, Kristof and WuDunn utilize religious language (cloistered) and women are referred to as a resource to be tapped or mined. This paragraph also

overlooks the unpaid labor of social reproduction performed by women and girls the world over. But the real tragedy here, we are to understand, is not the violence women face everyday, including violence in the home, but that these women and girls are unable to contribute (visibly and legibly) to their country's GNP and the world economy.

A Path Appears: Transforming Lives, Creating Opportunity (2015)

"A Path Appears..." is Kristof and WuDunn's book on altruism and social progress. (Kristof and WuDunn, 2015) The book consists of a series of short essays by the duo, each one on a specific social justice issue, with each essay followed by an uplifting profile of a survivor and how they were able to turn their life around with the help of one of the non-profit organizations highlighted in the preceding essay.

Attacking Sex-Trafficking

Chapter ten focuses on the work of an Episcopal priest based in Nashville named Becca Stevens. The essay reveals that Stevens was molested as a child and that the years of abuse she endured inspired her to build her congregation around a commitment to helping trafficking victims. "The roots of sex trafficking, she says, lie in rape of children, pointing to research indicating that a majority of prostitutes have been sexually abused as children." (Kristof and WuDunn, 2015:155) This statement is troubling for many reasons. First, she makes no distinction between prostitution and trafficking. Second, when applied to trafficking victims or to consenting adult sex workers the argument that the majority of either group has been sexually abused as children is problematic, but for different reasons.

If the argument is to be read to mean that trafficking victims were abused as children, and that histories of abuse lead to becoming victims of trafficking, the argument sounds very much like victim blame. If, on the other hand, Stevens is saying that consenting adult sex workers enter

the industry because of a history of abuse, then her argument sounds very much like the research cited in the 1950s and 1960s which resulted in homosexuality being listed as a mental disorder in the Diagnostic and Statistics Manual. Whether or not childhood sexual abuse occurs in the prostitute population with more or less frequency than the non-sex-working population is irrelevant, and only results in pathologizing and further stigmatizing an already vulnerable population. The assumption here is that entering the sex industry is the wrong choice, and something must account for that lapse in judgment or character flaw.

Finally, there is no source cited, which, for otherwise detail-oriented, professional journalists Kristof and WuDunn is notable. It seems that this particular line of reasoning (that prostitutes and/or trafficking victims find themselves in the sex industry because of a history of sexual abuse) is so pervasive and accepted that it requires no further exploration or explanation. I focus on this one line, casually linking childhood sexual abuse and sex trafficking and/or prostitution, because it appears in the second paragraph of the essay and establishes the logic of the remainder of the essay.

This is followed by alarming statistics from UNICEF, the International Labor Organization and the National Center for Missing and Exploited Children. Kristof and WuDunn explain that, though trafficking happens in the United States, it happens more in many other countries.¹⁰ They do acknowledge that trafficking statistics vary widely and then cite their own statistic: “Our own calculation (based on arrests, data for online prostitution advertising, and

¹⁰ The countries listed are: India, Pakistan, Bangladesh, Nepal, Malaysia, Cambodia, Vietnam, Moldova, Romania and Mexico. (Kristof, WuDunn) The majority of these countries rely heavily on textile and garment production. I will argue in my dissertation that this is not a coincidence. The international anti-trafficking movement restricts the cross-border movement of working class women (not just trafficking victims) and functions as an important component of neoliberal development policies.

results of surveys of men about purchasing sex) is that there may be 100,000 women and girls (about 10 percent of them underage) selling sex in the United States, both willingly and unwillingly.” (Kristof and WuDunn, 2015:156). The methodology may be suspect, and again, consent seems unimportant to the authors as they chose to combine adult and underage; consenting workers and trafficking victims, into one statistic.

The essay goes on to describe Magdalene, the Nashville-based NGO founded by Stevens and her congregation. Magdalene offers former prostitutes therapy, job training, and help staying away from drugs, alcohol and “bad old friends”. (Kristof and WuDunn, 2015:157) They then briefly profile a success story from the program: a woman named Clemmie Greenlee who went from being a “junkie”¹¹ prostitute to running a program similar to Magdalene in New Orleans.

The second half of the essay outlines Kristof and WuDunn’s theories around sex trafficking and their stance regarding sex industry legislation. These three pages represent the most overt expression of their personal politics I’ve seen, though they stop short of outright endorsing a specific legal model.

They begin this section by dispelling what they call two misconceptions about sex trafficking. The first is that it mainly involves foreign women brought into the U.S. (Kristof and WuDunn, 2015:158) They state that, in fact, “...by far the most common victims of human trafficking in the United States are homegrown girls like Greenlee. Most traffickers in the United States are simply pimps.” (Kristof and WuDunn, 2015:158) This definition of trafficking makes no distinction between pimps and traffickers. That is significant for two reasons. First, it removes cross-border movement (or movement of any kind) from the definition of trafficking. And

¹¹ “Junkie” is considered a derogatory word by the harm reduction community as it perpetuates addiction stigma. But it is characteristic of Kristof and WuDunn’s sensationalist language.

second, it again conflates all sex industry involvement with trafficking, though this is the most transparent and intentional example.

The misconception they try to dispel is "...that women and girls are overwhelmingly selling sex voluntarily, working cooperatively with pimps to make money." (Kristof and WuDunn, 2015:158) Again, there are two flaws in this statement. First, they have apparently combined statistics for women and girls, with one group legally unable to consent and second, they have painted a titillating but inaccurate picture of the sex industry as it exists today. The vast majority of sex workers in the United States advertise online and work indoors doing either "outcall" (where they go to the client's home or hotel) or "incall" (where they work out of their own space, often shared with other escorts). To imply that the majority of sex workers have pimps is, again, sensationalist and dangerously inaccurate. Pimps are part of a specific era and sector of the sex industry. They operate primarily in spaces of street-based sex work (because indoor escorts generally screen their clients and don't need to rely on a bodyguard or other intermediary). Pimps are also associated, rightly, with violence and abuse. To say that the majority of prostitutes who rely on pimps are not in the industry of their own free will, (that coercion, drug dependence, extreme poverty or abuse is usually involved, would be accurate) but to make it sound like that small sector of the sex industry accounts for all or most of the industry is incredibly misleading. This tactic makes the outlier appear to be the norm, and in doing so, fuels the anti-trafficking moral panic.

The next section outlines three different legal models: legalization, the Nordic Model, and what Kristof and WuDunn have now deemed the Nashville Model after the work of the Magdalene organization. However, they fail to mention the model endorsed by UNAIDS, the World Health Organization and Amnesty International; and utilized with great success in New

Zealand for more than a decade: full decriminalization. (Abel and Brunton, 2006; Godwin, 2012; World Health Organization, 2005)

Kristof and WuDunn explain some of the benefits of legalization such as access to STI testing, access to indoor brothel work, which is safer than street-based work, and the ability to ensure that all workers are of legal age. (Kristof and WuDunn, 2015:158) Yet, they argue, legalization is flawed. They assert that “A jurisdiction that allows legal prostitution attracts sex tourists, creating a parallel market for underage or trafficked girls.” (Kristof and WuDunn, 2015:158-159) I would argue that the neoliberal economic development policies endorsed by Kristof and WuDunn create and maintain economic inequities that attract sex tourists, regardless of the legal status of the trade in a given country. (Kempadoo, 2003)

The duo then provides three examples to illustrate what they perceive to be the failure of legalization: Nevada, Sydney, and Amsterdam. Again, their analysis contains notable strategic omissions. They point out that “In Nevada, the women in legal brothels are eighteen or over, but there are also plenty of younger girls working outside the brothels.” (Kristof and WuDunn, 2015:159) I do not doubt the veracity of this statement but the implication that legalization is to blame for the presence of underage workers is misleading. Legalization in Nevada requires that a county is only able to legalize prostitution if its population is under a certain number. This ensures that legal brothels are unable to operate in the larger cities, such as Las Vegas, and it makes access to legal brothels more difficult for both potential clients and sex workers. In other words, there are only a handful of legal brothels in Nevada and they are all in the middle of nowhere. The law also requires women to live on the premises during their employment. (Albert, 2001)

The combination of the county population restrictions and on-site living quarters results in a bizarre and extremely limited form of legalization which has created gated compounds which house groups of women, isolated from the rest of the world and often required by the brothel to buy all of their food and safer sex supplies directly from the brothel at inflated prices (Albert, 2001). This scenario looks much more like gold-rush era company towns which allow owners such as Dennis Hof¹² to profit at the expense of workers than a functional, safe and accessible form of prostitution legalization. There are many reasons women would choose to work independently (and illegally) in Nevada rather than in a legal brothel: lack of access to transportation to the remote brothels, unwillingness to submit to that level of movement restriction and financial control, and limited client pools (again due to remote location and availability of independent escorts).

