

The Movement to Criminalize Sex Work in the United States

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Until recently, prostitution was not a prominent public issue in the United States. Law and public policy were relatively settled. The past decade, however, has witnessed a growing debate over the sex trade and the growth of an organized campaign committed to expanding criminalization. A powerful moral crusade has been successful in reshaping American government policy toward sex work – enhancing penalties for existing offences and creating new crimes. Crusade organizations have advocated a strict abolitionist orientation toward all forms of commercialized sex, which are increasingly conflated with sex trafficking. This paper examines the impact of this movement on legal norms and government policies. I argue that the moral crusade, and its government allies, are responding to the growth of the sex industry in recent years and to fears of its normalization in American society.

In November 2008, residents of San Francisco, California, voted on a ballot measure that would have de facto decriminalized prostitution in the city. The measure stipulated that the police would discontinue enforcing the law against prostitution. The measure failed, but was endorsed by a sizeable minority of voters – 42 per cent. Four years earlier, Berkeley, California voters had considered a similar proposal, with 36 per cent supporting it. As this paper will demonstrate, the San Francisco and Berkeley cases are entirely exceptional in contemporary America – where liberalization of prostitution policy is rarely discussed by political leaders let alone voted on by the public.¹ As a 1999 commission in Buffalo, New York, reasoned, ‘since it is unlikely that city or state officials could ever be convinced to

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1 An exception is a bill in the Hawaii State Legislature in 2007, which would have decriminalized indoor prostitution and zoned street prostitution. The bill failed.

decriminalise or legalise prostitution in Buffalo, there is nothing to be gained by debating the merits of either'.²

Although some observers have documented a growing 'mainstreaming' or 'normalization' of the sex industry – especially regarding pornography and stripping, where there has been some spillover into mainstream media coupled with sheer abundance on the Internet³ – prostitution remains beyond the pale in the United States. Indeed, prostitution is being increasingly demonized, marginalized, and criminalized as a result of the efforts of a robust moral crusade. The crusade initially targeted sex trafficking, but then expanded its targets to prostitution, pornography, stripping, and all other types of commercial sex.

The punitive trend may be viewed as a reaction to the increasing availability and mass marketing of sexual services and to what crusade and political leaders view as an alarming normalization of sex for sale. In other words, with the help of the Internet, the neo-liberal deregulation of commerce and flourishing of free markets has allowed the sex industry to expand as never before and on a global scale. Neo-liberalism also implies that individuals have the 'right' to engage in sexual commerce. I suggest that it is precisely this loosening of traditional sexual mores coupled with the unprecedented availability of a growing variety of sexual services that has created a huge backlash – in the form of a moral crusade that is attempting to stem the tide by pressing for laws that outlaw commercial sex work. This is part of a broader symbolic politics in which certain social forces have fought other signs of alarming 'permissiveness',⁴ and have tried to impose a 'new respectability', one dimension of which Hunt describes as follows:

'New respectability' reflects the aspiring role of upwardly mobile women concerned to exhibit [independence from men which] produces a renewed sense of sex and sexuality as risk and danger ... It finds expression in a preoccupation with the external danger of sex in general and male sexuality in particular ... This in turn leads to a stress on women's stance as victim ... The new respectability manifests itself most distinctively in preoccupation with sexual imagery and representation.⁵

I would extend the latter point to sexual commerce in general. In the United States, crusade efforts were latent in the 1990s but gained renewed vigour in

2 Prostitution Task Force, *Workable Solutions to the Problem of Street Prostitution in Buffalo, New York* (1999).

3 B. Brents and T. Sanders, 'Mainstreaming the Sex Industry: Economic Inclusion and Social Ambivalence', this volume, pp. 40–60; L. Comella, 'Remaking the Sex Industry: The Adult Expo as a Microcosm' in *Sex for Sale: Prostitution, Pornography, and the Sex Industry*, ed. R. Weitzer (2010, 2nd edn.); E. Jost, 'Making it Mainstream: Sexworkers as Characters' *Spread Magazine*, Winter 2008, 54–7.

4 D. Wagner, *The New Temperance: The American Obsession with Sin and Vice* (1997).

5 A. Hunt, 'The Purity Wars' (1999) 3 *Theoretical Criminology* 409, at 430.

the following decade because the advent of the Bush administration opened a uniquely favourable window of opportunity for crusade organizations to press their agenda. Developments during the Bush years are consistent with more general trends toward increased moral regulation in response to perceived social ills,⁶ but it is also clear that the Bush administration radically altered the degree of state access and policy influence for social forces committed to amplified moral regulation.

This paper examines these developments, drawing on information from crusade groups, reports of government agencies, and relevant legislation. We shall see that activists have met with remarkable success in getting their views incorporated in government policy and law enforcement practices. In other words, the crusade is not confined to mere debate or sabre rattling, as it has attained a measure of success in criminalizing sexual services, manifested in new penalties, increasing arrests, and growing official demonization of commercial sex.

A MORAL CRUSADE PERSPECTIVE

A *moral crusade* is a type of social movement that sees its mission as a righteous enterprise to combat a particular condition or activity that is defined as an unqualified evil. Moral crusades have symbolic goals (attempting to redraw or bolster normative boundaries and moral standards) as well as instrumental ones (providing relief to victims, punishing evil-doers).⁷ Some are motivated by genuine humanitarian concerns and desires to help victims, while others are mainly interested in imposing specific mores on others, especially when conventional rules appear to be unravelling, thus creating anxiety about the erosion of normative boundaries or threats to a cherished way of life. Moral crusade discourse has three central characteristics:

- inflation of the magnitude of a problem (for example, the number of victims, harm to society), assertions that far exceed the available evidence;
- horror stories, in which the most shocking cases are described in gruesome detail and presented as typical and prevalent;
- categorical conviction: crusade members are adamant that a particular evil exists precisely as they depict it and refuse to acknowledge any grey areas.

By dramatizing the plight of traumatized victims, demonizing perpetrators, and exaggerating the extent of the problem, activists seek to alarm the public and justify draconian solutions.

⁶ Hunt, *id.*; Wagner, *op. cit.*, n. 4.

⁷ S. Cohen, *Folk Devils and Moral Panics* (1972); E. Goode and N. Ben-Yehuda, *Moral Panics* (1994).

The crusade against trafficking and sex work in the United States (and some other nations) has been dominated by a coalition of the religious right and abolitionist feminists. Right-wing members include Focus on the Family, National Association of Evangelicals, Catholic Bishops Conference, Concerned Women for America, International Justice Mission, Shared Hope International, and numerous others. Feminist groups include the Coalition Against Trafficking in Women (CATW), Equality Now, the Protection Project, and Standing Against Global Exploitation (SAGE) – and the American movement is aligned with groups abroad such as the European Women’s Lobby. The term ‘abolitionist feminist’ refers to those who argue that the sex industry should be eliminated because of its objectification and oppressive treatment of women, considered to be inherent in sex for sale. Mainstream feminist organizations, such as the National Organization for Women, have been far less active in this debate and have focused on other issues concerning women.

The religious and feminist coalition members may hold opposing views on other social issues, such as abortion, but they largely agree on sex work. The single-issue focus of most of these feminist groups – targeting the sex industry exclusively – trumps all other issues and explains their willingness to work with right-wing groups, in order to enhance the legitimacy of their campaign as a bipartisan left-right enterprise.

