

Evidence that Evidence Doesn't Matter: The Case of Human Trafficking in Canada

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Abstract

This article considers the ways in which the political pressures that have structured Canada's involvement in the fight against human trafficking and the on-the-ground enforcement of laws adopted through Canada's positioning as an anti-trafficking nation have created a problem that necessitates regulation. Although the problem could be interpreted as a legal fiction, its effects are real and include greater restrictions on migrants, a lack of attention to wide-ranging labour abuses, and the tightening of the net around sex work.
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Résumé

Cet article considère les moyens par lesquels les pressions politiques, qui ont structuré la participation du Canada à la lutte contre la traite des personnes et l'application sur le terrain des lois adoptées suite au positionnement du Canada en tant que nation opposée à la traite, ont

créé un problème qui exige une réglementation. Bien que le problème puisse être interprété comme une fiction juridique, ses effets sont réels et comprennent des restrictions plus importantes sur les migrants, un manque d'attention aux abus considérables en matière de droit du travail et le resserrement du filet autour du travail du sexe.

In 2000, the United Nations General Assembly proposed its most recent version of international anti-trafficking legislation, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*. Canada was among the first countries to ratify the *Trafficking Protocol*, thus joining the global fight against human trafficking, which included advocating for global partnerships as a necessary component of an international anti-trafficking strategy (Public Safety Canada 2012). Since then, and in response to international pressures from the United Nations and the United States, Canada has taken numerous steps to combat trafficking and fulfill the criteria set out in the *Trafficking Protocol*. Notwithstanding these efforts, existing evidence in the form of official cases where charges of human trafficking have been laid reveals significant problems with the way in which trafficking cases are identified. For instance, the vast majority of human trafficking cases that have, to date, gone before the courts have categorised procurement and labour exploitation as instances of trafficking (Roots 2013). In fact, as of 2014, there has been only one case in Canada that came close to qualifying as human trafficking as defined by the *Trafficking Protocol*, in that it involved transnational organized crime, migrants, and forced labour (*R. v. Domotor et al.* 2011). As such, we are left to wonder how aggressive anti-trafficking measures can be justified given the lack of evidence that a problem even exists in Canada.

The anti-trafficking efforts of the Canadian government, non-governmental organizations (NGOs), and the media have perpetuated an image of a hopeless, agency-less, and often sexually enslaved trafficking victim (De Shalit, Heynen, and van der Meulen 2014). This image has been central in shaping our collective understanding of trafficking and is rooted in concerns over white slavery that emerged during the Victorian era (Doezema 2007); it has been further reinforced by contemporary cases of human trafficking that have gone before the courts (Roots 2013). In this article, we argue that Canada's commitment to the global anti-trafficking campaign, combined with pressures from the international community, not only upholds its existing anti-trafficking efforts, but also protects them from being challenged. We suggest that knowledge about human trafficking in Canada is not grounded in

evidence-based research, but is largely produced by an evolving anti-trafficking subject position that shapes Canadian responses to human trafficking. Among other influential factors, the Canadian government's desire to position itself as an anti-trafficker is based on a powerful anti-trafficking discourse that also guides the activities of other anti-trafficking advocates, including individual actors, NGOs, and the media. It is this positioning that allows the Canadian nation state to continue to belong to an international network of anti-trafficking states, particularly through securitization and law-and-order measures.

The intentions behind Canada's anti-trafficking movement are simultaneously made visible and invisible by their contradictions. This is exemplified, in part, by emotive and urgent statements made by state officials and NGOs on the expanding human trafficking problem when the evidence presented in most court cases is not consistent with the internationally accepted definition of human trafficking (RCMP 2013). The anti-trafficking movement in Canada has expressed concern about large-scale exploitation, but it has focused mainly on individual relationships in the sex trade with strong abolitionist undertones.¹ It also alludes to slavery without regard for the growth in labour precarity and the intensification of exploitation characteristic of neoliberalism. The federal government prioritizes anti-trafficking activities that centre on national and international security and that target borders and organized crime groups at the expense of human security and development. These contradictions suggest that the problem of human trafficking is based on rhetoric and not on evidence. In what follows, we do not seek to make sense of the contradictions or to read them as evidence toward a discernible 'truth.' Instead, our analysis focuses on the anti-trafficking subject position. Through its discursive alignment with humanitarian discourses on trafficking, Canada constitutes itself as a subject of these discourses "as every subject position is a discursive position" (Laclau and Mouffe 1985, 115). Thus, the truth/falsity of claims as to whether or not human trafficking really exists is not the issue. What is at stake is how these claims (come to) exist and to what effect.

We begin with a focus on the concept of "subject position," highlighting the ways in which discourses shape Canadian responses to human trafficking. Building on existing literature that unpacks anti-traffick-

ing discourses (see, for example, Bruckert and Parent 2004; Jeffrey 2005; Kempadoo 2005; Doezema 2010), we explore Canada's legal practices since the amendment of the *Criminal Code* in 2005 to demonstrate the material effects of its anti-trafficking subject position. We contend that the relabeling of procurement and labour exploitation as human trafficking acts to reinforce unrealistic perceptions of "victims" as agency-less and contributes to contradictions in the application of human trafficking laws. It further reinvigorates the moral outcry against sexual labour with familiar white slavery undertones and the call for the eradication of prostitution in the name of protection and salvation (van der Meulen, Durisin, and Love 2013).