The next example of failed legalization provided by Kristof and WuDunn is Sydney, Australia, where, they assert "...there are reportedly four times as many illegal brothels as legal ones." (Kristof and WuDunn, 2015:159) Again, I don't doubt the veracity of this statistic (though again no source is cited). Sydney is located in New South Wales AU, which legalized prostitution in 2003. But the steps required to open and maintain a legal brothel in New South Wales are so onerous as to make legal operation of a brothel nearly impossible. (Angus and Gotsis, 2015)

The third and final city in their list of examples of failed legalization is Amsterdam, where, they report that "...only 4 percent of prostitutes are estimated to be legally registered." (Kristof and WuDunn, 2015:159). Again, the dynamic duo fails to provide any history or context

¹² Hof is the owner of several legal brothels in Nevada including the Moonlite Bunny Ranch and six other brothels including The Love Ranch (the brothel where Lamar Odom overdosed). Hof's net worth is estimated at \$20 million and he proudly refers to himself as a "pimp".

with this example of failed legalization. In Amsterdam prostitution has been officially legal since 2000 though the city has been known as a popular destination for sex tourism for much longer.

But in 2008 the city of Amsterdam initiated a massive gentrification project called Project 1012 named after the area code of the red light district. The Project involved, among other things, the slow shuttering of legal workspaces in the redlight district by refusal on the part of the city to renew the permits of existing brothels. This was done under the guise of anti-trafficking but it functions (not incidentally) as a tool of gentrification. On April 9th of 2015, 200 workers occupied the famed windows of the red light district to protest the shuttering of their safe, legal workplaces. They also staged a march and rally at which the police chief spoke in opposition to the closing of the brothels arguing that the closures would only result in an increase in trafficking and illegal sex trade. (Dee, 2015) So, presumably, as the legal windows close the percentage of prostitutes working illegally increases.

The next legal model they analyze is the Nordic Model. The Nordic Model was created by Catharine McKinnon and Andrea Dworkin and implemented by Sweden in 1999. The law criminalizes the purchase of sex but not the selling of sex. Leading up to the passage of the law by popular vote in 1999, advocates for the legislation used the patriarchal phrase “Our women are not for sale!” (Kulick, 2005). Several European countries have since adopted this model and it is becoming increasingly popular with anti-trafficking organizations.

Kristof and WuDunn then describe what they have deemed the Nashville Model, though there is no significant difference in the laws surrounding prostitution and trafficking in Nashville than in other cities in Tennessee; rather, the Nashville Model, apparently describes the social services provided by Magdalene. As in the Nordic Model, in Nashville, men arrested for soliciting prostitution are sent to “Johns School” a day-long class in which the men are lectured

on the risk of sexually transmitted infections and educated by former street-based prostitutes on the violence of the sex trade (Kristof and WuDunn, 2015:159) The express goal of the Johns Schools¹³ is to stigmatize the purchase of sex.

Another component of the Nashville Model is the option of a day-long diversion program for women arrested for prostitution, in lieu of a prison sentence. (Kristof and WuDunn, 2015:159) During this bizarre intervention a sex crimes prosecutor warns women of the risk of AIDs and violence in the industry. Kristof and WuDunn explain: “We attended a session and watched as Welch passed out horrifying photos of corpses of prostitutes who have been murdered in Nashville.” (Kristof and WuDunn, 2015:159-160) This scared-straight tactic of exposing arrested prostitutes to images of their dead peers is part of Magdalene’s service model. THIS is the program Kristof and WuDunn endorse. At best this is victim-blame and at worst this traumatizes or re-traumatizes those in the most high-risk sector of the sex industry: those engaged in street-based prostitution and survival sex work.¹⁴

The chapter concludes with a description a woman named Julia Baskette who was nine months into the program at Magdalene when she “relapsed” (Kristof and WuDunns word choice) back into prostitution. Shortly thereafter she was murdered at a truck stop. (Kristof and WuDunn, 2015:160) The segment again pathologizes sex workers, paints the entirety of the sex industry to be inherently dangerous and implies that Baskette is to blame for her murder.

¹³ Johns Schools are not the invention of Magdalene. They have been tried in various cities around the U.S. and are also a controversial component of the Nordic Model. (Kulick, 2005)

¹⁴ Statistically these groups are most likely to be arrested for prostitution-related crimes. (Ray and Caterine, 2014)

Shana's Comeback

Each essay highlighting the work of a particular NGO is followed by a short success story featuring a person who has gone through the programing and services offered by the NGO, in this case, Magdalene in Nashville. The story following *Attacking Sex-Trafficking* is entitled *Shana's Comeback* and tells the story of Shana Goodwin, a former prostitute and heroin addict.

Goodwin was born to a drug-addicted prostitute and sent to live with relatives from an early age. She was molested by one of the relatives from a very young age and at the age of 13 her mother took her to be initiated into prostitution. At a stranger's house her mother injected her with heroin and accepted payment from a man who then had sex with 13 year old Shana. This horrifying story is misleadingly described by Kristof and WuDunn as "fairly typical" of the sex industry. (Kristof and WuDunn, 2015:162)

Goodwin then ended up engaged in street-based prostitution, addicted to heroin, and abused by a string of pimps for more than twenty years. "A couple of times Goodwin tried to run away, and Nitty [her pimp] beat her when he recovered her. She never sought help from the police, partly because she had learned to distrust them: she had been arrested 167 times; her pimp, never." (Kristof and WuDunn, 2015:163) Rather than seeing this trajectory as an argument for improved social services for children, improved access to drug treatment programs and decriminalization of prostitution¹⁵; Kristof and WuDunn use it purely for shock value.

The writings by Kristof and WuDunn are sensationalist, compelling and rife with strategic omissions, which allow them to argue for policies that support their personal political beliefs in the name of "rescue". The politics and tactics they endorse increase stigma and re-

¹⁵ Under decriminalization, selling sex and buying sex are not crimes, but pimping is. (Abel and Brunton, 2006)

traumatize the most vulnerable sector of the sex industry (street-based sex workers); increase criminalization of cross-border movement in all forms (not just trafficking) (Agustin, 2007); and force women into the formal economy with no regard to the violence that often entails.

Somaly Mam

Somaly Mam is an anti-trafficking activist and author. In 2008 she published *The Road of Lost Innocence: The True Story of a Cambodian Heroine*. The book was marketed as an autobiographical account of her experiences in a Cambodian brothel. It has since come to light that several parts of the book were exaggerated or entirely fabricated (Marks, 2014).¹⁶

In the wake of Marks' damning Newsweek exposés, Mam's reputation floundered. She was forced to resign from her own organization and Nicholas Kristof publicly stated that he regrets his professional involvement with Mam. But at the start of 2015 she started a new NGO, also based in Cambodia, called The New Somaly Mam Fund.

Despite the controversy surrounding Mam, she is still a pivotal figure in the anti-trafficking movement, and her book is widely considered to be one of the texts which galvanized the international anti-trafficking movement.

The Road of Lost Innocence: The True Story of a Cambodian Heroine (2009)

In "*The Road of Lost Innocence...*" Mam describes in graphic detail her time in forced prostitution in a brothel in Phnom Penh, her escape from the brothel, her marriage to a French foreign aid worker and the 1997 founding of her NGO AFESIP, an acronym which, in French, means "Acting for Women in Distressing Situations". "*The Road of Lost Innocence...*" is fascinating for many reasons. First, it relies heavily on racialized tropes and plays into the

¹⁶ Though I was aware of the exposés, I chose to read the book before I read the Newsweek reports with the intention of reading her book with the least bias possible.

stereotypes embraced by an audience of potential donors from the global north. Second, she explicitly endorses communism but fails to address the systemic violence of capitalism (though horrific examples of the violence of capitalism are sown throughout the text). Third, she makes the radical feminist argument that the sex industry is inherently violent.

Throughout the book Mam relies on racialized tropes and race essentialism to paint a stark and vivid picture of the violence of trafficking. She uses the word “savage” at least half a dozen times to refer to Cambodians and Chinese people. (The tone of the text is established early with the first usage of “savage” appearing on page 4.) She also repeatedly imbues people of different races with different negative attributes, as in “The Phong people are good to children, not like the Khmer.” (Mam, 2009:6) and “Sometimes – very occasionally – I would go into a rage. Maybe it was the Phnong in me: I would suddenly crack and rebel.” (Mam, 2009:65). Her troubling racial characterizations remain unchallenged and uncomplicated throughout the text.

A second interesting aspect of the book is her treatment of economics. Early in the text, she provides a brief overview of Cambodian history from the 1970s on, including the period of rule by Vietnam. She says “Cambodia was a Communist country...I look back now at those days, and I think it was the best system for Cambodia. School was free, and it gave children a way out of poverty – not like today, when parents must pay huge sums of money for education and every diploma can be bought for a price.” (Mam, 2009:28) Her endorsement of communism is interesting for two reasons: first, it is at odds with Kristof's expressly neoliberal economic ideology and second, because she fails to ever directly address capitalism.

When violence is recognized as systemic, Mam blames the Cambodian culture of silence and obedience including the code of conduct for women and girls (called *chbap srey*), or she blames the four years Cambodians spent under Pol Pot's Khmer Rouge regime (1975-1979) for

corrupting the citizenry and normalizing violence. Though the violence of capitalism is present throughout, it is never recognized as violence, or it is treated as individual tragedies rather than systemic violence.