During the Bush administration (2001–2008), this crusade gained tremendous influence over policy making, successfully transforming the movement against sex trafficking into an official government project targeting all types of commercial sex. What is most remarkable about the resulting legal sanctions is how far they diverge from evidence-based policy. As I have shown elsewhere, almost all of the crusade’s claims about trafficking in particular and sex work in general are either unsubstantiated or demonstrably false.⁸ A crucial reason why this crusade achieved such remarkable success was the lack of a counter-discourse and lobbying by influential groups. On the few occasions when the movement’s claims were challenged in public forums, those who voiced such opposition were either ignored or denounced as apologists for pimps and traffickers. This stands in contrast to some other vice contests, such as debates over drugs and abortion, where the claims of moral entrepreneurs have been more vigorously countered by advocates.

8 R. Weitzer, ‘The Social Construction of Sex Trafficking: Ideology and Institutionalization of a Moral Crusade’ (2007) 35 *Politics and Society* 447; R. Weitzer, ‘Flawed Theory and Method in Studies of Prostitution’ (2005) 11 *Violence Against Women* 934; R. Weitzer, ‘The Mythology of Prostitution: Advocacy Research and Public Policy’ (2010) 7 *Sexuality Research and Social Policy*.

SEX TRAFFICKING: FACTS AND FICTIONS

The facts regarding sex trafficking are murky, but certain aspects are clear. We do know that relocation from one place to another for the purpose of selling sex has long existed. We also know that there are victims of coercive or deceptive enticement into the sex trade: people are transported to locations where they are pressured into prostitution. Reports from around the world indicate that coercive sex trafficking is by no means fictional. We also know that sex trafficking can be quite lucrative for the third parties involved. In fact, there are 'few other criminal activities in which the profit-to-cost ratio is so high'.⁹ The most exploitative actors make huge profits off the labour of workers who accumulate little if any money of their own. In addition, some third parties act violently toward sex workers or demand sex from them, sometimes over a long period of time.

We do not know *how many* persons are trafficked across borders every year. The grand claims made by abolitionist groups that the magnitude of the problem is *huge* and *growing* are entirely unsubstantiated, but quite strategic. What do I mean by strategic? The size of a social problem matters in attracting media coverage, donor funding, and attention from policy makers. Moral crusades thus have a vested interest in inflating the magnitude of a problem, and their figures are typically unverifiable.¹⁰ The anti-trafficking crusade claims that there are hundreds of thousands or millions of victims worldwide, and that trafficking has reached an 'epidemic' level. Such claims have been echoed by government officials in the United States and other nations. When specific figures are presented, they have ranged from 600,000 to 4 million.

Like the global numbers, domestic American figures have changed drastically in a short period of time. In 2000, the government claimed that 45,000–50,000 persons were trafficked into the United States annually – a figure based largely on one government analyst's review of newspaper clippings.¹¹ This dubious figure was cited in the landmark Victims of Trafficking and Violence Protection Act, 2000 (TVPA) as justification for the new law, which states unequivocally that 'Congress finds that ... approximately 50,000 women and children are trafficked into the United States each year'.¹² The State Department's *Trafficking in Persons* report repeated the figure in 2002, but just one year later, the figure fell to 18,000–

9 P. Williams 'Trafficking in Women and Children: A Market Perspective' in *Illegal Immigration and Commercial Sex*, ed. P. Williams (1999) 153.

10 Goode and Ben-Yehuda, *op. cit.*, n. 7, pp. 36–44.

11 J. Markon, 'Human Trafficking Evokes Outrage, Little Evidence' *Washington Post*, 23 September 2007. Strikingly similar to developments in the United States on the trafficking front, as described in this section of the article, is the British situation, which has also been coloured by moral panic and gross distortion of figures on the magnitude of trafficking. See N. Davies, 'Prostitution and Trafficking: The Anatomy of a Moral Panic' *Guardian*, 20 October 2009.

12 TVPA 2000, s. 102(b1).

20,000 (a 64–60 per cent decrease from 50,000) and the 2004 and 2005 *Trafficking in Persons* reports reduced the number further, to 14,500–17,500. Members of Congress and the Bush administration accepted these numbers uncritically and passed legislation based on the notion that huge numbers of people were victims of this newly-discovered ‘modern form of slavery’ – the favoured construct of this moral crusade.

Some agencies have questioned the figures. A General Accountability Office (GAO) evaluation disputed the prevailing estimates for their ‘methodological weaknesses, gaps in data, and numerical discrepancies’. The GAO concluded that (i) ‘country data are generally not available, reliable, or comparable’, (ii) the ‘U.S. government has not yet established an effective mechanism for estimating the number of victims’, and (iii) the same is true for international non-governmental organizations (NGOs) working in the trafficking area.¹³ The Justice Department noted the disparity between the official figures and the number of victims identified, which was attributed to either faulty figures or insufficient enforcement efforts:

Most importantly, the government must address the incongruity between the estimated number of victims trafficked into the United States – between 14,500 and 17,500 [annually] – and the number of victims found – only 611 in the last four years [2001–2004] ... The stark difference between the two figures means that U.S. Government efforts are still not enough. In addition, the estimate should be evaluated to assure that it is accurate and reflects the number of actual victims.¹⁴

The 2008 *Trafficking in Persons* report by the State Department, for the first time, offered no specific number but instead used the fuzzy term ‘thousands’.¹⁵ The report also states that 1,379 trafficking victims were identified between 2001 and mid-2008, but this figure remains but a fraction of the number of persons allegedly trafficked into the United States during this time period (using the most conservative official figure: 14,500 × 7.5 years = 108,750).¹⁶

Crusade organizations and United States government agencies also claim that the number of trafficked victims is steadily increasing. A leader of the Polaris Project, for instance, claims that trafficking is ‘fastest growing crime worldwide’.¹⁷ Curiously, this claim contradicts the government’s own numbers on both domestic and international trafficking, which steadily declined during the eight years of the Bush administration.

13 General Accountability Office, *Human Trafficking: Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-trafficking Efforts Abroad* (2006), especially 2, 10, 3, 14.

14 US Department of Justice, *Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (2005) 4.

15 US Department of State, *Trafficking in Persons Report, 2008* (2009).

16 *id.*

17 Bradley Myles, Deputy Director of the Polaris Project, quoted in J. Iwasaki, ‘Human Trafficking Increasing Worldwide’ *Seattle Post-Intelligencer*, 4 August 2008.