Subjects of the Anti-Trafficking Discourse

Discursive practices operate to institutionalize discourses, positing them as true privileged ideas. This process allows for specific interpretations of a phenomena in ways that put constraints on what can be known, said, and thought (Hajer and Laws 2006). Michel Foucault (1991) contends that "actors may scheme, and competing ideas may circulate, but they are limited by...discursive practices, or discourses, which constitute parameters of what can be thought and spoken" (11). The particular discourse an actor employs allows for the formation of a corresponding subject position, where "a *subject-position* refers to a *position within a discourse*" (Epstein 2008, 14, original emphasis). Throughout this article, we rely on Charlotte Epstein's (2008) notion that a subject position is distinct from an actor's political *subjectivity*, as the latter "cannot be reduced to discursive production" (14). As such, we suggest that the Canadian state has stepped into the anti-trafficking subject position, aligning itself with the interests of other anti-trafficking nation states.

It is not surprising that the Conservative federal government pushed the neoliberal agenda farther than its predecessors, demonstrating an increased appetite for securitization and immigration control (Dobrowolsky 2008). However, there were other factors at play with regard to its anti-trafficking efforts. If the federal government had abided by a neoliberal cost-benefit analysis alone, it would have made little sense for it to create a multimillion dollar budget for anti-human trafficking activities. Instead, it is more likely that the federal government "realized that the social and ethical

costs of not regulating outweighed the costs of regulating" (Epstein 2008, 67). After all, Canada was strongly criticized by the United States and the United Nations for its inadequate response to human trafficking and, while the federal government took steps to regulate it in the past, it is only in recent years that it dedicated resources and funds toward the cause more intentionally (Roots 2013; De Shalit, Heynen, and van der Meulen 2014). Perhaps this suggests that, when "new types of peer pressures pushing states toward developing collective regulations" and "new types of benefits to cooperating" arise, the social costs of not belonging to an international system of anti-trafficking states become more evident (Epstein 2008, 67). It was when Canada finally immersed itself in the anti-trafficking conversation with other states that its anti-trafficking interests began to take shape.

With increasing international focus on human trafficking, the anti-trafficking subject position allows nation states to establish global cooperation often through regulation. The anti-trafficking discourse provides guidelines for state action in terms that are familiar to all players on the field. Thus, identifying a dominant discourse can illuminate the driving force behind a particular action better than identifying other factors, such as the costs and benefits of that action to the state (Epstein 2008). While cooperation is not cheap, some states tend to seek cooperation in order to belong to a social system. The desire to belong and the process of belonging, then, shape the subject position of a state and thereby its interests (Epstein 2008). As Pierre Bourdieu (1993) has famously argued, interests are shaped by the confines of a given social field and indicate a choice made by the actor (in this case the state) to invest in and belong to that field. The actor also has the choice not to belong. Once it makes the investment, however, the actor speaks the language of the field and behaves in ways that support its belonging (Bourdieu 1993; Epstein 2008). The actor is driven by the desire to belong and sustain its role in its adopted social field where actors share interests and define themselves as members. As Epstein (2008) puts it, "there is an interest in maintaining the field, because the field defines their interests, and therefore their identities" (70). This process does not undermine state agency or rationality, but takes into consideration factors other than self-interest, including relationships with other states.

Here, the actions and values of an actor are secondary to the discourses they speak (Epstein 2008). Accordingly, Canada *says* it is an anti-trafficker by adding a sense of urgency to a long-standing anti-trafficking discourse, particularly through the construction of the issue as modern-day slavery. Research suggests that the federal government and federally-funded NGOs, along with prominent media figures, are often situated in the modern-day slavery discursive position. Among other problematic references, these various social actors predominantly allude to modern-day slavery in publications and on websites (De Shalit, Heynen, and van der Meulen 2014). The term “slavery” conjures images of one of the worst known treatments of humans associated with the trans-Atlantic slave trade of African people and its use legitimizes the crime of trafficking as worthy of legal, oral, and social attention (Kempadoo 2005; Stanley 2009).

One of the reasons, then, that the anti-trafficking movement has grown in Canada is because it has evoked existing and familiar master discourses. These include the modern-day slavery discourse, which often tells the story of an exploited and enslaved prostitute who must be saved (Doezema 2010). They also allude to the trafficker as a member of a transnational organized crime group, particularly hailing from Asia, South America, and Eastern Europe. While organized crime was largely associated with Sicilian Mafia families beginning in the 1940s, that association gradually shifted, albeit not entirely, to organized criminals of Asian, South American, and Eastern European descent by the 1980s (Woodiwiss 2001). Traffickers who are envisioned as members of organized crime groups epitomize what is wrong with society, which requires urgent regulation (Bruckert and Parent 2004). Such imaginings also enable the Canadian state to maintain its focus on the failures of other nations, rather than its own. The anti-trafficking movement therefore helps to align Canada’s humanitarian traditions with its contemporary neoliberal law-and-order inclinations (Dobrowolsky 2008). Together, these discourses work to defend and validate increased state power, enhanced restrictions on immigration, and criminalization and surveillance of the sex trade.