Third, Mam equates trafficking and violence with all sectors of the sex industry. This is radical feminist rhetoric. She says “To me, few people are worse than the men who use prostitutes. They pay to rape women, teenagers, and little girls. They use violence – they hit, slap, and bite, like in the porn videos that are on sale everywhere. It excites them to use power and to see pain.” (Mam, 2009:151). This quote is reminiscent of Andrea Dworkin’s well-known argument in her 1981 book *“Pornography: Men Possessing Women”* that exposure to pornography causes men to become sexually violent. While it clear that Mam’s personal experience in the brothels of Phnom Penh was violent and traumatic, and that that is the case for many of the women and girls she encounters in her outreach and brothel raids, she is unable to imagine that any person would ever consent to prostitution or that the industry could be anything other than violent and traumatic.

Finally, her solution to the problem of trafficking is teaching women to sew (the same solution embraced by most anti-trafficking organizations). She says: “In 2003 we opened an AFESIP garment workshop, and I take the women there. They know that in Cambodia a garment factory is often a brutal place, crowded and poorly ventilated. Many women are so ill treated and exploited there that they may even choose to become prostitutes voluntarily, though initially they don’t usually realize what that choice means.” (Mam, 2009:161) Throughout the text Mam summarily dismisses anyone who claims to be in the industry by choice and in this particular quote Mam again fails to address the violence of capitalism and neoliberal development projects directly, though her organization does the work of producing and maintaining the labor force to

staff the terrible factories she describes. At the time of publication in 2008 Mam claimed to have rescued and rehabilitated (retrained) 5,000 women from the sex industry in Southeast Asia. (Mam, 2008) Clearly her work could have an impact on the economy as well as the lives of thousands of individual women.

Somaly Mam: The Holy Saint (and Sinner) of Sex Trafficking – Newsweek

This shocking exposé was published by Newsweek in May of 2014. It represents the culmination of two years of investigative journalism by Simon Marks into Somaly Mam’s story and the ethics of her fundraising tactics.

According to interviews with Mam’s neighbors, childhood friends and family, Mam was never orphaned. She was born to Mam Khon and Pen Navy. Additionally, Pen Chhun Heng, a cousin of Mam’s and Orn Hok, a commune chief, claim that the abusive stranger Mam calls “grandfather” in her book is an entirely fictional character and that they have no knowledge of her being forced to marry a violent soldier as a teenager or being sold to a brothel. (Marks, 2014)

It is unclear whether Mam was ever a prostitute and her own timeline changes. In her memoir she claims she entered the brothel at age 16 and escaped around age 18. (Mam, 2008) But while speaking at the White House in 2012 she claims that she was sold into the sex industry at 9 or 10 and spent a decade in a brothel in Phnom Penh. And on the Tyra Banks show she claimed to have spent 4 or 5 years in a brothel. (Marks, 2014)

But more shocking than the possibly fabricated and certainly misleading versions of her own story is her use of children as props in her anti-trafficking narrative. Marks highlights two examples. In 2009, anti-trafficking vigilante Nicholas Kristof reported in *The New York Times*, a lurid story of the abuse of a young girl named Long Pross “He reported that a woman had kidnapped Pross and sold her to a brothel, where she was beaten, tortured with electric wires,

forced to endure two crude abortions and had an eye gouged out with a piece of metal by an angry pimp. Pross, Kristof said, was rescued by Mam and became part of her valiant group of former trafficking victims fighting for a world free of sexual slavery.” (Marks, 2014:2) Pross was also featured in the PBS documentary entitled *Half the Sky* (after Kristof and WuDunn’s book of the same name), and appeared on *Oprah*. (Marks, 2014:2) But according to Pross’ family, friends and a surgeon named Dr. Pok Thorn, he performed surgery on Pross to remove a tumor from her eye when she was 13. After the surgery, a director at the hospital contacted ASEFIP (Mam’s NGO in Cambodia) to get the girl into a vocational program. (Marks, 2014:2) This example represents just one of several instances in which Mam has been caught teaching children to perform fabricated tales of abuse in order to raise money for her organization.

In a 2012 interview with Euronews Mam reports that she regularly finds children as young as three in Cambodian brothels. Yet, as Marks reports “Experts in the field say that is almost unheard-of. Patrick Stayton, who formerly ran the Christian, faith-based International Justice Mission (IJM) in Cambodia, says, ‘They may have had a supply of younger girls between the age [sic] of 14 and 17,’ but adds, ‘We’ve never seen prepubescent girls, or very, very rarely.’” (Marks, 2014:3)

Marks cites Thomas Steinfatt, a University of Miami statistics professor who studies sex trafficking. Steinfatt published a 2008 report based on months of research in Cambodia which estimated that there were “...no more than 1,058 victims of trafficking in Cambodia and [he] has said the situation has improved markedly since then.” (Marks, 2014:3) Steinfatt also estimated that “The high-end estimate for the number of children likely involved in sex work in Cambodia in 2008 was 310 children.” (Marks, 2014:3)

With these reports in mind, does it matter that accurate numbers are difficult (if not impossible) to generate, and that much of Somaly Mam’s personal narrative, as well as the stories of her “star”¹⁷ victims were fabricated? Clearly her tactic of training young girls to perform tales of horrific abuse is in itself psychologically abusive. But in addition to those cases, I argue that her unethical tactics do matter because Mam is creating a narrative, which makes sex trafficking seem virulent and widespread. This perpetuates what Giorgio Agamben would call a “state of exception” enabling the suspension of rights in the name of responding to a more vile and urgent problem. (Agamben, 2004)

3.2 Sex Workers Rights Texts

Melissa Gira Grant

Melissa Gira Grant is a freelance journalist and former sex worker. She has been active as a journalist and sex workers rights activist for more than a decade. She is also the co-founder of Glass Houses Press, and author of *Take This Book: A History of the People's Library at Occupy Wall Street* (2012).

Playing the Whore: The Work of Sex Work

“*Playing the Whore...*” is Melissa Gira Grant’s first book on the sex industry. It addresses common myths and misconceptions about the sex industry and argues for sex workers rights rather than rescue. The book is divided into ten chapters: The Police, The Prostitute, The Work, The Debate, The Industry, The Peephole, The Stigma, The Other Women, The Saviors and The Movement. Though each chapter provides valuable insights, the two I will focus on are The Other Women and The Saviors.

¹⁷ This is the term used by Marks to describe Pross and Ratha.

The Other Women

This chapter is called *The Other Women* because prostitutes are so othered by whose stigma as to be considered outsiders even to groups which seem like logical allies (the LGBT community, workers rights groups, feminists, tenants rights groups, prison abolitionists etc.). Grant's first mention of the anti-trafficking movement appears several pages into this chapter. She calls it "the contemporary antiprostitution movement" (Grant, 2014: 88) but the organization she uses as an example of the shocking tactics utilized by those opposed to prostitution is an abolitionist anti-trafficking organization based in Denmark. (Grant, 2014:89)

I will address three key points Grant makes in this chapter: the further objectification of prostitutes by their alleged "rescuers"; the complexity of consent and which groups of women are entitled to claim rape; and finally, the need to justify labor as choice.

Grant says of radical feminist rhetoric: "Prostitutes, in their [sex industry abolitionists'] imagination, have actually become the mute objects men have reduced them to. They are apparently unlike all other women, who face objectification but can retain the ability to speak and move in the world independently." (Grant, 2014:90) This tongue-in-cheek critique of anti-sex industry activism, gets at the heart of the failure of radical feminist logic. For radical feminists and the rest of their abolitionist allies, prostitution is somehow radically and irretrievably different from any other form of sexualization, rather than existing on a continuum of sex industry work or sexualization more broadly. This establishes prostitutes as a separate, helpless class of women and enables self-proclaimed "experts" to speak for them.

This next section deserves to be quoted at length. Grant addresses rape in the sex industry. She says: "When anti-sex work activists claim that all sex work is rape, they don't just ignore the labor; they excuse the actual rape of sex workers. If men can do whatever they want

when they buy sex, the rape of sex workers, of those who are thought to have no consent to give anyway, isn't understood by opponents as an aberration but as somehow intrinsic and inevitable.' (Grant, 2014:91) She goes on to describe what she calls a "matrix of consent" (Grant, 2014:93) which I consider to be a useful way of understanding the complexity of consent in sex worker/client relationships. In the sex industry many factors go into the decision to consent to paid sex including. These can include whether the potential client can provide references from other sex workers, whether the client is polite and respectful, how much they are willing to pay for sex and even whether the client is familiar with and adheres to standard escorting protocol including showering before and after sex. (Abel and Brunton, 2006)

Finally, Grant argues that: "Sex workers, more than any other, are expected to justify their labor as a choice, as if the choice to engage in a form of labor is what makes that labor legitimate." (Grant, 2014:93-94) This is key. This logic is also often extended to include not just the requirement that sex workers justify their work as choice, but that they further justify their work as an *empowering* choice.¹⁸ Like all forms of labor, choice as a worker of any kind in late capitalism is much more complicated than this simplified notion suggests. By combining sex and capitalist consumption, the sex industry and the figure of the sex worker, complicate the notion of consent. I suggest that this complication is seen as so threatening to second wave feminists that they would rather embrace what sociologist Elizabeth Bernstein calls "carceral feminism" (Bernstein, 2012) than try to engage in a more challenging dialogue about capitalism, law and women's rights.