Internationally, it is clear that sex trafficking has increased in *some* parts of the world, especially from the former Soviet Union and Eastern Europe. The break-up of the Soviet empire and declining living standards for many of its inhabitants has made such migration both much easier and more compelling than in the past. But an increase in trafficking after the demise of the Soviet Union does not mean that trafficking is growing now. Instead, it may have levelled off. A report by the International Organization for Migration points to this very possibility: the number of trafficked persons in south-eastern Europe that were identified and assisted remained virtually the same (declining slightly) between 2003 and 2004.¹⁸

Researchers have criticized the statistics proffered by activists, NGOs, and governments for their 'lack of methodological transparency' and source documentation,¹⁹ for being extrapolated from a few cases of identified victims (who are unrepresentative of the victim population),²⁰ and for the lack of a standard definition of 'victims' as a basis for estimating the magnitude of the problem.²¹ But these critiques have largely gone unheeded by Congress and the Bush administration. As a White House press officer stated, the issue is 'not about the numbers. It's really about the crime and how horrific it is. . . . How can we tolerate even a minimal number within our borders?'²² In other words, when the numbers are challenged, officials respond that the numbers are not important. Yet, the government continues to cite the high numbers as justification for spending huge amounts of money funding abolitionist organizations that are conducting 'research' on the problem and on enforcement efforts to identify and rescue victims in the United States and abroad, efforts that have thus far paid few dividends relative to the expenditures.²³

In a nutshell, *figures on the magnitude of the problem are totally unreliable*. Even general estimates are dubious, given the clandestine nature of the sex trade. There are several red flags: the official numbers have fluctuated radically over a short time period; relatively few victims of

18 International Organization for Migration, *Second Annual Report on Victims of Trafficking in South-Eastern Europe* (2005) 12. The numbers were 1,329 in 2003 and 1,227 in 2004.

19 L. Kelly, 'You Can Find Anything You Want: A Critical Reflection on Research on Trafficking in Persons within and into Europe' (2005) 43 *International Migration* 235, at 237.

20 G. Tyldum and A. Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking' (2005) 43 *International Migration* 17.

21 E. Gozdziaik and E. Collett, 'Research on Human Trafficking in North America: A Review of the Literature' (2005) 43 *International Migration* 99.

22 Tony Fratto, quoted in Markon, *op. cit.*, n. 11.

23 A. Farrell, J. McDevitt, and S. Fahy, *Understanding and Improving Law Enforcement Responses to Human Trafficking* (2008); M. Ditmore, *Kicking Down the Door: The Use of Raids to Fight Trafficking in Persons*, Sex Workers Project, New York (2009).

coercive trafficking have been located; and there is substantial slippage in how ‘trafficking’ is defined and how ‘victims’ are identified and certified as such.

1. *Complexities and grey areas*

Moral crusades paint problems in black and white, but the trafficking issue is full of nuances – complexities that are rejected by crusade leaders and by allied government agencies. One gray area is the issue of consent and intentionality. If the total number of trafficked persons is opaque, it is just as unclear how many individuals have been trafficked by force or deceit versus the number who have migrated with full information and consent regarding the type of work and nature of the working conditions. Crusade leaders typically lump these together or simply deny that anyone can consent to working in the sex industry.

Within the population of migrant women who have entered prostitution, there is a great deal of variation in their experiences of the migration process and complex relationships with intermediaries, ranging along a continuum. Migrants also hold diverse goals and desires, which need to be considered in relation to conditions in their home countries. As Julia O’Connell Davidson points out, even when migrants experience unpleasant or exploitative working conditions in the destination locale, some consider this ‘preferable to remaining at home, where threats to their security in the form of violence, exploitation, or straightforward starvation may be far greater’.²⁴ Laura Agustín concurs, describing both push and pull factors behind some migrants’ actions:

many people are fleeing from small-town prejudices, dead-end jobs, dangerous streets, and suffocating families. And some poorer people *like* the idea of being found beautiful or exotic abroad, exciting desire in others.²⁵

This is not to romanticize sex work, but it serves as a useful counterpoint to the *victim* trope presented by abolitionist forces, which is challenged by a growing body of research:

- An investigation of immigrant Korean massage parlour workers in New York, for instance, concluded: ‘invariably, the Korean women said they knew the kind of work they were expected to perform . . . The women had relative freedom of movement and had joined the sex business of their own free will . . . [They] had a lifestyle as prostitutes that did not fit the stereotype of the trafficked woman’.²⁶

24 J.O. Davidson, ‘Trafficking, Modern Slavery, and the Human Security Agenda’ (2008) 6 *Human Security J.* 8, at 9.

25 L.M. Agustín, *Sex at the Margins* (2007) 45–6.

26 A. DeStefano, *The War on Human Trafficking: U.S. Policy Assessed* (2007) 88.

- A study of Vietnamese migrants working in Cambodia found that almost all of them knew that they would work in a brothel there and their motivations consisted of ‘economic incentives, desire for an independent lifestyle, and dissatisfaction with rural life and agricultural labor’. After raids on the brothels by ‘rescue’ organizations, the women ‘usually returned to their brothel as quickly as possible’.²⁷
- In Australia, ‘the majority of women know they will be working in the sex industry and often decide to come to Australia in the belief that they will be able to make a substantial amount of money ... Few of the women would ever consider themselves sex slaves’.²⁸
- In Europe, research indicates that the women are ‘often aware of the sexual nature of the work ... Many migrants do know what is ahead of them, do earn a large amount of money in a short time selling sex, and do have control over their working condition’.²⁹ One investigation of trafficking from Eastern Europe to Holland found that few of the 72 women interviewed were coercively trafficked and that a large number had previously worked as prostitutes:

For most of the women, economic motives were decisive. The opportunity to earn a considerable amount of money in a short period of time was found to be irresistible ... In most cases recruiting was done by friends, acquaintances, or even family members.³⁰

These are not isolated findings; other research shows that many migrants sold sex prior to relocating or were well aware that they would be working in the sex industry in their new home. One analyst concludes that, ‘the majority of “trafficking victims” are aware that the jobs offered them are in the sex industry’.³¹ Whether or not this indeed characterizes the majority, it is clear that traffickers do not necessarily fit the ‘folk devil’ stereotype popularized by the anti-trafficking movement. Some facilitators are relatives, friends, or associates who make travel arrangements, obtain necessary documents, provide funds, and otherwise assist with migration. Many of the Vietnamese women working in Cambodian brothels, for

27 J. Busza, S. Castle, and A. Diarra, ‘Trafficking and Health’ (2004) 328 *Brit. Medical J.* 1369; see, also, the identical findings in T. Steinfatt, *Measuring the Number of Trafficked Women and Children in Cambodia* (2003) 23–4.

28 L. Meaker, ‘A Social Response to Transnational Prostitution in Queensland, Australia’ in *Transnational Prostitution*, eds. S. Thorbek and B. Pattanaik (2002) 61, 63.

29 L.M. Agustín, ‘Migrants in the Mistress’s House: Other Voices in the Trafficking Debate’ (2005) 12 *Social Politics* 96, at 98, 101.

30 J. Vocks and J. Nijboer, ‘The Promised Land: A Study of Trafficking in Women from Central and Eastern Europe to the Netherlands’ (2000) 8 *European J. of Criminal Policy and Research* 379, at 383, 384.

31 J. Doezeema, ‘Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women’ (2000) 18 *Gender Issues* 23, at 24.

instance, had been recruited and transported by their relatives, including mothers and aunts.³² These intermediaries have a qualitatively different relationship with migrants than do predators who use force or deception to lure victims into the trade.

In short, the evidence indicates that migration for sex work is a complex and diverse phenomenon. There are *several migration trajectories and diverse worker experiences*, ranging from highly coercive and exploitative to informed and conscious intentionality on the part of the migrant. Such complexities, nuances, and variations have been ignored or denied by abolitionist forces and by governments influenced by them.

CONFLATING TRAFFICKING WITH ALL OTHER SEX WORK

When a moral crusade achieves success with respect to its foundational objective, it may set its sights on other problems that it associates with its original *raison d'être* – the phenomenon of ‘domain expansion’. What began in the mid-1990s as a campaign against sex trafficking has steadily expanded over time. In addition, over time the focus of the crusade has shifted to ‘the demand’, that is, the customers, who are increasingly demonized and targeted for harsh penalties, as shown below.