The Making of a Powerful Discourse

The *Trafficking Protocol*, adopted by the United Nations in 2000, provided the first ever internationally

agreed upon definition of human trafficking. According to Article 3(a), trafficking is defined as “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (United Nations 2004, 42). The aim of the international definition was to achieve global consistency and consensus on the issue of human trafficking. Member countries were required to develop and enact domestic anti-trafficking laws as well as legislative definitions of trafficking that covered domestic and transnational trafficking, a variety of purposes for trafficking, and trafficking with or without the involvement of organized crime (United Nations 2011). The United States assumed the role of monitoring member countries’ anti-trafficking efforts by carrying out an annual evaluation their performance (US Department of State 2013a). The evaluation is based on a three-tier ranking system, where Tier One status is awarded to those countries who have fully complied with the US’s minimum anti-trafficking standards, Tier Two rankings are given to countries who do not fully comply with the minimum standards but are making significant efforts to do so, and Tier Three status is bestowed on countries whose anti-trafficking efforts have been substandard and who, as a result, can subject to US imposed sanctions (US Department of State 2013b). In light of the key role that the US plays in this global anti-trafficking effort and especially given the threat of possible sanctions, compliance is important and, in the case of Canada, is also tied to its economic and political success.

Although the US State Department’s annual evaluation of global anti-trafficking efforts is officially based on international standards, the yearly reports are, in reality, significantly influenced by American perceptions and conservative moral values that condemn prostitution (Gallagher 2006). In 2003, Canada dropped from its usual Tier One status to a Tier Two ranking (Gallagher 2006). That same year, the Department of State Report on Human Rights criticized Canada’s border control strategy and immigration laws for being too lenient and for consequently making Canada and the US targets of criminal organizations. The report

suggested that Canada's negligence in these areas undermined US national security due to the geographic proximity of the two countries (Collacott 2006). Such criticisms from the international community threatened Canada's subject position as a humanitarian nation fighting to combat global human trafficking and, therefore, as belonging to a "system of states." It also created tensions between Canada and the US, which led Canada to take numerous steps to increase its anti-trafficking efforts and re-establish its subject position as an anti-trafficker.

In 2001, Canada enacted its first anti-trafficking law under section 118 of the *Immigration and Refugee Protection Act* (IRPA), which prohibits transnational human trafficking. IRPA (2001) defines human trafficking as knowingly organizing the entry of an individual into Canada by means of abduction, fraud, deception, or use or threat of force or coercion. In 2005, Canada also enacted its first ever criminal laws governing human trafficking, which included a legislative definition of trafficking. Section 279.01(1) of the *Criminal Code* (1985) defines human trafficking as the recruitment, transportation, concealment, harbouring, or exercising control, direction, or influence over an individual's movements for the purpose of exploitation. It has become apparent over the years that this definition of trafficking is riddled with difficulties, not the least of which is its ambiguity. Trafficking is attributed to the operation of criminal organizations, but it also includes activities carried out by independent individuals. To establish the offence of trafficking in Canadian law, a trafficker does not need to physically move a victim, eliminating transportation as the necessary requirement of the offence. (Sikka 2009). Such departures in Canada's legislative definition of trafficking from the internationally-sanctioned definition contained in the *Trafficking Protocol* have resulted in an offence that is virtually indistinguishable from other provisions within the *Criminal Code*. This is particularly the case in regard to the procurement provision under section 212, which itself is based on the glaring misconception that the sex trade consists of the perfect combination of evil predators and naïve women (van der Meulen 2010; Bruckert and Law 2013).

While the Supreme Court struck down section 212 and other prostitution-related sections of the *Criminal Code* in 2013 on the grounds that they violated sex

workers' rights as guaranteed by the *Charter of Rights and Freedoms* (*Canada (Attorney General) v. Bedford* 2013), the federal government quickly proposed and approved a new law entitled, *Protection of Communities and Exploited Persons Act*, in 2014. This legislation focuses on the criminalization of buyers but retains many of the same provisions that criminalize sex workers as well. The need to criminalize sex work and enhance state intervention is largely justified by arguments that sex work is inherently exploitative, in part, by acting as a gateway to human trafficking. According to Canada's former Justice Minister Peter MacKay, "The [law] recognizes that the vast majority of those who sell sexual services do not do so by choice. We view the vast majority of those involved in selling sexual services as victims" (Mas 2014, para. 6). He went on to imply that the new legislation would help reduce the rates of human trafficking in Canada (Bronskill 2014).

The divergent views of the Canadian courts and the federal government on the issue of prostitution are noteworthy. In contrast to the federal government, the Supreme Court's decision in *Canada (Attorney General) v. Bedford* (2013) indicated that the Canadian courts were beginning to consider sex workers' increased vulnerability to harm and the consequent need to address the working conditions of this form of employment. This was particularly evident in the decision by Justice Susan Himel of the Ontario Superior Court of Justice in 2010, who wrote: "The evidence from some of these witnesses tended to focus upon issues that are, in my view, incidental to the case at bar, including human trafficking, sex tourism and child prostitution. While important, none of these issues are directly relevant to assessing potential violations of the Charter rights of the applicants" (*Bedford v. Canada* 2010, para. 183). Despite the courts' recognition of and insistence on the need to separate consensual sex work from issues like child and youth sexual exploitation and human trafficking, the Conservative federal government continued to conflate prostitution with emotive issues in an effort to gain support for its anti-prostitution stance.