¹⁸ Within the sex workers rights movement this is called playing the "Happy Hooker" after Xaviera Hollander's 1971 book of the same name.

Rather than try to understand how consent is negotiated in the commodification of erotic services, anti-trafficking activists prefer to dismiss all sex workers as crazy or as damaged victims. It is also worth noting that nannies, massage therapists, psychotherapists and others in the care industries also negotiate boundaries and perform intimate labor for money, but they are not required to rationalize their work as choice or enjoy all aspects of their job. Nobody expects hospice nurses to love changing adult diapers, or to rationalize their choice to enter the elder care industry; nor do we assume that hospice nurses couldn't have possibly consented to the terms of their employment just because an outsider may consider the work icky or even degrading.

Sex workers find themselves in a double bind: if sex work is freely chosen, without economic need, sex workers are seen as corrupting sex by introducing commerce into the exchange, as if sex workers invented capitalism. But if any economic need is present, sex workers are automatically labeled victims of predatory men, of false consciousness, of drugs, or of porn culture, but never of *capitalism*. This is yet another incarnation of the Madonna/Whore complex.

The Saviors

The Saviors is Grant's chapter on the rescue industry (a term coined by anthropologist Laura María Agustín). In it, she describes the work of Nicholas Kristof and Somaly Mam and the controversies surrounding their unorthodox tactics.

She discusses the work of Cambodian human rights organization LICADHO, Human Rights Watch and the Women's Network for Unity in documenting civil and human rights abuses by anti-trafficking organizations including ASEFIP (Somaly Mam's multi-national NGO). I'll quote this section at length because the charges represent a very different story from Mam's account of her work. Grant outlines some of the findings:

“They [women rounded up in brothel raids] were illegally detained for months at a time without charges, as were others who worked [as prostitutes] in public parks and had been chased, beaten, and dragged into vans by police. The Cambodian Human Rights Organization LICADHO captured chilling photographs of sex workers caught in sweeps locked together in a cage – thirty or forty people in one cell. Sex workers who had been detained reported being beaten and sexually assaulted by guards in interviews with LICADHO, Women’s Network for Unity, and Human Rights Watch. Some living with HIV, who had been illegally held in facilities described by the local NGOs that ran them as ‘shelters,’ were denied access to antiretroviral medication... Through eyewitness accounts, human rights observers established that at least three detainees were beaten to death by guards.” (Grant, 2014:106-107)

In these accounts ‘rescue’ looks very much like punishment. These reports emerged in the wake of a Cambodian crackdown on prostitution inspired by U.S. threats to cut aid to Cambodia from the U.S. Agency for International Development (USAID). (Grant, 2014:106) This same threat, of the withdrawal of U.S. aid money, is celebrated by Mam in *The Road of Lost Innocence*... as the key major political victory that brought human trafficking international attention and allowed ASEFIP unprecedented access to brothels. (Mam, 2008)

Grant goes on to cite a USAID funded study which reports that of a sample of 20,000 sex workers in Cambodia, 88% were not forced into the industry either physically or through coercion such as debt contracts. (Grant, 2014:108) Though it is difficult to know what percentage of women and girls in Cambodian brothels are there by force, what percentage are there by choice and what percentage are living in a gray area: engaged in survival sex work, it is clear that Mam’s depiction of the industry in Cambodia is intentionally misleading, sensationalist and

oversimplified. Her writing is designed to appeal to a white, Western audience by exploiting the racist trope of the sexually predatory, dark-skinned “savage”; convincing us that the sex industry in her home country is more brutal and horrifying than anything that could exist in “developed” nations.

The Price of a Sex-Slave Rescue Fantasy –New York Times

This essay was published by the New York Times in May of 2014, shortly after Newsweek published its exposé on Somaly Mam and she was forced to resign from her own organizations (ASEFIP in Cambodia and The Somaly Mam Foundation in the United States). In it, Grant argues that “Ms. Mam and her foundation banked on Western feel-good demands for intervention, culminating in abusive crackdowns on the people she claimed to save.” (Grant, 2014:1)

Much of the information highlighted in the article appears in greater detail in her chapter on saviors in “*Playing the Whore...*” but one point worth emphasizing is her suggestion that, following the guidelines of the International Labor Organization, effective anti-trafficking should include “...the collection of accurate data, effective protection of victims, and *the support of workers in their own organizing.*” (Grant, 2014:3 emphasis mine) This final principle of supporting workers in their own organizing, involves first accepting the notion that erotic services are labor and that sex workers are workers. Grant concludes that “It’s a broader fight against poverty, inequality and vulnerability that goes far beyond a brothels walls.” (Grant, 2014:3) I couldn’t agree more.

The War on Sex Workers: An Unholy Alliance of Feminists, Cops, and Conservatives Hurts Women in the Name of Defending Their Rights – Reason.com

In this essay, published in January of 2013, Grant describes how a coalition of forces, led by an international contingent of radical feminists, has managed to redefine commercial sexual services as sexual exploitation in both the international and domestic spheres, and what that redefinition means for sex workers. She covers a lot of ground in the article, part of which I've cited in my brief history of the sex workers rights movement and the anti-trafficking movement.

Early in the lengthy article, Grant describes Gloria Steinem's trip to India with the organization NoVo¹⁹ Foundation (funded by Warren Buffet). She toured the red-light district of Calcutta with Peter and Jennifer Buffet in 2012. After the trip she argued that "What would really benefit the women who worked there—whom she described to the Calcutta Telegraph as 'prostituted,' characterizing their condition as 'slavery'—would be to end sexual health services and peer education programs in brothels, programs that have been recognized by the United States Agency for International Development as best-practices HIV/AIDS interventions. Steinem described the women leading those health and education programs as 'traffickers' and those who support them 'the trafficking lobby.'" (Grant, 2013:1)

One of the programs Steinem is describing is Apne Aap, a peer-run, harm-reductionist support program which provides health services and safer sex supplies to women in the sex industry. If Apne Aap volunteers are "traffickers," where does the definition of trafficking end? In this example we see eerie parallels with some of the legislation being passed in the United

¹⁹ According to the NoVo Foundation's website, the organization's name comes from the Latin word "novo" meaning to make anew, revive or change. Their goal is to change social attitudes, relationships and institutions that perpetuate injustice. Retrieved 7/11/16 from <http://novofoundation.org/about-us/faqs/>

States in the name of anti-trafficking. Grant concludes this section of the article with her summation of radical feminism: “While these women once focused on ending sexual “objectification” in magazines and red light districts, today they are waging a global war that pits one class of women against another.” (Grant, 2013:1)

In the last few paragraphs of her essay, Grant sums up her stance in this compelling argument:

“It is not sex work that exposes sex workers to violence; it is our willingness to abandon sex workers to violence in an attempt to control their behavior. Prohibition makes prostitution more dangerous than it would otherwise be by pushing it underground and stripping sex workers of legal protection. The fight over that policy is about more than just strains between generations of feminism. It is about an unholy marriage of feminism with the conservatism and police power that many feminists claim to stand against.”
(Grant, 2013:2)

Tara Burns

Tara Burns is a self-identified sex trafficking victim, a former sex worker, and currently a freelance journalist, activist, researcher and lobbyist based in Alaska. She is the author of three self-published books: “*Whore Diaries...*” I, II and III. Her writings constitute an important intervention into the anti-trafficking narrative. Having experience with both sex trafficking and sex work her unique perspective is invaluable to the sex workers rights movement. Burns also bridges the gap between narrative and law in that her personal writings inform her activism. She is pushing for the repeal of House Bill 359, a 2012 Alaska law which turned prostitution

misdemeanors into trafficking felonies, in an effort to protect the rights and safety of both consenting adult sex workers and trafficking victims.

The State is a Trafficker: Why Alaska Arrested Amber Batts (2015)

This article appeared on the popular sex-worker run blog TitsandSass.com in August of 2015. In it Burns describes the take-down of Alaska's most popular escort agency Sensual Alaska and the woman who ran it: Amber Batts.