1. *Targeting prostitution*

Religious conservatives have long denounced prostitution as perverse and sinful, a source of moral decay in society, and a threat to marriage because it breaks the link between sex, love, and reproduction. The anti-trafficking campaign has given these conservatives new opportunities to express these fears, which they do in their publications and websites and in the media. A government crackdown on prostitution ratifies the religious right’s views on sex and the family. Some feminist crusade leaders also champion rather traditional views of ‘proper’ sexuality. The founder of CATW, Kathy Barry, does so in a remarkable passage in her seminal abolitionist manifesto, *Female Sexual Slavery*:

We are really going back to the values women have always attached to sexuality, values that have been robbed from us, distorted and destroyed as we have been colonized through both sexual violence and so-called sexual liberation. They are the values and needs that connect sex with warmth, affection, love, caring ... Sexual values and the positive, constructive experience of sex *must be based in intimacy* ... It follows then that *sex cannot be purchased, legally acquired, or seized by force*.³³

³² Steinfatt, op. cit., n. 27, p. 24.

³³ K. Barry, *Female Sexual Slavery* (1979) 227, 230.

And another CATW leader, Janice Raymond, seems to agree, when she states that prostitutes' customers 'lack responsibility, intimacy, emotion' in their sexual behaviour.³⁴

Yet, the core abolitionist feminist tenet is that prostitution is an institution of male domination and exploitation of women. CATW's website is unequivocal: 'all prostitution exploits women, regardless of women's consent. Prostitution affects all women, justifies the sale of any woman, and reduces all women to sex'.³⁵ It can never qualify as a conventional commercial exchange like other service work nor can it ever be organized in a way that advances workers' interests. As Laura Lederer insists:

This is not a legitimate form of labour ... It can never be a legitimate way to make a living because it's inherently harmful for men, women, and children ... This whole commercial sex industry is a human-rights abuse.³⁶

Abolitionist groups have fought for policies that target sex trafficking more than labour trafficking. A journalist sympathetic to the crusade nevertheless took issue with this exclusive focus on sex trafficking:

To the dominant coalition ... the only slaves – anyway, the only slaves worthy of American attention – were prostitutes. And all prostitutes were slaves. There was a circular logic that dumbfounded those who regularly aided real slaves, real prostitutes, and really enslaved prostitutes.³⁷

Abolitionists were also intent on linking sex trafficking to prostitution.³⁸ The central premise is that *sex trafficking is inseparable from prostitution, and prostitution is evil by definition*. Not only are the two conflated, but activists also claim that 'most' sex workers have been trafficked.³⁹ Such linkage is a transparent attempt to lay the groundwork for the crusade's ultimate goal, that is, to eliminate the entire sex trade. Activist Donna Hughes, for example, calls for 're-linking trafficking and prostitution, and combating the commercial sex trade as a whole'.⁴⁰

34 J. Raymond, 'Prostitution on Demand: Legalizing the Buyers as Sexual Consumers' (2004) 10 *Violence Against Women* 1182.

35 Available at: <www.catwinternational.org>.

36 Lederer, quoted in B. Jones, 'Trafficking Cops' *World Magazine*, 15 June 2002. Lederer was a leader in the anti-porn movement in the 1980s. Between 2001 and 2009, she was a senior advisor in the US State Department's Trafficking in Persons office. In 2009, she became Vice-president of Global Centurion, an organization fighting sex trafficking.

37 E.B. Skinner, *A Crime So Monstrous: Face-to-Face with Modern-Day Slavery* (2008) 289.

38 See, for example, M. O'Connor and G. Healy, *The Links between Prostitution and Sex Trafficking: A Briefing Handbook*, CATW and European Women's Lobby (2006); see, also, the article by CATW co-director Dorchen Leidholdt, 'Prostitution and Trafficking in Women: An Intimate Relationship' (2004) 2 *J. of Trauma Practice* 167.

39 D. Hughes, 'Accommodation or Abolition?' *National Rev. Online*, 1 May 2003, 1.

40 D. Hughes, 'Wolves in Sheep's Clothing: No Way to End Sex Trafficking' *National Review Online*, 9 October 2002, 2.

The American government has fully adopted the crusade's conflation of trafficking and prostitution. The State Department's website, 'The Link between Prostitution and Sex Trafficking', draws this 'link' boldly. The site proclaims that prostitution 'is inherently harmful'; that it 'leaves women and children physically, mentally, emotionally, and spiritually devastated'; that legal prostitution 'creates a safe haven for criminals who traffic people into prostitution'; and that prostitution is 'the oldest form of oppression'.⁴¹ The site documents these notions with footnotes exclusively to writings by leading abolitionists, including Janice Raymond, Melissa Farley, Donna Hughes, and Gunilla Ekberg.⁴² Some government officials privately questioned the crusade's depiction of prostitution,⁴³ but this internal questioning had no effect on the Bush government's official position that prostitution was an unqualified evil.

What is missing from this discourse is recognition that prostitution and trafficking differ substantively: prostitution is a type of labour, whereas migration and trafficking involve the process of relocation to access a market. Both empirically and conceptually, it is inappropriate to fuse the two.

The slippage between trafficking and prostitution is facilitated by demonization of the client. The identification of 'folk devils' is a staple of moral crusades, and this is certainly the case here.⁴⁴ The initial focus on traffickers has steadily expanded to include customers ('the demand'), who are seen as the root cause of trafficking. Some crusade members define both traffickers and customers as 'predators'. Melissa Farley declares that clients 'are not just naughty boys who need their wrists slapped. They could be more accurately described as predators'.⁴⁵ A recent report on clients of prostitutes in Scotland proclaims that 'prostitution is best understood as a transaction in which there are two roles: exploiter/predator and victim/prey'; the report advocates putting customers 'in the same category as rapists, paedophiles, and other social undesirables'.⁴⁶ Donna Hughes offers a blanket

41 US Department of State, 'The Link between Prostitution and Sex Trafficking' (2004) 1, available at <www.state.gov/documents/organization/38901.pdf>.

42 Gunilla Ekberg is now the co-executive director of CATW-International and is based in Brussels. Previously she was active in the successful campaign to criminalize clients in Sweden.

43 Skinner (op. cit., n. 37, p. 283) writes:

But privately, Justice Department officials who actually dealt with victims were galled that the coalition expected them to find moral equivalency in the victimization of a \$90,000-dollar-a-year call girl in Georgetown, who kept her own income and worked for herself, and a fourteen-year-old girl, raped fifteen times a day in a fetid trailer in a migrant labor camp.

44 Cohen, op. cit., n. 7.

45 Melissa Farley, quoted in A. Brown, 'Sex Industry in Scotland: Inside the Deluded Minds of the Punters' *Daily Record*, 28 April 2008.

46 J. Macleod, M. Farley, L. Anderson, and J. Golding, *Challenging Men's Demand for Prostitution in Scotland*, Women's Support Project (2008) 30, 27.

indictment: ‘Men who purchase sex acts do not respect women, nor do they want to respect women’.⁴⁷ The very title of Hughes’ report, *The Demand for Victims of Sex Trafficking*, seems to imply that customers are intentionally seeking trafficked ‘victims’.