In line with this approach, the Canadian government established a National Human Trafficking Coordination Centre headed by the Royal Canadian Mounted Police (RCMP), along with several other large-scale anti-trafficking initiatives, which indicate the existence of a significant problem. Yet, prior to 2012, the year Cana-

da released its *National Action Plan to Combat Human Trafficking*, there were only 25 human trafficking-specific convictions (RCMP 2013). Since then, the number of convictions has grown quite rapidly and, in January 2015, the RCMP reported eighty-five human trafficking convictions. This increase in criminal convictions is timely and allows Canada to sustain its anti-trafficking subject position and international image. Still, human trafficking charges and convictions do not clarify the nature of the criminal activity as they are based on Canada's vague and broad legislative definition. As a consequence, various other *Criminal Code* offences are categorized as trafficking.

The conflation of human trafficking with sex work provides a plateau for the negative construction of sex work through a moral framework that supports existing notions of "acceptable" female sexuality (Backhouse 1985; Hua and Nigorizawa 2010). This conflation is also used to support arguments that the sex industry is inherently exploitative and to emphasize the victimization of women within it (Backhouse 1985; Ditmore 2005). As several scholars have shown, the concept of human trafficking provides a way to explain women's entry into prostitution as being against their will (Jeffrey 2005; Doezema 2007, 2010). Even in cases where prostitution is considered a necessary evil, a clear distinction is made between workers as "fallen" women and non-workers of the middle to upper classes as "virtuous" (Backhouse 1985, 387). Leslie Jeffrey (2005) contends that such perspectives strengthen the Madonna-whore binary and justify criminalizing and paternalistic responses to sexual labour; as a consequence, police are granted greater authority and increased surveillance mechanisms are enacted. Sex workers' rights advocates are thus excluded from the conversation and their concerns about safety are minimized by appeals to prohibitionism and abolitionism (Bruckert and Parent 2004; Ditmore 2005).

This story is not much different from the one that emerged around the nineteenth century *Contagious Diseases Acts*, which aimed at preventing the spread of sexually transmitted infections, or venereal diseases as they were once known, among soldiers (Backhouse 1985). While prostitution was regarded as necessary in an effort to prevent other evils like masturbation and homosexuality among men, prostitutes were targeted as bearers and spreaders of disease (Backhouse 1985).

Amidst other provisions, the *Contagious Diseases Acts* authorized police officers to arrest women who they deemed to be prostitutes (Spiegelhalter 2004). Interestingly, targeting prostitutes was seen as a way to re-establish military efficacy and national security (Spiegelhalter 2004). After 1869, attitudes shifted to embrace a more abolitionist sentiment, as middle- to upper-class women began to seek new ways to redeem prostitutes and the moral makeup of society as a whole (van der Meulen, Durisin, and Love 2013). As a result, the *Contagious Diseases Acts* were replaced by "a highly complex series of provisions that sought to protect women from the wiles of the procurer, pimp, and brothel keeper, and also included increased penalties for convictions" (van der Meulen, Durisin, and Love 2013, 6). Canada's current legal regime suggests that it has not strayed far from the age-old moral crusade against prostitution and, in fact, has revitalized it through the conflation of sex work and trafficking (Weitzer 2012).

Effects of the Anti-Trafficking Subject Position

Through its positioning as an anti-trafficker, Canada has pursued legal practices that have constituted the problem of human trafficking. Its legal human trafficking problem is maintained by several factors, including appeals to white slavery, the pursuit of the rescue paradigm, the construction of agency-less, but deserving, victims, and the targeting of criminal organizations, each of which will be discussed in more detail below. While the problems could be interpreted as a legal fiction, the effects are very real and include, to name a few, greater restrictions on migrants, a lack of attention to the labour abuses experienced by irregular migrants, and the tightening of the net around sex work.

Appeals to White Slavery

The conflation of sex work and trafficking is long standing and stems from the panic over white slavery, a term used to describe the cross-border movement of white women for sex work in the late nineteenth and early twentieth centuries. This movement caught the attention of early twentieth-century moral crusaders in Britain, which led to the *International Agreement for the Suppression of the White Slave Trade* in 1904. Canada was among the countries to sign the agreement, which required signatories to establish agencies in their respective countries that were tasked with collecting

information on the international traffic of women and children (Cordasco 1981). The importance of this requirement cannot be underestimated, as Canada was obliged to discover and report on its white slavery problem whether it existed or not. In order to accomplish this task and in contrast to efforts that sought to build an image of Canada as a morally pure nation, Canadian reformers had to “convince people that Canada was not as healthy and pure a nation as was generally believed” and that the lack of visibility did not mean the problem did not exist (Valverde 2008, 93). According to Mariana Valverde (2008), it was the elasticity of the white slavery issue that enabled the development of a panic that did not need to rely on evidence. The panic was built on widely published narratives of the white slave traffic that were supported by pseudo-eyewitness accounts. These narratives constructed certain places and people as unsafe for women, focusing on the dangers of public places and strangers, particularly racialized men (Valverde 2008).

The anti-white slavery campaign was further propelled by pressure from Britain’s National Vigilance Committee. In his visit to Canada in 1912, William Coote, the head of the committee, expressed his disappointment at the efforts of Canadian reformers and the state (McLaren 1986). Coote contended that the Canadian government had not satisfied any stipulations agreed upon when signing the *International Agreement for the Suppression of the White Slave Traffic* (McLaren 1986). In response, Canadian reformers successfully lobbied for the enactment of the *Criminal Code Amendment Act* aimed at combatting white slavery (McLaren 1990). The Act included additional procuring offences, made living on the avails of prostitution an indictable offence, widened the scope of the existing bawdy-house laws, and increased its penalties (McLaren 1990). It thereby made an unsubstantiated link between procurement and white slavery (Bruckert and Law 2013), not unlike the one made about sex work and human trafficking in Canada today.