At age 30 Batts started working as an escort. Initially she worked for an agency but the agency took 50% of her profits as a management fee so she and a few of her sex workers friends started working out of a shared apartment.²⁰ (Burns, 2015)

Batts started Sensual Alaska while working in human resources for an oil and gas company. One of her friends in the sex industry asked her to handle the administrative side of the work. Through word of mouth she began handling client screening and booking for several women and quit her HR job to do full-time administration for her escort friends. At the time of her arrest, Sensual Alaska had a reputation for being the most reputable and reliable escort agency in the state. (Burns, 2015)

Though the circumstances of the initial incident are unclear, we do know that the story of the takedown of Sensual Alaska begins in April of 2014 when a young woman drunkenly called the police to report a stolen purse. It was also revealed in this phone call that the woman accused of stealing the purse, and the accuser were both working for Sensual Alaska. Three months later police staged a sting in which an undercover police officer posed as a client and arrested the woman who had made the initial phone call three months earlier, for prostitution. This resulted in a plea-bargain in which the woman, identified only as CI-RZD1-01, became an informant. She

²⁰ This is a common practice, especially in countries where prostitution is still criminalized.

outed several of her fellow escorts and provided police with the time and location of a booking with three escorts from Sensual Alaska. (Burns, 2015)

One of the women, threatened with arrest, provided officers with her email password. In her email the officers found numerous exchanges between she and Batts. According to Burns:

“The woman, like many other victims in the case, may have thought that she was proving to the officers [evidence] that Batts was *not* a sex trafficker. After all, sex trafficking is federally defined as the use of force, fraud, or coercion in the act of recruiting, harboring, transporting, providing, or obtaining a person for commercial sex acts. But under Alaska state law almost all prostitution is sex trafficking—one woman in Fairbanks was even charged with trafficking herself for placing an ad on Craigslist (sex trafficking in the fourth degree: aiding or facilitating prostitution).” (Burns, 2015:3, emphasis mine)

On July 9th investigators served warrants at Batts’ home and the incall apartment the escorts worked out of. When officers booked Batts that afternoon she was charged with seven counts of felony trafficking including “...managing a prostitution enterprise, procuring or soliciting a patron for a prostitute, facilitating travel that included commercial sexual conduct, managing a place of prostitution, inducing a person 18 years of age or older to be a prostitute, receiving money derived from prostitution, and engaging in conduct that instituted, aided, or facilitated prostitution.” (Burns, 2015:3) What would have been prostitution related misdemeanors a few years ago are now felony trafficking charges. In 2012 the Alaska legislature passed House Bill 359 which amended existing prostitution law to re-categorize several prostitution related as sex trafficking and explicitly made prostitution by more than one person sharing a space a trafficking crime, regardless of consent of the participants.

The police interviewed several of Batts' alleged "victims" all of whom were adult women who had entered the sex industry of their own accord. Even when pressed by police, the women refused to describe Amber as any type of predator, and in fact stated the opposite, explaining that Batts was not a trafficker or even a pimp or madam. Batts was described by the women she worked with as respectful and reliable. She said Batts would never try to pressure anyone into something she wasn't comfortable with. (Burns, 2015:4)

In an interview with Burns, Batts described the work she did for the women of Sensual Alaska. First she verified their ages and then had them sign an independent contractor form. Then she would post their information on the Sensual Alaska website. When a client called to book an appointment, he had to first get through a thorough screening with Batts before she would book and appointment for him. Those screenings involved a brief phone interview with the potential client asking if he'd ever seen an escort before and asking him to provide references (a common practice among escorts). Then Batts would vet him online. She used an Alaska website called CourtView to search for any convictions then utilize Google, Facebook, Twitter and LinkedIn. She would even google their phone number. Batts says of her screening process "...it's not something that takes two minutes. I would put in at least half an hour to 45 minutes." (Burns, 2015:2)

But, the media has not been kind to Batts. Burns explains: "Since her arrest, the local media has portrayed Batts as someone who preyed on vulnerable youth, although she hasn't been accused of exploiting minors. It upsets her to be portrayed as someone who would do that, she says, because, 'I used to be one of those girls.'" (Burns, 2015:4) And, in the wake of Batts' arrest, what has happened to those "girls": the women who used to have access to the services Batts provided? If they re-enter the industry, do they know how to screen their own clients a

thoroughly as Batts could with her years of experience? Do they even have the access and knowledge to allow them to continue to advertise online? Or will they find themselves on the streets, relying on actual pimps for security rather than the much safer business model offered by Sensual Alaska?

3.3 Consent and Embodiment

Consent in the context of survival sex work is complicated. But by denying women the agency to consent to paid sex, abolitionist anti-traffickers put women in a double-bind. In the age of anti-trafficking hysteria, the prostitute embodies two confounding dualisms. She is both victim and perpetrator; both un-rapeable and incapable of consent. (I mean un-rapeable in the sense that rape of prostitutes is regularly dismissed outright or prosecuted merely as theft of services.) When a prostitute is arrested for the crime of trafficking (herself), the underlying assumption is that no sane person would or could consent to paid sex. In other words, she (the bios, or legally recognizable person) is somehow enacting violence on herself (the zoe, or physical body).

In this framework, the prostitute body is so devoid of subjectivity and agency that she is unable to consent to sex, illegible as anything other than a corpus and, paradoxically, the embodiment of the imagined evil to which she is subjected. Within this paradox, the prostitute can be seen to embody both the masculine and feminine invocations of Giorgio Agamben's conception of homo sacer, in that she is read as both perpetrator and victim.

To be both incapable of consent (like a child) and un-rapeable (like an animal) is a paradox on par with the enduring mystery of homo sacer, or one who is so sacred that violence against them is not a punishable crime (Agamben, 1998 and 1997). To be incapable of consent is to be sacred and inviolable, like a child. Yet, to be un-rapeable is to be like an animal, whose consent (to be bred, for example) is not necessary, and maybe even impossible.

CHAPTER 4

THE LEGAL TERRAIN

In this chapter I will explore the link between activism, narrative, and the creation of laws. I will demonstrate how that the tenor of anti-trafficking rhetoric is reflected in draconian legislation. I will also explain how such laws harm both consenting adult sex workers and victims of trafficking.

4.1 Federal Law

The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Act (PROTECT Act) of 2003

The PROTECT Act was passed in 2003. It clarifies and strengthens existing laws against child pornography, kidnapping and child sexual assault. The Act is a 46-page document divided into 53 sections. Of those sections only section 204 (Suzanne's Law) is potentially pertinent to adult sex workers.

Section 204: Suzanne's Law

Suzanne's Law was passed in 1990 following the disappearance of State University of New York at Albany undergraduate Suzanne Lyall. The law requires police to notify the National Crime Information Center when a person under the age of 18 is reported missing. Section 204 of the PROTECT Act raised that age to 21. So, as of 2003, anyone under the age of 21 who is reported missing is considered a missing child. Under the category of "missing child" the missing person could become the subject of a national Amber Alert. This indicates that there is the potential for increased surveillance and policing of sex workers between the ages of 18 and

21 engaged in survival sex work (often queer-self-identified youth who have been kicked out of their homes or youth who have aged out of the foster system.) (Burns, 2015)

4.2 California Law

Proposition 35 (2012)

Proposition 35, also known as the CASE Act (Californians Against Sexual Exploitation), was passed by popular vote in November of 2012. It passed by overwhelming majority: 81.1% of the vote. According to CaseAct.org it is also the most popular initiative in California history and the first to receive more than 10 million votes.²¹ Based on my reading of the law, this outcome is more a reflection of the power of the anti-trafficking narrative than the quality or effectiveness of the law itself. The anti-trafficking industry achieved widespread support on this ballot measure by exploiting the national panic around sex trafficking.²²

The CASE Act is divided into seven sections. I will focus on just those sections (2, 4, 6, 7, 8, 9, 11 and 14) which are relevant to my analysis of the anti-trafficking movement.

Section 2: Findings and Declarations

Section 2 outlines the basic tenets and goals of the measure in six (6) statements. It begins with the foundational statement that “Protecting every person in our state, particularly our children, from all forms of sexual exploitation is of paramount importance.” (CASE, 2012:1) It goes on to make significantly more audacious claims devoid of statistical evidence or with incomplete citations. The three that stand out to me as inflammatory and unfounded are numbers 3, 4 and 6.

²¹ Retrieved 7/11/16 from: <http://www.caseact.org/about/>

²² Californians Against Slavery was the most vocal and high-profile NGO advocating the passage of Proposition 35. In their writing prostitution is always rape or “slavery”. Retrieved 7/11/16 from: <http://www.casre.org/about/slavery/> This language echoes the racialized white slavery panic of the 1910’s which resulted in the passage of the Mann Act. (Doezema, 2010)

The third of the Findings and Declarations is that “Upwards of 300,000 American children are at risk of commercial sexual exploitation, according to a United States Department of Justice study. Most are enticed into the sex trade at the age of 12 to 14 years old, but some are trafficked as young as four years old. Because minors are legally incapable of consenting to sexual activity, these minors are victims of human trafficking whether or not force is used.” (CASE, 2012:1) This passage contains several inflammatory statistics which set the tone for the rest of the document and prepares the reader to accept the draconian punishments outlined in the remainder of the document out of a sense of urgency and moral panic. I will now discuss each claim in greater detail.

The passage cites “a U.S. Department of Justice study” but fails to cite the name of the study or even the year of publication. It is worth noting that the Department of Justice study they are referring to is likely the annual Trafficking in Persons Report which is considered to be the most authoritative source for estimates of trafficking victims in the U.S. despite the fact that the numbers fluctuate wildly from year to year and the methodology for determining these numbers has come under harsh criticism from scholars as well as activists. (McNeil, 2012)²³ In the Department of Justice report the number of trafficked persons estimated to be in the United States at a given time fluctuates by tens of thousands from year to year. (Weitzer and Ditmore, 2010) It is telling that the authors of this legislation fail to cite a year, or even the name of the report they are utilizing.