It is true that some clients are indeed predators, but the crusade’s sweeping claims are caricatures. Research on customers cautions against gross generalizations: they vary considerably in background characteristics, behaviour, and motives for buying sexual services.⁴⁸ Some customers act violently and some seek out under-age prostitutes, but abusive clients appear to be in the minority.⁴⁹ In one study, only 8 per cent of arrested customers had a previous conviction for a violent or sexual offence.⁵⁰

The focus on prostitution has had important policy outcomes in the United States. First, most of the enforcement efforts against trafficking have centered on prostitution cases, with much less attention to labour trafficking.⁵¹ Since 2006, the Justice Department has created 42 task forces (multi-agency law enforcement units) responsible for identifying trafficking victims, but some enforcement agents equate sex trafficking with prostitution, as a recent assessment revealed: ‘some local task forces have focused exclusively on prostitution, making no distinction between prostitution and sex trafficking’.⁵²

Second, there has been a crackdown on ‘demand’. The 2005 Trafficking Victims Prevention Reauthorization Act (TVPRA) authorized \$25 million per year to be distributed to police departments for expanded arrests of those who ‘purchase commercial sex acts’ and other efforts against clients, such as funding the creation of john schools,⁵³ which are day-long rehabilitation programmes for clients, designed to educate arrested customers about the harms of prostitution and deter future offending. As of 2008, forty American cities had created such schools, which have also been introduced in Britain and Canada.⁵⁴ In just one city, San Francisco, more than 5,700 arrested clients passed through its john school between 1995 and early 2008.⁵⁵

The 2008 TVPRA provides resources for additional enforcement. It contains funding for police data-gathering on the sex trade, studies of ‘the

47 D. Hughes, *The Demand for Victims of Sex Trafficking* (2005) 7.

48 M. Monto, ‘Prostitutes’ Customers: Motives and Misconceptions’ in Weitzer, op. cit., n. 3; T. Sanders, *Paying for Pleasure: Men who Buy Sex* (2008); J. Lowman and C. Atchison, ‘Men Who Buy Sex’ (2006) 43 *Canadian Rev. of Sociology and Anthropology* 281.

49 Monto, id.; Lowman and Atchison, id.

50 B. Brooks-Gordon, *The Price of Sex: Prostitution, Policy, and Society* (2006).

51 A. Farrell et al., *Understanding and Improving Law Enforcement Responses* (2008),

52 Women’s Commission for Refugee Women and Children, *The U.S. Response to Human Trafficking: An Unbalanced Approach* (2007) 14.

53 TVPRA 2005, s. 204(1b, 1c)

54 M. Ohtake, ‘A School for Johns’ *Newsweek*, 24 July 2008.

55 id.

use of Internet-based businesses and services by criminal actors in the sex industry’, and for dissemination of best practices for apprehending and prosecuting those who use the Internet for purposes of prostitution or trafficking.⁵⁶ This clearly sets the stage for increased arrests of persons who advertise sexual services online and who avail themselves of such services. Many local police departments around the country have increasingly monitored Internet postings in recent years, using them to arrest providers.

A third important outcome centres on eligibility restrictions for government funding. Activists successfully pressed the United States government to adopt a policy denying funding to organizations that were not sufficiently committed to eradicating prostitution. Today, to be eligible for United States funding, any foreign NGO working on the trafficking front must declare its opposition to prostitution and especially legal prostitution. This requirement was added to the 2003 TVPRA, and it applies to *any* funds or activities of the organization, including funds that come from sources other than the government. The State Department’s policy is clear: ‘no U.S. grant funds should be awarded to foreign non-governmental organizations that support legal state-regulated prostitution’.⁵⁷ This, despite the fact that the Justice Department had lobbied against the measure, questioning its constitutionality.⁵⁸ Furthermore, the ban applies to anyone, including Americans, who applies for funding to conduct research on trafficking.⁵⁹

Similarly, the 2003 Global AIDS Act requires that any international organization working to curb AIDS must ‘have a policy explicitly opposing prostitution and sex trafficking’ if it wishes to receive such funding. This applies to American groups in so far as they work with or subcontract work to international organizations. Organizations that take no position on prosti-

56 TVPRA 2008, s. 237(c).

57 US Department of State, *op. cit.*, n. 41, p. 2.

58 A letter from the Justice Department’s Office of Legislative Affairs to Rep. James Sensenbrenner, chair of the Judiciary Committee in the House of Representatives (dated 24 September 2003), accepted that the government had the right to prohibit organizations from using government funds to promote prostitution, but opposed the prohibition on providing grants to organizations if they used *separate, non-government money* in support of prostitution:

There is substantial doubt as to whether the Federal Government may restrict a domestic grant recipient participating in a Federal anti-trafficking program from using its own private, segregated funds to promote, support, or advocate the legalization or practice of prostitution. . . . We believe that there is serious doubt as to whether that provision [in TVPRA 2003] would survive judicial scrutiny if challenged in court. In particular, we note that the prohibition on grant recipients using their own private, segregated funds to promote the legalization of prostitution, as opposed to the practice of prostitution, would be particularly vulnerable to legal challenge.

Because of these ‘serious First Amendment concerns,’ the Justice Department recommended that this provision be deleted from the Bill.

59 National Institute of Justice, *Solicitation: Trafficking in Human Beings Research and Comprehensive Literature Review* (2007) 4.

tution as well as those that favour decriminalization or legalization are thus ineligible for government funding.⁶⁰ Failure to do so results in summary denial of funding.

These funding restrictions cannot help but skew research and intervention in one direction, eliminating consideration of competing points of view and further privileging and institutionalizing the abolitionist perspective. In May 2005, 171 American and foreign organizations signed a letter to President Bush opposing the anti-prostitution pledge because they believe the policy interferes with promising interventions that require building trust with sex workers. Because of the restriction, several NGOs have declined to apply for government funding.

Legal prostitution systems are a prime target. CATW's mission is broad: to 'challenge acceptance of the sex industry, normalisation of prostitution as work, and to de-romanticise legalisation initiatives in various countries'.⁶¹ Legalization is claimed to pose a symbolic threat to society, by giving the state's blessing to an institution that oppresses women, and legalization also allegedly increases trafficking, by removing the constraints on a formerly illegal and circumscribed enterprise. CATW's co-director, Janice Raymond, declares that 'legalized or decriminalized prostitution industries are one of the root causes of sex trafficking'.⁶² And Linda Smith, director of Shared Hope International, testified in Congress that the government should 'consider countries with legalised or tolerated prostitution as having laws that are insufficient efforts to eliminate trafficking'.⁶³ Concerned Women for America claims that 'legalising prostitution does not remedy the problem of sex trafficking but rather increases it'.⁶⁴

The state of Nevada is the only site in the United States where prostitution is legal and regulated by the government, and therefore has become a target of abolitionists. These brothels stand out as dens of iniquity ripe for criminalization. The groundwork for criminalization was laid in a recent State Department-funded investigation of Nevada's brothels by anti-prostitution activist Melissa Farley. Her report goes out of its way to demonize the state's legal brothels, and has been criticized by scholars who have studied the brothels for over a decade.⁶⁵ I describe Farley's report in

60 See N. Masenior and C. Beyrer, 'The U.S. Anti-Prostitution Pledge: First Amendment Challenges and Public Health Priorities' (2007) 4 *PLoS Medicine* 1158.