Toronto police subsequently set up a morality squad, which focused on reducing the number of brothels and arresting both prostitutes and their clients. Between 1900 and 1914, nearly 2,000 charges of “keeping house of ill-fame or disorderly houses” were laid (Valverde 2008, 83). As Valverde (2008) notes, the fact that nearly two-thirds of these charges were laid

against women dispelled the myth that women were forced into prostitution by men and therefore needed protection. In 1915, Toronto’s leading moral reformers released the results of a two-year investigation into Toronto’s vice problem, which showed no evidence of coerced prostitution and the existence of very few bawdy-houses (Valverde 2008). As a result, the reformers followed the example of their colleagues in the Minneapolis Vice Commission, who in their desperate need to find evidence of white slavery in the face of its absence changed their focus and began to target the morals of working-class young women (Valverde 2008). The result was a moral panic over “women who were not prostitutes but went out with men to parks or ice cream parlours and on occasion had sex with their male dates” (Valverde 2008, 83). As Valverde (2008) contends, “it would be easy simply to dismiss these statements as the fantasies of repressed clergymen and techniques in a Machiavellian plan to heighten the power of both moral reformers and state authorities... the fact remains, however, that many people believed white slavery was a serious social problem” (89).

Canada’s white slavery panic in the early twentieth century suggests that the construction of this social problem is not exclusive to current campaigns against human trafficking. As with contemporary anti-trafficking legislation, early twentieth century laws targeting white slavery were implemented in response to international mandates and to external pressures from moral reformers. Thus, Canada’s desire to belong to an international system of anti-trafficking state led to the criminalization and targeting of sex workers, their customers, and even women who failed to abide by existing norms of femininity. The development of Canada’s white slavery panic at the turn of the twentieth century shares many similarities with current anti-trafficking campaigns, which include the need to abide by international mandates to create and enforce anti-trafficking laws, pressure from external sources (in this case, the US), and Canada’s desire to belong to a system of states. Together, these components have, once again, led Canada to a place where the construction of a social problem is seen as a desirable solution to a “well-hidden” problem.

The current conflation of sex work and human trafficking is evident not only in the close resemblance between human trafficking and procurement laws, but

also in the types of criminal cases being classified as human trafficking. For instance, in 2013, a Calgary man named Daniel Erhabor was charged with human trafficking as well as a number of other offences, including living on the avails of prostitution and pimping—for reportedly forcing a woman “to have sex with him and other clients between August and October of 2013” (Lawrence 2014, para. 3). According to media reports, the charges were laid after “a 37-year-old-woman came forward and reported that she was physically and sexually assaulted while working in the sex trade” (Schmidt 2014, para. 2). This case raises questions about the decision to charge Erhabor with human trafficking as opposed to other possible offences, such as assault and sexual assault, especially given his position as the complainant’s “pimp” (Schmidt 2014, para. 2). Furthermore, the victim was not transported across country, province, or even city boundaries, as the entire incident took place in Calgary. Since Canada’s human trafficking law does not necessitate the transportation of the victim and thus runs the risk of conflating sex work and human trafficking, it is left to the case officer to decipher between the various offences. Perhaps of greater relevance in this case is the labour conditions that some sex workers face due to the criminalization of their work—an issue that has been effectively erased with the introduction of the emotionally charged issue of human trafficking.

In another case, two Calgary men, Arjanit Simnica and Avni Gashi, were charged with human trafficking and prostitution-related offences for allegedly holding two girls, aged 15 and 17, captive in a hotel room for several days and forcing them to engage in sexual labour (Schneider 2013). Once again, the elements of this case closely resemble those of other *Criminal Code* offences, such as kidnapping, forcible confinement, and sexual exploitation, particularly because the girls were not transported across city, province, or state boundaries. Although prostitution laws are already problematic for a number of reasons, including that they serve as justification for police harassment of sex workers and contribute to unsafe labour conditions, the conflation of sex work and trafficking further heightens these concerns. In this case, Simnica pled guilty to human trafficking and prostitution-related charges, while Gashi was acquitted by a judge who did not believe the story the victims told about their experiences with the accused (Martin 2014). Although we strongly regret the

dismissal of the victims’ narratives by the trial judge, it remains unclear why the police decided to charge the two men with human trafficking, as opposed to other offences, in the first place.

Police enthusiasm in laying human trafficking charges raises questions about motivation and the role of political mandates, including Canada’s need to demonstrate its anti-trafficking efforts. This is particularly pertinent when reflecting on the US Department of State’s annual *Trafficking in Persons Report*, which year after year directs Canada to focus on investigating, prosecuting, and convicting human traffickers. The 2013 *Trafficking in Persons Report* states that Canada must “continue to intensify efforts to investigate and prosecute trafficking offenses and convict and sentence trafficking offenders using anti-trafficking laws; increase use of proactive law enforcement techniques to investigate human trafficking” (US Department of State 2013a, 125).