The next outlandish claim in the CASE Act is that “Most are enticed into the sex trade at the age of 12 to 14 years old...” (CASE, 2012:1) This is one of the most oft-cited statistics in

²³ The methodology is called the Bales algorithm after anti-trafficking crusader and “Professor of Contemporary Slavery” Kevin Bales. (kevinbales.net, retrieved 4/8/16)

anti-trafficking propaganda. In 2014 investigative journalist Chris Hall tried to track down the source of this alarming statistic. According to his research, the statistic most likely comes from a 2001 study by Richard J. Estes and Neil A. Weiner entitled *The Commercial Sexual Exploitation of Children in the U.S., Canada and Mexico*. The study was based on 1,310 surveys sent out to NGOs working with homeless youth in 17 major cities in the U.S., Canada and Mexico. (Hall, 2014)

The methodology of the study doesn't seem to be at fault, but, if this is indeed the source of the 12-14 age of entry statistic, it has clearly been taken out of context. In a study of homeless youth engaging in survival sex work the average age of entry into the industry would, by default, be under 18, and, as the study was administered by staff and volunteers of NGOs which do outreach to homeless youth, the focus would be on the youngest and most vulnerable of their target population. As for the following claim that some are trafficked as young as four years old, I am unable to account for that statistic, and there is no source cited in the CASE Act.

The fourth of the Findings and Declarations states that “While the *rise of the internet* has delivered great benefits to California, the predatory use of this technology by human traffickers and sex offenders has allowed such exploiters a new means to entice and prey on vulnerable individuals in our state.” (CASE, 2012:1, emphasis mine) I find this statement fascinating. The 2014 FBI seizures of California's most popular escort advertising website MyRedBook.com and its sister site MyPinkBook.com reveal the extent to which the figure of the online predator still dominates anti-trafficking rhetoric. The much more publicized FBI seizure of New York's gay male escort advertising website RentBoy.com provides further evidence that even male sex work populations (which don't fit the victim stereotype) are not immune to the impact of anti-trafficking panic. Finally, the precedent-setting shutdown of the “adult” section of Craigslist in

and 2010 and the ongoing legal battles faced by BackPage.com reinforce a pervasive belief within anti-trafficking rhetoric that traffickers are *everywhere*. I find the supposition that online advertising enables traffickers to be incredibly problematic. The seizure of these sites does little to impact trafficking. However, I believe it has a disastrous effect on the adult workers who advertise on the sites. I will explain this in further detail using the example of MyRedBook.com and MyPinkBook.com.

MyRedBook, was a free advertising site which allowed independent sex workers (predominantly female) to negotiate services and screen clients from the safety of their own homes, while maintaining anonymity. MyPinkBook was the sister site of MyRedBook, also free to use, which consisted of message boards for the advertisers on MyRedBook to communicate. It was used by sex workers to promote community resources and events, build community, and, most importantly, warn fellow workers of dangerous clients. Without those free websites, many of the women who couldn't afford to advertise on expensive websites like Eros.com were likely pushed out onto the street in search of work, effectively *increasing* the danger faced by an already vulnerable population. The reason most sex workers no longer rely on pimps is that they are now able to rely on the internet to screen clients, build community and stay safe. I believe that the removal of this vital resource will actually result in an increase in street-based prostitution and will enable pimps and traffickers.

When I lecture in undergraduate classes, the argument that makes the most sense to the students (based on the feedback I have received in the form of conversations and anonymous surveys) is that the internet is a valuable resource, rather than a terrifying netherworld full of predators. In the meantime, however, Generation X is writing legislation such as the CASE Act which capitalizes on their generation's fear of the internet and the mythical figure of the sneaker

pimp²⁴ (as imaginary as the welfare queens of the same era). This boogey-man has now been strengthened and re-branded as a much scarier creature; the trafficker. The creation of this evil figure has potentially devastating results for those in the sex industry.

The sixth of the Findings and Declarations asserts that “We need to strengthen sex offender registration requirements to deter predators from using the internet to facilitate human trafficking and sexual exploitation.” (CASE, 2012:1) This is troubling given that the legal definition of sex offender is already so broad in scope as to be almost meaningless. Zach Anderson’s case is the most recent, high-profile example of this phenomenon. At the time of his arrest he was 19 and was forced to register as a sex offender in two states for having consensual sex with a young woman who told him she was 18. A deciding factor in the case was the fact that Anderson had met the young woman online, which enabled the judge to characterize Anderson as a predator. The case garnered so much attention that a Michigan judge overturned the initial ruling, removing the teen from the sex offender registry in Michigan but Anderson remains on the list in Indiana. (Chris and Efron, 2015)

Cases like this, unfortunately, are not uncommon. As I will address in further detail, the CASE Act expands the definition of sex offender even further, making the distinction socially meaningless; for example: no distinction is made between a convicted pedophile and a drunk college student arrested for urinating in an alleyway, but the impact of being required to register as a sex offender is disastrous for anyone convicted one of the many crimes that falls under this ever-widening legal category.

²⁴ Sneaker pimp is a 1990s slang term for an adult male who finds and recruits underage girls into prostitution through online exchanges. (It is also the name of a popular British trip-hop band of the same era.)

Section 4

In Section 4 of the CASE Act, part b states that “Evidence of any sexual history of commercial sexual act of a victim of human trafficking, as defined in Section 236.1 of the Penal Code, is inadmissible to attack the credibility or impeach the character of the victim in any civil or criminal proceeding.” (CASE, 2012:2) This is in accordance with the “best practices” model advocated by The Polaris Project. In fact, the wording is almost identical. This gives a sense of just how influential anti-trafficking organizations are in the creation of new legislation. When lobbyists from anti-trafficking organizations work closely with lawmakers, their own agenda is clearly reflected in subsequent laws, and, often divorced from the realities of the sex industry. This disconnect does a grave disservice to both sex workers and victims of trafficking.

Section 6

In Section 6 of the CASE Act, parts a through e remove sections of the existing legal code and parts 1 through 8 update them with more comprehensive and far-reaching language. I will address five of these amendments.

The first amendment increases the jail time for trafficking-related offenses from three, four or five years (depending on the severity of the crime) to five, eight or twelve years (depending on the severity of the crime) and adds a fine not to exceed \$500,000. (CASE, 2012:2) This is characteristic of California’s “tough-on-crime” approach and reminiscent of the infamous Three Strikes Law, which was amended via Proposition 36 to lessen the sentences for non-violent offenders and appeared on the ballot next to Proposition 35 (the CASE Act) in the same statewide election cycle in 2012.

Amendment 2 redefines “commercial sexual act” as “...any sexual conduct on account of which anything of value is given or received by any person.” (CASE, 2012:4) Under this

incredibly broad definition, commercial sexual act is no longer limited to prostitution. In fact, under the CASE Act strip clubs could be deemed illegal, and strip club managers could be tried as traffickers.

The third amendment I will address is amendment 4, which extends further protections to immigrants. It expands the definition of “duress” to include direct or implied threat of force or violence (as opposed to only actual force or violence) and “direct or implied threat to destroy, conceal, remove, confiscate, or possess any actual or purported passport or immigration document of the victim...” (as opposed to only the actual confiscation or destruction of such documents) (CASE, 2012:4).

The fourth amendment I will address is amendment 5, which adds duress to the definition of “forced labor or services”. It is amended to read: ““Forced labor or services’ means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.” (CASE, 2012:4)

The fifth amendment I will address is amendment 8, the final amendment in the section. It is notable because it adopts the language of the 2013 *Uniform Act on Prevention of and Remedies for Human Trafficking* endorsed by the Polaris project. This includes defining “serious harm” as physical as well as non-physical harm, psychological harm, financial harm, or reputational harm. (CASE, 2012:4)

Section 7

In Section 7 of the CASE Act, the legal code is updated with more detailed descriptions of what constitutes trafficking. I will address two of these amendments.

Amendment d states: “In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the total circumstances, including the age of the victim and *his or her relationship to the trafficker or agents of the trafficker*, and any handicap or disability of the victim, shall be considered.” (emphasis mine) The inclusion of the victims relationship to the trafficker is significant to my analysis because the document defines trafficker using California legal code sections 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6 and 518, which include in the definition of trafficker anyone who can be said to have benefited from the earnings of a person in the sex industry. This definition could be read to include the roommate, family or partner of an adult stripper, escort, porn performer or even a cam model²⁵. The inclusion of the relationship of the trafficker and the traffickers agents to the victim in the text of the CASE Act has the potential to limit the scope of the legislation but also leaves interpretation of personal relationships up to the discretion of individual judges, which is in itself troubling.

Amendment h is a list of seven signs that a person may be trafficked. The fourth in this list states that “The person lives and works in one place.” (CASE, 2012:5) This is interesting in light of the fact that Nevada law requires that the women working in the legal brothels in the state also reside at the brothel. (Albert, 2001) In other words: what Californians have determined to be characteristic of a felony trafficking offense, Nevadans have determined to be a prerequisite of a safe, legal workplace. This is just one small example of how much sex industry and sex trafficking legislation varies between states.