61 Available at: <www.catwinternational.org>.

62 J. Raymond, 'Ten Reasons for Not Legalizing Prostitution' (2003) 2 *J. of Trauma Practice* 315, at 317.

63 L. Smith, Testimony before Committee on International Relations, House of Representatives, Hearing on the State Department's *Trafficking in Persons Report*, 19 June 2002, 66.

64 Available at: <www.cwfa.org>.

65 K. Hausbeck, B. Brents, and C. Jackson, 'Vegas and the Sex Industry: Don't Make Assumptions about the Choices Women Make' *Las Vegas Rev. J.*, 16 September 2007.

some detail here because it was publicized and praised in the media, including the influential *New York Times*, and was given the stamp of credibility when it was published as an official State Department report. The report is saturated with wild claims based on anecdotes and flawed information, typical of Farley's writings.⁶⁶ First, Farley provides no evidence of trafficking into the brothels and relies instead on a few individuals' perceptions to make this connection:

Women are trafficked from other countries into Nevada's legal brothels ... In Nevada, twenty seven per cent of our forty five interviewees [or just twelve individuals] in the Nevada legal brothels *believed* that there were *undocumented immigrants* in the legal brothels. Another eleven per cent said they were uncertain, thus as many as thirty eight per cent of the women we interviewed *may have known* of internationally trafficked women in Nevada legal brothel prostitution.⁶⁷

Another way of reporting this 'finding' is that as many as 62 per cent did *not* believe that women were trafficked into the brothels, while the remainder either did not have an opinion or believed that there were undocumented immigrants, who are not necessarily 'trafficked'. Interestingly, Farley converts the *beliefs* of a *minority* into *evidence* of trafficking. Elsewhere, Farley writes that a few women in one brothel told her that women in another brothel had been trafficked from China. Instead of treating this as hearsay, Farley presents this as factual and calls the women who told her this story 'witnesses', lending their statements an aura of credibility.⁶⁸

Second, Farley twists findings to fit her abolitionist orientation. In interviews with some workers at eight of Nevada's thirty legal brothels, she states, 'I knew that they would minimise how bad it was'.⁶⁹ If the respondent did not describe working in a brothel as 'bad', they were in denial, and Farley sought to penetrate this barrier: 'we were asking the women to briefly remove a mask that was crucial to their psychological survival'.⁷⁰ She also asserts that 'most' of the women working in the legal brothels had pimps, despite the fact that the women were 'reluctant to admit that their boyfriends and husbands were pimping them'.⁷¹ And 'a surprisingly low percentage – thirty three per cent – of our interviewees in the legal brothels reported sexual abuse in childhood', a percentage that 'is lower than the likely actual incidence of sexual abuse because of symptoms of numbing, avoidance, and dissociation among these women' or discomfort discussing such experiences.⁷² In citing research by Brents and Hausbeck that concluded that the brothels 'offer the

66 See the critiques of Farley's previous work in Weitzer, op. cit., n. 8.

67 M. Farley, *Prostitution and Trafficking in Nevada: Making the Connections* (2007) 118, 119. Emphasis added.

68 *id.*, p. 120

69 *id.*, p. 22.

70 *id.*

71 *id.*, p. 31.

72 *id.*, p. 33.

safest environment available for women to sell consensual sex acts for money',⁷³ Farley dismisses their findings by arguing that 'safety is relative, given that all prostitution is associated with a high likelihood of violence'.⁷⁴ Evidence that contradicts her position is summarily discounted.

What about legal systems in other nations? The State Department's own assessments appear to undercut the notion that legal prostitution systems are a magnet for sex trafficking. In its annual *Trafficking in Persons Report*, several nations where prostitution is legal (Australia, Germany, the Netherlands, New Zealand) were found to 'fully comply with minimum standards for the elimination of trafficking'.⁷⁵ Moreover, the 2005 *Report* reveals that the Dutch authorities report a 'decrease in trafficking in the legal sector', a finding confirmed by other analysts.⁷⁶ Rather than being a magnet attracting migrants into a country, it appears that legal prostitution may help *decrease* trafficking due to increased oversight. Moreover:

it is the prohibition of prostitution and restrictions on travel which attract organised crime and create the possibilities for large profits, as well as creating the prostitutes' need for protection and assistance.⁷⁷

As one analyst states:

Traffickers take advantage of the illegality of commercial sex work and migration, and are able to exert an undue amount of power and control over [migrants] . . . In such cases, it is the laws that prevent legal commercial sex work and immigration that form the major obstacles.⁷⁸

In addition to potentially discouraging trafficking, legal prostitution can be organized in a way that enhances workers' safety, health, and job satisfaction – as seems to be borne out in several nations. These systems are not problem-free, but the evidence from these sites contrasts strikingly with the image proffered by the anti-prostitution crusade.⁷⁹

73 B. Brents and K. Hausbeck, 'Violence and Legalized Brothel Prostitution in Nevada' (2005) 20 *J. of Interpersonal Violence* 289.

74 Farley, *op. cit.*, n. 67, p. 20.

75 US Department of State, *Trafficking in Persons Report* (annual publication).

76 Transcrime, *Study on National Legislation on Prostitution and the Trafficking in Women and Children*, Report to the European Parliament (2005) 121. There has also been an overall decrease in prostitution establishments (brothels, window units) since legalization in 2000 due to increased government monitoring.

77 A. Murray, 'Debt Bondage and Trafficking' in *Global Sex Workers*, eds. K. Kempadoo and J. Doezema (1998) 60.

78 K. Kempadoo, 'Introduction: Globalizing Sex Workers' Rights' in Kempadoo and Doezema, *id.*, p. 17.

79 The evidence for this is reviewed in Weitzer, *op. cit.*, n. 8.

2. Targeting stripping and pornography

Domain expansion is broader than prostitution. Activists have pressed the government to criminalize ‘the commercial sex trade as a whole’,⁸⁰ and they have met with some success thus far. The key legislation on sex trafficking defines ‘commercial sexual activities’ as ‘any sex act on account of which anything of value is given to, or received by, any person’.⁸¹ One purpose of the 2005 End Demand for Sex Trafficking Bill was to ‘combat commercial sexual activities’ in general, because ‘commercial sexual activities have a devastating impact on society. The sex trade has a dehumanising effect on all involved’. The bill targeted a wide variety of sex acts, such as lap dancing in strip clubs, legal brothel prostitution in Nevada, and pornography. Parts of the End Demand Bill were included in TVPRA 2005, which contains a section that repeatedly refers to the need to investigate and combat ‘trafficking in persons and demand for commercial sex acts in the United States’,⁸² – effectively blurring the line between trafficking and commercial sex.

Donna Hughes’s report on trafficking (funded by the State Department) includes sections on pornography and stripping.⁸³ Her report claims that ‘the introduction of lap dancing has almost eliminated the distinction between dancing and prostitution’, and also that women and girls are trafficked to perform at strip clubs (though she found only six cases of this in the United States during 1998–2005).⁸⁴ Other crusade members have made similar claims about strip clubs, which in the future may result in increased government surveillance or control. Hughes maintains that strip clubs are ‘attractive to some criminals because they assume that since stripping is legal they will be less likely to be caught trafficking women into these markets’.⁸⁵ This, despite the overwhelming evidence that organized crime thrives under conditions where a particular vice is criminalized – amply demonstrated by drug, gambling, and alcohol prohibition – and tends to decline when it is legalized.⁸⁶ Organized crime may be reduced in legal prostitution as well. In Queensland, Australia, a government evaluation concluded that organized crime had been largely eliminated in the legal brothels, and in New Zealand, a government study found no evidence of criminal involvement in prostitution.⁸⁷ Elsewhere, organized crime may be

80 Hughes, *op. cit.*, n. 40, p. 2.

81 TVPA 2000, s. 103(3); TVPRA 2005, s. 207(3).

82 TVPRA 2005, s. 201a.

83 Hughes, *op. cit.*, n. 47. Hughes received \$108,478 from the State Department to write this report: Attorney General, *Report to Congress on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2004* (2005).