On occasion, the police also carry out raids on brothels and massage parlours, charging owners, operators, and, most notably, workers with human trafficking and prostitution-related offences. For instance, a large-scale anti-trafficking raid was carried out in British Columbia in late 2006, which involved RCMP detachments in Coquitlam, Richmond, Surrey, and Burnaby as well as the Vancouver Police Department, the Integrated Border Enforcement Team, and other government agencies. Out of 106 people arrested, 78 were sex workers and 26 were clients. The massage parlours raided were, for the most part, licensed and were not in violation of any laws. Furthermore, none of the sex workers working the establishments were in the country “illegally,” they were all over the age of nineteen, and all declined the offer of government assistance through emergency shelters. What is most notable about this case is that the large-scale raid, which took the police nine months to plan and prepare, did not result in a single human trafficking charge (Bolan 2006).

More recently, in April 2015, a human trafficking investigation led to eleven sex working migrant women being detained and ordered to be removed from Canada for “working without a valid work permit” in Ottawa massage and body rub parlours (Hempstead 2015, para. 5). They were not given the chance to defend themselves in a criminal court. While this is one of a few Canadian human trafficking cases that has involved

migrant women who were engaged in the sex trade and who best fit the constructed image of human trafficking victims, the women were detained as criminals and were scheduled for deportation. Such ongoing police efforts to help supposed trafficking victims are part of abolitionist interventions that blur the lines between captor and rescuer.

As Gretchen Soderlund (2005) contends, as a practice, police raids assume that all rescued and, in many cases, arrested women are victims of trafficking in need of intervention. She asks:

Is it intellectually and ethically responsible to call every instance of a practice 'slavery' when many women involved demonstratively reject the process of protection and rehabilitation, and when they escape from supposed rescuers who aim to force them out of a life of prostitution ('captivity') and into a life of factory work or employment in the low-paying service sector ('freedom')? (66)

Nevertheless, such police actions are a part of a wider rescue paradigm—a paternalistic and imperialist ideology that assumes that protection and removal from a morally condemned situation are needed, even if it takes place against the wishes of the “victim.”

Pursuit of the Rescue Paradigm

Laura Agustín (2007) traces the rise of the rescue paradigm to Europe during the period known as the “Rise of the Social” in the nineteenth century. During this era, members of the middle classes began to focus their attention on the poor and sought to “help” them by addressing various ills, including immoral sexual activity. The rescue approach relied on a victimization discourse, which allowed the middle classes to appear helpful while seeking to regulate how others lived their lives. It was during this period, Agustín suggests, that current understandings of prostitution were crystallized and a dynamic between “duped” prostitutes and rescue societies was formed. The contemporary rescue paradigm continues to reinforce and simplify historical power relations, such as those between the poor and the middle classes, white and racialized people, and the Global North and the Global South. Despite its harmful consequences, however, the emotive appeal of the rescue paradigm is essential to anti-trafficking movements and policies as it established not only a victim but also

a saviour (Stanley 2009). Furthermore, the issue of trafficking in women is politically valuable by working as a uniting force for people of varying political and religious backgrounds, all of whom want to see an end to the despicable and callous oppression and exploitation of women (Soderlund 2005).

Julietta Hua and Holly Nigorizawa (2010) discuss a particularly noteworthy example of the workings of the rescue paradigm in the case of *United States v. Trakhtenberg*, where a young woman who migrated to the US for sex work was “rescued” by the police and labelled a victim of trafficking. The woman rejected her status as a victim in a letter to the court, in which she explained the various ways US authorities pressured her to adopt the status of a victim and present exaggerated information against the accused. Despite the young woman’s refusal to see herself as a victim of trafficking, the court nonetheless labelled her as one and claimed that the woman’s inability to recognize her own victimization was the result of ignorance and naiveté. She was awarded \$4,280 for her suffering (Hua and Nigorizawa 2010). The court’s claims are consistent with those made by some Western feminists who suggest that women who say that they made a decision to engage in sex work are operating under a “false consciousness” (for critique of the Western feminist position, see Weitzer 2010; Bruckert and Law 2013). Such an undermining of sex workers’ self-identification and determination is a common feminist strategy that goes beyond the courts. Furthermore, the dominant narrative of the trafficking victim disregards the ways in which anti-trafficking laws impose their own violence and fail to capture the nuances and complexities of migration and labour (Ditmore 2005; Hua and Nigorizawa 2010; Hunt 2010).

The presence of the rescue paradigm is also evident in Canada’s 2012 *National Action Plan to Combat Human Trafficking*. With an annual budget of six million dollars, the plan promises to “consolidate ongoing efforts of the federal government to combat human trafficking and introduce *aggressive* new initiatives to prevent human trafficking, identify victims, protect the most vulnerable, and prosecute perpetrators” (Public Safety Canada 2012, 10, emphasis added). The goals of the *National Action Plan* include training and raising awareness among law enforcement officials and prosecutors, and establishing a dedicated team comprised of members of the RCMP, Canadian Border Services

Agency, and local police services to investigate human trafficking.² The plan further promises to improve intelligence collection and raise public awareness on the issue. It also aims to identify and protect *potential* victims of trafficking, both domestic and international. Given the Conservative federal government's position "that prostitution victimizes the vulnerable and that demand for sexual services can be a contributing cause of human trafficking" (Public Safety Canada 2012, 11), the latter goal is particularly disconcerting. Government rhetoric that conflates sex work and trafficking contributes to increased surveillance of sex workers and other vulnerable groups, and removes agency by assuming that all consent is given under negating conditions.