²⁵ ‘Cam model’ refers to anyone who makes money from the sale of access to webcam shows which are usually sexual in nature and mediated by third-party websites such as MyFreeCams, Chaturbate and CamGirlCentral. More information on this phenomenon appears in the 5th footnote of this document.

Section 8

In section 8 of the CASE Act, amendment d requires that, of the fines collected from the successful prosecution of trafficking-related felony offenses, seventy percent is to be allocated to public agencies and non-profit organizations which provide direct services for trafficking victims. The other thirty percent is to be allocated to law enforcement and prosecution agencies. (CASE, 2012:5) This directly links anti-trafficking legislation to the surveillance, prosecution and punishment of consenting adult sex workers.

Section 9

Section 9 of the CASE Act describes amendments to the Sex Offender Registration Act. Amendment c requires that any person who has been convicted in a state, federal or military court of the perpetration or attempt to perpetrate rape since July 1, 1944, will be required to register as a sex offender. (CASE, 2012:6) It is unclear whether this includes statutory rape, and whether the 1944 date overrides the statute of limitations.

Section 11

This is the section of the CASE Act which garnered the attention of the ACLU and the Electronic Frontier Foundation. The Ninth Circuit Court of Appeals found section 11 unconstitutional in 2014, but the rest of the CASE Act remains in effect. (Maass, 2014) The original text reads as follows: amendment b of section 11 requires any person who is required to register as a sex offender to send written notice of any new or changed Internet identifier, or new or changed account with an Internet service provider, to the law enforcement agency or agencies with which he or she is registered within 24 hours. This information will then be made available to the Department of Justice. (CASE, 2012:7) Under the Sex Offender Registration Act, this requirement, like the existing requirements to register and update home addresses with law

enforcement agencies, will be in effect for the duration of the offender’s lifetime. Sections 12 and 13 define “Internet service provider” and “Internet identifier”.

Section 14

Section 14 of the CASE Act adds a requirement to law enforcement officer training. Under amendment e of section 14, “Every law enforcement officer who is assigned field or investigative duties shall complete a minimum of two hours of training in the course or courses of instruction pertaining to the handling of human trafficking complaints as described in subdivision (a) by July 1, 2014 or within 6 months of being assigned to that position, whichever is later.” (CASE, 2012:9)

The Expansion of the Nuisance Eviction Ordinance (2014)

Since 2004 the Oakland Nuisance Eviction Ordinance (hereafter NEO) has allowed landlords to evict tenants for various public nuisances including illegal gambling, dealing in illicit drugs, gang-related crimes and possession of deadly weapons. In 2014, the Oakland City Council voted to expand the NEO to *require* landlords to evict suspected prostitutes. The amended NEO is divided into 16 sections organized by letter (A-Q). I will highlight the parts of each section which are relevant to the sex industry.

Section A: Purpose

Section A outlines the NEO and summarizes its purpose as follows:

“The purposes of this amended ordinance include: to expand the illegal activities that can be used to require landlords to bring eviction actions against individuals conducting nuisance activity on rental properties; to penalize owners for maintaining a nuisance or authorize the City to take other action against the rental property owner for failing to take appropriate action against the offending tenants; to enable rental property owners to

assign the eviction cause of action to the City and allow the City Attorney to handle the eviction of the offending tenant; and to authorize owners to remove from the rental unit only the person engaged in the illegal activity and not other tenants in the unit who may be innocent of the activity.” (NEO, 2014:1)

It is worth noting, however, that after the passage of the CASE Act, other tenants in the unit residing with a person in the sex industry can be labeled a trafficker, and face serious criminal charges including imprisonment and fines. (CASE, 2012:3)

Section B: Definitions

Section B defines 24 key terms. I will address eight which pertain to the sex industry.

“12. ‘Pandering’ means to procure, give, transport, provide, or make available for the purpose of prostitution by intentionally encouraging or persuading an individual to become or remain a prostitute, as defined in California Penal Code Section 266(i).

13. ‘Pimping’ means deriving support or maintenance from the earning or proceeds of a prostitute, a crime pursuant to California Penal Code Section 266(h).” (NEO, 2014:2)

“15. ‘Prostitution’ means the solicitation of, agreement to engage in, or engaging in any act of prostitution, as defined in California Penal Code Section 647(b).

16. ‘Prostitution Related Crime’ means Pandering, Pimping, Prostitution or Solicitation as defined herein.” (NEO, 2014:2)

Number 18 defines “Residential Rental Unit” broadly, encompassing “...units in a hotel occupied by Tenants (and not by transients)...” (NEO, 2014:2) Though it is unclear how this would be utilized in a hotel, it is significant, since hotel employees across the nation are now being trained by local law enforcement agencies, at the behest of Homeland Security, to spot

‘signs of trafficking’, which range from disposing of used condoms in hotel room trash cans to “excessive” use of the “Do Not Disturb” sign. (Savage, 2016)

“19. ‘Safety Related Reasons’ means and includes that an Owner has information that a credible threat has been made by the Tenant committing the illegal activities or someone on that Tenant’s behalf...” (NEO, 2014:3)

“20. ‘Soliciting or Soliciting For Prostitution’ means to entice, advice [sic], incite, order, command, encourage or requests [sic] another person to engage in specific conduct which would constitute a crime or commit such crime of prostitution. The crime solicited need not actually be committed for solicitation to occur.” (NEO, 2014:3)

Section D: Duty of Owner to Not Permit or Maintain Tenant Nuisance

Section D states that a property owner whose tenant is engaged in a long list of illegal activities including any “Prostitution Related Offense” is found to be “...creating, permitting or maintaining a nuisance.” And thus “...may be required to evict the Tenant who is creating the nuisance.” (NEO, 2014:4) The section goes on to clarify that “...if the Owner does not evict, the City Attorney elect may do so upon request of the Owner.” (NEO, 2014:4)

Section E: Eviction of Offending Tenant

Section E, subsection 2a provides that the Tenant need not be convicted of a crime in order to be evicted under the NEO. (NEO, 2014:5) The following section elaborates on the limited burden of evidence required to evict a tenant under the NEO.

Section F: Notification by the City to Remove Tenant

Section F subsection 1b states that: “Facts or evidence may be derived from any source including, but not limited to, the Owner, other tenants, and persons within the community, law enforcement agencies, or prosecution agencies... a Tenant need not be arrested, cited, or

convicted of the conduct to justify removing the Tenant from the Rental Unit.” (NEO, 2014:5)

This is the most alarming section of the NEO expansion. It not only encourages, but mandates a modern day witch hunt, targeting anyone who looks like a prostitute. Poor women, women of color and transgender women are more likely to be labeled prostitutes (Ray and Caterine, 2014.)

This section of the amended NEO is also reminiscent of Giorgio Agamben’s description of Homo Sacer as the person to whom “...all men act as sovereign.” (Agamben, 1998)

Section F subsection 2h states that: “ If an Owner fails to take the action to commence an unlawful detainer within the timeframes required by this Subsection [25 days] or fails to submit a report or request to the City to accept assignment of the eviction within the required timeframes, the City may take further action against the Owner for maintenance of a nuisance, including, but not limited to, the assessment of Civil Penalties pursuant to O.M.C. 1.08.100.” (NEO, 2014:7)

Section F subsection 6b allows the tenant 15 days after the date of the City’s notice of eviction to contest the eviction, and subsection 8 allows the City to request a report from the property owner on the status of a tenants removal at any time following the eviction of a tenant. (NEO, 2014:8)

Section I: Tenant Removed From Rental Unity Cannot Return For Three Years

Section I subsection1 states that: “An Owner may not re-rent to or permit a Tenant who is removed from a Rental Unit pursuant to this Section. O.M.C. 8.23.100 to re-occupy and Rental Unit in the City of Oakland owned by the Owner for a period of at least three (3) years following the Tenant’s vacating the Rental Unit without first attaining the approval of the City Attorney or City Administrator.” (NEO, 2014:11) Subsections 3 and 4 go on to outline the penalties and fines both Owner and Tenant can face if the three-year rule is broken. (NEO, 2014:11)

As a whole, the amended Nuisance Eviction Ordinance expands the legal rights and responsibilities of landlords while increasing the surveillance of, and economic violence against already precarious populations including poor women, transgender women and women of color. In short, it is both a tool of gentrification enacted in an already rapidly gentrifying area, and, I think, an example of the feminization of Agamen's figure of Homo Sacer. (Agamben, 1998; Sanchez, 2004; Weheliye, 2014) Homo Sacer represents a person who has been stripped of legal status and exists, in the eyes of the state and the populous, only in the physical form. As such, Homo Sacer is subject to policing by all, and banishment from the city. This figure is somehow, simultaneously sacred in it's separateness from the rest of humanity, yet cursed.