84 *id.*, pp. 22, 26.

85 *id.*, p. 22.

86 See, for example, the voluminous literature on Prohibition in the United States.

87 Crime and Misconduct Commission, *Regulating Prostitution: An Evaluation of the Prostitution Act 1999, Queensland* (2004) xii; Prostitution Law Review Committee,

more resilient in a particular vice sector, but the claim that it necessarily increases when prostitution is legalized, as abolitionists claim, is dubious.⁸⁸

Pornography is also under new scrutiny. Most of the groups involved in the anti-prostitution crusade are equally alarmed by pornography, and they have begun to associate it with trafficking. In an article entitled 'Pornography as Trafficking', abolitionist icon Catharine MacKinnon equates the distribution of pornography with the trafficking of persons depicted in pornography:

In the resulting materials, these people are then conveyed and sold for a buyer's sexual use . . . Each time the pornography is commercially exchanged, the trafficking continues as the women and children in it are transported and provided for sex, sold, and bought again. Doing all these things for the purpose of exploiting the prostitution of others – which pornography intrinsically does – makes it trafficking in persons.⁸⁹

The slippage between 'materials' and 'persons' is striking in this formulation. Conflation is even more conspicuous in MacKinnon's circular argument that 'the pornography industry, in production, creates demand for prostitution, hence for trafficking, because it is itself a form of prostitution and trafficking'.⁹⁰

Pornography became widely available during the 1990s via video, cable TV, and the Internet. The expanding market of sexual material heightened anxieties within conservative and prohibitionist feminist quarters, whose leaders complained that the Clinton administration was ignoring the growing 'threat' to traditional values and/or to women.⁹¹ Anti-porn groups had hoped that the inauguration of President Bush would result in a robust crackdown on pornography, but this did not materialize until his second term in office. Two years after Bush took office, a right-wing organization, Concerned Women for America, analysed the Justice Department's (DOJ) record to date, and complained that it was only targeting the most extreme kinds of porn:

Until the DOJ vigorously and consistently targets the major hard-core porn producers and distributors of prosecutable but less deviant material, the industry will continue to make billions exploiting women, addicting men, exposing children, destroying marriages, and polluting the culture while laughing all the way to the bank.⁹²

Report of the Prostitution Law Review Committee on the Operation of the Prostitution Reform Act 2003 (2008) 163–4.

88 Mary Sullivan, a leader of Australia's branch of CATW, claims that organized crime is 'inherent' whether prostitution is illegal or legal. M. Sullivan, *What Happens when Prostitution Becomes Work? An Update on Legalization of Prostitution in Australia* (2005) 4.

89 C. MacKinnon, 'Pornography as Trafficking' (2005) 26 *Michigan J. of International Law* 993, at 993, 1004.

90 *id.*, p. 999.

91 Public Broadcasting Service, 'American Porn', *Frontline* television series (2006).

92 J. LaRue, 'DOJ Releases List of "Obscenity Prosecutions During This Administration"', Concerned Women for America, <www.cfw.org>, 18 December 2003.

Attorney General John Ashcroft held private meetings with conservative groups in 2002 to assuage their concerns, and Attorney General Alberto Gonzales created a new Justice Department unit in 2005 (the Obscenity Prosecution Task Force), but anti-porn activists remained unsatisfied.⁹³ A 2007 letter to President Bush, signed by over fifty major players in the anti-porn movement, urged him to wage war on pornography. The letter writers were alarmed at the ‘explosive increase’ in the availability of pornography, which they associated with a host of harms. The letter argues that ‘trafficking in women and children’ is ‘linked to the spread of obscenity’ and that pornography ‘corrupts children, ruins marriages, contributes to sex crimes against children and adults, and undermines the right of Americans to live in a decent society’.⁹⁴ The letter complains that the Justice Department has been lax in enforcing the obscenity laws, demands intensified prosecution of pornography cases, and asks Bush ‘to make fighting obscenity one of your top priorities’. Two years earlier, one of the signatories, Patrick Trueman (former chief of the Justice Department’s obscenity unit and now legal counsel for the Family Research Council), testified before Congress that ‘pornography is closely linked to an increase in prostitution, child prostitution, and human trafficking . . . Pornography is a powerful factor in creating the demand for illicit sex’.⁹⁵ And Donna Hughes asserted that the producers of pornography ‘often rely on trafficked victims’.⁹⁶ These charges were made without supporting evidence.

It is clear that the perceived ‘mainstreaming’ or ‘normalization’ of pornography is the driving force behind activists’ robust campaign to criminalize its production, distribution, and possession. As the leader of Morality in Media stated:

if we could just send a message to people that this is not what sex is all about, we will have won more than half the battle. Whether you’re a creationist or a Darwinist, sex is linked to something greater than masturbating to depictions of other people having sex. It’s linked to a person. We have a capacity to love.⁹⁷

93 ‘Justice Department Sets Sights on Mainstream Porn’ *Pittsburgh Post-Gazette*, 11 April 2004.

94 ‘Appointment of New U.S. Attorney General and Other Matters Regarding Vigorous Enforcement of Federal Obscenity Laws’, 10 September 2007. <http://www.moralityinmedia.org/obscenityEnforcement/Letter-Regarding-Appointment-of-New-U.S.-Atty-General_10Sep2007.pdf>. The letter was signed by, among others, Donna Hughes, Patrick Trueman, Morality in Media, Family Research Council, Concerned Women for America, Focus on the Family, American Family Association, American Decency Association, and Citizens for Community Values.

95 P. Trueman, Testimony, US Senate Subcommittee on the Constitution, Civil Rights, and Property Rights, Hearing on Obscenity Prosecution, 16 March 2005.

96 Hughes, op. cit., n. 47, p. 26.

97 Robert Peters, quoted in G. Beato, ‘Xtreme Measures: Washington’s New Crackdown on Pornography’ *ReasonOnline*, May 2004.