Agency-less but Deserving Victims

As Hua and Nigorizawa (2010) have argued, anti-trafficking laws work in a framework that recognizes some victims as "deserving" while criminalizing others, such as non-status migrants and sex workers. The courts, as well as government and police officials, contribute to the creation of a dominant narrative of a trafficking victim based on gender and racial stereotypes that construct them as infantile and that link cultural "otherness" to deviancy (Hua and Nigorizawa 2010). As a consequence, protection is only extended to certain types of "victims" who are innocent and naïve (Bruckert and Parent 2004). Those who are perceived as having played an active role in producing their conditions (for instance, knowingly migrating under irregular circumstances or engaging in sex work) are criminalized. According to Jeffrey (2005), the Canadian government's decision to directly equate migrant sex work with trafficking works to justify stricter criminal and border control policies that create further challenges for migrant workers and sex workers. This is exemplified by the 2012 *Safe Streets and Communities Act* and by omnibus legislation that, among other measures, resulted in changes to the IRPA that increased the discretionary power of immigration officials to refuse entry to migrants deemed as vulnerable to (sexual) victimization by human traffickers (Parliament of Canada 2012). The Canadian Civil Liberties Association (CCLA) (2013) has pointed out, however, that the sections of the *Safe Streets and Communities Act* that pertain to human trafficking do not specify what constitutes being at risk of exploitation, while simultaneously equating sex work

with exploitation and conflating it with trafficking. Employers and policymakers are, in turn, indemnified of their responsibility to prevent exploitation and to ensure that the needs of migrants and workers are met appropriately.

In a study conducted with migrant female sex workers living in London, England, for instance, Nick Mai (2013) found that most of the interviewees experienced exploitation when it came to working conditions and payment, but not as a result of the sex work itself. Global anti-trafficking movements, however, have ignored the concerns of migrants and sex workers, and have advocated for policies that "[conceal] the shared socio-economic and cultural vulnerabilities of societies in the West and in the rest of the world, which are being polarised and fragmented by neoliberal policies inscribing economic success and privilege as an absolute priority" (Mai 2013, 120).

In keeping with growing anti-trafficking sentiment, on 14 July 2012, then Human Resources Minister Diane Finley announced that migrants will no longer be eligible to enter Canada as exotic dancers under the Temporary Foreign Worker Program (Payton 2012). The program first introduced an exemption for employers who wished to hire migrant exotic dancers from obtaining a labour market opinion in the late 1970s. Since the late 1990s, however, the program came under the scrutiny of Citizenship and Immigration Canada and the Department of Human Resources and Skills Development, when it became more popular among Eastern European women than women from the US (Parliament of Canada 2012). Over the years, anti-trafficking advocates suggested various changes to the exotic dancer exemption in the Temporary Foreign Worker Program, arguing that they would protect migrant women from the threats of human trafficking, degradation, humiliation, and sexual exploitation. The Canadian government's 2012 decision to discontinue the exotic dancer provision relied on the same sentiments and were fueled by unsubstantiated concerns that escort agencies, brothels, and massage parlours were directly implicated in human trafficking activities and/or the sexual exploitation of migrant workers (Curry 2012).

The fate of the exotic dancer exemption in Canada highlights how moral and patriarchal discourses construct migrant female workers as sources of physical, cultural, and legal corruption (Macklin 2003). Their

labour is feared and their identities become tied to ethnic stereotypes, which serve as justifications for poor and discriminatory treatment (Anderson 1997). Women who migrate from the Global South, particularly for sex work, are depicted in some academic literature, most government reports, and the media as incapable of making sound decisions and as modern-day slaves (Anderson 1997; Doezema 2007). The relabeling of migrant sex workers as trafficking victims and, worse, as modern-day slaves fails to account for the ways in which “unfreedom in the labour process is related to context specific and contingent forms of capitalist development and political relations” (Strauss 2012, 139). This begs the question: how do we distinguish between “‘trafficked’ and ‘not trafficked but just-the-regular-kind-of exploitation’ migrants” (Anderson and Andrijašević 2008, 141)?

Targeting Criminal Organizations

In 2010, 29 people were charged for their role in recruiting individuals from Hungary to work in the construction sector in Canada. The recruits were lured with promises of well-paid employment. Upon arrival, they were forced to work without pay, to apply for welfare that was confiscated by the accused, and to live in substandard living conditions, which included eating scraps that were supplied once a day (Morrow 2012). It was difficult for the recruits to escape because they did not speak English and their passports and other documents had been confiscated. The prosecution of this case led to the country’s first criminal convictions involving transnational organized crime, migrants, and forced labour, and is considered to be Canada’s largest human trafficking case to date. Eight people pled guilty to conspiracy to commit human trafficking (Morrow 2012). Ferenc Domotor Sr., who was deemed to be the leader of the operation, received the highest sentence ever imposed for a human trafficking offence in Canada (Robertson 2012). He pled guilty to conspiracy to commit trafficking, being a part of a criminal organization, and coercing victims to mislead immigration officials (Robertson 2012).