I think this is an apt description for the situation sex workers find themselves in today. In Agamben's account, Homo Sacer is a male figure. But several scholars have interrupted this narrative to suggest that women, specifically whores, embody the feminized incarnation of the centuries old figure and legal category. (Sanchez, 2004; Weheliye, 2014)

4.3 New York Law

Sex Trafficking legally defined (2007)

In June of 2007 the New York Senate and Assembly amended their prostitution statutes to include sex tourism, sex trafficking and labor trafficking. In the process the state repealed section 230.03 of New York Penal Law which, since 1978, had defined the class B misdemeanor of patronizing a prostitute in the fourth degree as payment in exchange for sexual conduct.²⁶

Prior to this substantial amendment New York prostitution law did not include sex trafficking as

²⁶ At the time of the laws passage there was no statutory definition of 'sexual conduct' but case law *People v. Costello* (1977) had defined the term to include "sexual intercourse, deviant sexual intercourse, and masturbation." Retrieved 7/11/16 from <https://www.nycourts.gov/judges/cji/7-FormerCrimes/230/230.03.pdf>

a unique legal category. (Though related crimes such as kidnapping, rape, pimping, and prostitution were already in the penal code.) In my analysis I will address only the sex tourism and sex trafficking sections of the amendments.

Section 1 subsection 1

This section expands the existing definition of pimping to include any business that sells travel-related services which facilitate travel for the purpose of patronizing a prostitute in a foreign jurisdiction regardless of whether prostitution is legal in the given jurisdiction. (NY 230.34, 2007:1) This addition demonstrates a concern over sex tourism and possibly sex trafficking as well

Section 2 subsections 1-5

Section 2 defines sex trafficking in detail. It is notable that each instance listed includes some form of force, coercion or violence. The various definitions include forced drug use, withholding of passport or identification documents, prostitution as repayment of real or purported debt, and threat of injury. There is no definition of sex trafficking in this document which encompasses paid sex between consenting adults. This is notable in light of the formation of the Human Trafficking Intervention Courts in New York, as the courts arrest people and charge them with sex trafficking even when a third party trafficker is not involved. (Ray and Catherine, 2014)

Section 2 also specifies: “In a prosecution for sex trafficking, a person from whose prostitution activity another person is alleged to have advanced or attempted to advance or profited or attempted to profit shall not be deemed an accomplice.” (NY 230.34, 2007:2) Based on this protection for “accomplices”, it appears that those deemed trafficking victims should be protected from prosecution. This would ensure that anyone working in the sex industry with a

pimp or other intermediary is not charged for trafficking his or herself. But since the majority of prostitutes no longer rely on pimps or other intermediaries they are often now charged with the felony crime of (self) trafficking during the prosecution of what would otherwise be deemed a prostitution misdemeanor. (Bernstein, 2012; Ray and Caterine, 2014)

The Human Trafficking Intervention Courts (2013)

The New York Human Trafficking Intervention Courts were formed in 2013 in New York City, based on a model from early 1990's anti-drug courts. Now there are HTICs throughout the state of New York and cities such as Columbus, Ohio and Nashville, Tennessee have started their own Human Trafficking Intervention Courts modeled after the New York HTICs. I have had some difficulty locating the legislation which created the courts. The document I am citing here is a press release from the New York State Unified Court System announcing the Human Trafficking Intervention Initiative. This Initiative includes the formation of the HTICs.

State of New York Unified Court System Press Release (2013)

The press release is a four-page document outlining the function and goals of the HTIC's. There are several troubling aspects. First, the courts are founded on the premise that "...the vast majority of individuals charged with prostitution offenses are commercially exploited or at risk of exploitation." (HTIC, 2013:3) The press release paints a simplified, fetishized, racialized and dated picture of the sex industry in which young girls are forced by evil men to do unspeakable sex acts with complete strangers. In reality, the vast majority of people in the sex industry are consenting adults, (Agustin, 2007; Ray and Caterine, 2014; Hall, 2014) and the majority of clients are repeat-business, even in the sector of street-based prostitution. (Abel and Brunton, 2006)

As depicted in the press release, the courts will prevent human trafficking victims from going to jail. However, in reality, actual victims of the crimes associated with human trafficking are not legally allowed to be prosecuted for the crime of prostitution under the Trafficking Victims Protection Act and, in the case of exploited children, the PROTECT Act. Like many anti-trafficking initiatives, the press release ignores the distinction between consenting adult sex workers and victims of trafficking. It relies on the assumption that no sane person would choose the sex industry and that abolition of the sex industry is desirable and achievable. (The press release states that one of the goals of the HTICs is reducing the demand for paid sex²⁷)

Yet, according to a report by the New York City sex workers rights group, The Red Umbrella Project, 18 months into the HTIC's existence, no traffickers had been apprehended. However, 364 adult women working in the sex industry, or perceived to be working in the sex industry, had been arrested and tried in the courts for the crime of "trafficking" themselves.²⁸ (Ray and Catherine, 2014) Under threat of imprisonment, the women are given the "choice" to attend diversion programs and are further required to not return to the area in which they were arrested, or other areas known for street-based prostitution for a period of six months. This final requirement functions as a de facto Prostitution Free Zone²⁹ in that it prohibits people who have been profiled as prostitutes from entering specific sectors of the city.

²⁷ "End Demand" is a popular slogan of the sex industry abolitionist movement internationally. Following the logic that being paid for sex harms women, and the demand for paid sex maintains the existence of the sex industry, the demand for paid sex must be abolished. In other words, the reference to reducing demand is a direct link to abolitionist rhetoric.

²⁸ At the time of the report, 70% of the women brought in on prostitution charges were black and 94% of women brought into the court on loitering charges were black. (Ray, Catherine, et al. 2014)

²⁹ PFZ's began in the 1990's in Portland Oregon and, like the HTIC's, were marketed as a kinder, gentler form of policing of street-based sex work. (Sanchez, 2004) PFZ's have also been tried in Washington D.C. and Charlotte, North Carolina. A PFZ was proposed in Atlanta, Georgia as recently as 2013, though the bill failed to pass thanks to the work of local activists.

Though not the stated goal, the impact of the HTIC's is to further criminalize and punish already vulnerable populations. This undermines the right to the city and public space more generally (Mitchell, 2003) and functions as a form of banishment (Agamben, 1998 and 2005; Weheliye, 2014). It also represents what the Red Umbrella Project has called "stop and frisk for black women". (Ray and Caterine, 2014)

CHAPTER 5

CONCLUSION

This analysis of anti-trafficking rhetoric, laws and ideology has demonstrated that, though well-intentioned, the impact of much anti-trafficking activism is to blur the line between victims and worker; increase the vulnerability of both groups; and make consent unimaginable. Based on these findings I believe that the first step to creating a world free of trafficking is the full decriminalization of all sectors of the sex industry. New Zealand is an excellent model of this approach. It is impossible to eliminate the sex industry. And attempts to eliminate the sex industry only subject already vulnerable populations to further violence in the form of heightened policing, surveillance, harassment and criminalization. That is why I endorse full decriminalization and a harm-reductionist approach to anti-trafficking and sex workers rights advocacy. These frameworks make it easier to distinguish between consenting adult workers in the industry and actual trafficking victims. Good public policy, written with the input of people in the sex industry, can curb trafficking and provide meaningful support to victims (on their terms) while protecting the rights of consenting adult sex workers.

Decriminalization is advocated by the World Health Organization, UNAIDS and most recently, Amnesty International. Decriminalization of the sex industry has been shown to result in lowered STI rates in both the sex worker population and the general population and to reduce violence in the industry. (Abel and Brunton, 2006) Additionally, decriminalization makes trafficking easier to police. Sex workers are the industry experts we should be listening to. When

consenting adult sex workers can go to the police when an underage girl shows up on their street corner or online forum without fear of getting arrested themselves, everyone benefits.

Another benefit of decriminalization is that it allows those who want to leave the industry to leave. In states where prostitution is criminalized (and especially states adopting the “tough-on-crime” approach endorsed by the anti-trafficking movement) women are trapped in the industry because they are saddled with huge fines or an arrest record. It can be extremely difficult to find a job and even a place to live with an arrest record, let alone a felony conviction and in some cases a sex offender designation, which must be disclosed to all potential landlords and employers.

Another failure of the anti-trafficking movement is the use of punishment as rescue. This happens in two ways: through mandatory “rehabilitation” programs aimed at retraining women to enter the formal economy and, worse, through laws which are so broad in scope or so poorly written that they turn any sex industry related misdemeanor into a felony trafficking violation and enable both sex workers and victims to be prosecuted for the nonsensical crime of *trafficking themselves*. One striking example of this is the Human Trafficking Intervention Courts in New York. A harm-reductionist approach would offer services rather than punishment and make those services and involvement in programs optional.

Sex workers are resourceful, intelligent people who are capable of consent and capable of making logical decisions given their circumstances. I believe that the most effective form of anti-trafficking is to include sex workers in the conversation and convince anti-trafficking organizations that abolition and the Nordic Model harm both consenting adult workers and the victims they aim to help.

Violence is not inherent to prostitution. Violence in the sex industry is twofold: it stems from stigmatization and criminalization (which put sex workers at increased risk of violence from police as well as sexual predators and murderers); and the violence of capitalism, which forces those who have limited economic options to choose the industry out of desperation and a lack of options (in the case of survival sex work). In other words, sex work is not inherently dangerous, capitalism and criminalization are.

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