Pressure from these individuals and groups helps to explain recent government actions regarding pornography. For the most part, the law has remained unchanged (the 1973 *Miller* decision – stipulating that local ‘community standards’ should be used to decide whether something is obscene – remains the cornerstone of pornography law),⁹⁸ but law enforcement has expanded. The Justice Department recently launched a new crackdown on pornography, including greater resources targeting adult pornography (previous practice centered on child porn).⁹⁹ The Justice Department also created a new unit (the Obscenity Prosecution Task Force) alongside the existing obscenity branch.¹⁰⁰ The head of the new unit, Brent Ward, was United States Attorney in Utah during the Reagan administration, during which he vigorously prosecuted distributors of pornography, attempted to impose new restrictions on strip clubs, prosecuted a phone sex company, and forced Utah’s two remaining adult theatres to close.¹⁰¹ Another major figure is Bruce Taylor, who served in the Justice Department’s obscenity unit in the Reagan years, was a lawyer for the nation’s premier anti-pornography group (Citizens for Decency through Law, founded in 1956), and was president of another anti-porn organization (the National Law Center for Children and Families). He is now the obscenity unit’s senior legal counsel.¹⁰² The appointments of Taylor and Ward were praised by right-wing groups that had pressed the Bush administration to launch a new war on porn.¹⁰³

An intriguing arrangement is the link between the Justice Department and a leading anti-porn organization, Morality in Media (MIM). The Justice Department website contains a section, *What Citizens Can Do About Obscenity*, which encourages people to report ‘hard-core pornography’. Since 2004, visitors who click on that icon are redirected to ObscenityCrimes.org, whose employees then conduct a review. This website is run by MIM, which received two large grants to fund the work of two retired police officers who review the complaints.¹⁰⁴ In the past few years, 67,000 citizen complaints have been passed from MIM to the Justice Department.¹⁰⁵ That the Department’s website provides links to MIM appears to reflect a seamless convergence of interests with a very partisan organization.

98 This is in contrast to Britain, where recent legislation targets ‘extreme pornography’. See F. Attwood and C. Smith, ‘Extreme Concern’, this volume, pp. 171–88.

99 ‘U.S. Attorney’s Porn Fight Gets Bad Reviews’ *Daily Business Rev.*, 30 August 2005.

100 US Department of Justice, ‘Obscenity Prosecution Task Force Established to Investigate, Prosecute Purveyors of Obscene Materials’, Press Release, 5 May 2005; R. Schmitt, ‘U.S. Cracking Down on Porn’ *Deseret News*, 15 February 2004.

101 ‘Nation’s Porn Prosecutor Fronts War against Obscenity’ *Salt Lake Tribune*, 26 February 2007.

102 Schmitt, op. cit., n. 100.

103 ‘Porn Industry Moans for Good Reason’ at <www.cwfa.org>, 24 February 2004.

104 ‘Outsourcing Justice? That’s Obscene’ *Washington Post*, 15 July 2007.

105 ‘Federal Effort on Web Obscenity Shows Few Results’ *New York Times*, 10 August 2007.

Whereas the Clinton administration prosecuted almost no cases involving adult obscenity, Bush launched several prosecutions. Between 2001 and May 2005, prosecution resulted in convictions of forty individuals and businesses, with an additional twenty indictments pending.¹⁰⁶ This record did not satisfy anti-porn activists. Former Justice Department official Patrick Trueman complained:

The few cases that have been prosecuted involve extreme pornography, depicting violence, defecation, or animals. Most people have no interest in this stuff, and it's not the business the mainstream porn industry is in. By only pursuing extreme obscenity, the mainstream porn industry is given a green light. There's this perception that anything other than extreme pornography is legal, and it's not. The fact that it's not being prosecuted does not make it legal ... Most porn violates community standards; that makes it illegal, and it's easy to prove.¹⁰⁷

Trueman went on to describe the dangers of mainstreaming:

The mainstream porn industry has been left to do pretty much whatever it wants. Porn is now so pervasive that our college students don't even know how to date, because pornography has conditioned young men to believe that they're entitled to sexual services from women without the need for relationship. They're on such a steady diet of porn that they can't distinguish between love and sexual desire.¹⁰⁸

In a nutshell, the trend in anti-porn enforcement under Bush can be characterized as both slow to materialize and less far-reaching than crusade activists had hoped for, yet greater than under the Clinton administration. Government anti-pornography efforts under Bush were less intensive than the major legal innovations and robust enforcement actions against prostitution and trafficking, but were nonetheless a significant part of the state's broad targeting of the sex industry in general.

Six months into the Obama administration, little has changed. Brent Ward remains in charge of the Obscenity Prosecution Task Force, and Justice Department prosecutors continued to work on cases inherited from the previous government.¹⁰⁹ In July 2009, a large coalition of anti-porn organizations, headed by the Alliance Defense Fund, requested a meeting with President Obama's new Attorney General, Eric Holder. Their letter to Holder illustrates, again, my argument that the current abolitionist crusade is a direct response to the perceived unravelling of traditional sexual mores due to the flourishing of sexual commerce and the alleged sexualization of the larger culture:

106 'Bush Administration Stepping Up Obscenity Prosecutions' *USA Today*, 4 May 2005.

107 Patrick Trueman, quoted in W. Laugesen, 'Pornography Crackdown' *National Catholic Register*, 22 April 2007.

108 id.

109 'Porn Prosecution Fuels Debate' *Politico*, 31 July 2009.

Since the advent of the Internet, illegal pornography has flooded homes, businesses, public libraries, and even schools. The results have been devastating to America. Pornography addiction is now common among men, women, and even many children. Children are creating cell phone pornography, in a new trend called 'sexting'. Pornography use is now a significant factor in divorce. Hotels, motels, cable and satellite companies, and other businesses are making tremendous profits by offering illegal, obscene pornography. America is becoming a 'pornified culture'. . . . We are compelled to write to you and ask for an expansion of the Administration's efforts against the scourge of pornography.¹¹⁰

The letter writers oppose both obscene material (that is, pornography that has been judged obscene by a jury) and the 'scourge' of pornography in general, including legal porn.

CONCLUSION

The evidence presented here shows that the dominant forces in the anti-trafficking, abolitionist crusade and their allies in the United States government are committed to a far-reaching attack on commercial sex – prostitution, strip clubs, pornography – all of which are associated with trafficking and 'sexual slavery'. A crackdown on, if not outright criminalization of, pornography and strip clubs becomes more palatable to mainstream organizations and moderate politicians if they can be linked to sex trafficking, that is, if they can be convinced that sex workers in these two sectors have been coerced and trafficked. Such domain expansion has been a gradual process. The initial, exclusive focus on trafficking was subsequently broadened as activists began to insist that all sectors of the commercial sex industry should be targeted for repression. Evidence of this domain expansion can be found in the areas designated for increased scrutiny in the End Demand Bill, the growing crackdown on domestic prostitution provided for in the 2005 and 2008 TVPRA, the requirement that those seeking government funding for their research or interventions on trafficking or AIDS sign an anti-prostitution pledge, and the Justice Department's increasing investigation of producers and distributors of adult pornography under the obscenity laws.

This moral crusade has succeeded, remarkably quickly, in transforming itself from social movement into a project of the United States government – becoming almost fully institutionalized in official discourse, legislation, and enforcement practices under the Bush administration. During this period, there has been an extraordinary osmosis between crusade and government ideology and policy initiatives. As I have shown here and elsewhere, the success of this movement is largely due to the convergence of interests and

110 Letter from Alliance Defense Fund to Attorney General Eric Holder, 15 July 2009.

organizational interpenetration between crusade groups and the Bush government, quite similar to the partnership between anti-pornography organizations and the Reagan administration in the mid-1980s.¹¹¹ The advent of a new government under President Obama is unlikely to alter the status quo, given how far-reaching the institutional investment in abolitionism has become. It is likely that right-wing political and religious forces will have less access to the state than under the Bush administration, but the laws, agency apparatuses, and enforcement machinery are likely to remain firmly in place for the foreseeable future.

111 Weitzer, *op. cit.*, n. 8.