While the aforementioned case is the only known one found to involve members of an organized crime group operating in Canada, there are noteworthy efforts to link Canada’s human trafficking cases to organized crime. According to Criminal Intelligence

Services Canada (2008), human trafficking in Canada involves criminal networks that specialize in the recruitment, transportation, and coercion of women into the sex trade. Similarly, the RCMP (2010) contends that South American, Eastern European, and Asian criminal groups are involved in trafficking women into Canada for the purpose of sexual exploitation. Police have also linked several suspected cases of human trafficking to organized crime groups, although all, with the exception of the Hungarian family of traffickers, went unconfirmed. Thus, police attempts to link individual exploiters to organized crime networks appear to be unsubstantiated by existing evidence. Interestingly, in a report prepared for the RCMP, Christine Bruckert and Colette Parent (2004) traced a notable change in language and focus that occurred in 1997, when the concern shifted from individual perpetrators who were exploiting migrant sex workers to the trafficking of women into the sex trade by organized criminals. The authors suggested that the intentional adoption of an organized crime framework repackaged a migration issue as a criminal justice one, and did little to address broader social, political, and economic inequities that contribute to irregular migration in the first place (Bruckert and Parent 2004).

Ongoing attempts to create such links are not accidental and serve an intentional purpose in Canada’s efforts to position itself as an anti-trafficker. The centrality of criminal organizations in human trafficking discourses works to perpetuate the notion that organized crime is an alien conspiracy and that migrants are threats to national security and morality (Woodiwiss 2001; Bruckert and Parent 2004). The need to establish “a moral order that is divided with a degree of certainty and clarity between the legitimate and the illegitimate—with a minimum blurring of the two” plays an important role in this context (Beare 2002, 225). Here, state officials and the public tend to have a very distinctive image of criminal organizations, which are almost always perceived to exist and act elsewhere (Beare 2002); they are seen as distinct from and acting in opposition to government organizations.

Mainstream perceptions of organized crime and the involvement of organized criminals in human trafficking are upheld by legal and political methods that adopt special measures to deter organized crime at any cost, financially and socially (Symeo-

nidou-Kastanidou 2007). Nation states then employ ideological and logistical strategies to justify these measures. Elisavet Symeonidou-Kastanidou (2007) suggests that, “the need to control organized crime has been used to justify and explain a wide range of European Union legislative measures, in the field of police and judicial cooperation, which have a considerable impact on the content of human rights” (83). Regulatory and legislative bodies frame organized crime as a threat to democracy, human rights, and the rule of law, justifying strict and restrictive policy responses (Symeonidou-Kastanidou 2007). Such responses also play an important role in unifying states on the international level, which is evidenced by the relationship between Canada and the United States, as discussed above (Collacott 2006).

Despite police suspicions about and suggestive statements on the connection between human trafficking and transnational organized crime, identified human trafficking cases in Canada do not support such a link. In fact, the RCMP (2010) has indicated that existing knowledge about Canada’s organized crime and transnational sex trafficking is largely based on hearsay. Jyoti Sanghera (2005) takes this argument a step farther and suggests that the lack of evidence makes it nearly impossible to propose that trafficking is, to any significant degree, associated with organized crime. Nevertheless, the links made between organized crime and social issues is paramount to increasing their urgency and danger—the issue of human trafficking is no different.

Conclusion

In this article, we have examined how the Canadian nation state is shaping and forming its subject position as an anti-trafficker in order to secure its place among countries committed to combating global human trafficking. In order to demonstrate its anti-trafficking efforts to the international community, Canada has enacted broad anti-trafficking laws, which diverge significantly from the UN *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*. However, the broad nature of these laws allows them to be applied to cases that do not resemble the internationally agreed upon characteristics of human trafficking. Instead, we discussed a series of cases that deal with procurement and the labour exploitation

of migrant workers being categorized as trafficking. Consequently, the construction of human trafficking becomes something that involves the exploitation of innocent women forced into the sex trade, paralleled with an emphasis on the dangers of trafficking due to the involvement of organized crime rings. The combination of the two discourses has produced a powerful effect in that it supports Canada’s subject position as a humanitarian country working to protect and rescue helpless, innocent, and naïve victims of trafficking, while allowing the government to advance its tough-on-crime agenda in order to combat the dangers associated with criminal organizations.

Through our analysis of anti-trafficking laws and interventions as well as human trafficking legal cases, we conclude that the anti-trafficking subject position is the product of policy-led evidence, rather than evidence-based policy. What seems to matter more than evidence is the anti-trafficking discourse, which has been responsible for shaping not only anti-trafficking policies, but also our understanding of the issue of human trafficking itself. At the very least, this situation suggests that the existent moral panic over human trafficking and the resultant increase in federal funding toward anti-trafficking security measures, violence towards sex workers (through raids, questioning, arrests, surveillance, and so forth), and restrictions placed on migrants is unwarranted. We recommend that there should be greater focus on investigating labour and migration abuses on a larger scale with fingers pointed not only at employers and organized criminals, but also at the state and its policies. Attention should likewise turn to minimizing the harms and vulnerabilities experienced by sex workers and migrants. Such initiatives should not rely on international or national security measures since they have tended to violate human rights rather than support them. Instead, what is needed are safe regularized migration avenues that minimize the need for illegalized migration and its associated dangers. Moreover, improvements in employment conditions in all industries hiring migrant workers, including the sex industry, are required. The development and maintenance of employment standards ensures fair and equitable treatment of employees and reduces the risk of exploitation among vulnerable groups.

Endnotes

¹ We use variations of the term “abolition” to refer to the movement to eliminate prostitution and not slavery. The overlap in language, however, is telling of the context in which human trafficking conversations often occur.

² The Human Trafficking Taskforce replaced the existing Interdepartmental Working Group on Trafficking in Persons.

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