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Fuelling traffic: abolitionist claims of a causal nexus between legalised prostitution and trafficking

Introduction

Interest in the phenomenon of human trafficking has exploded in recent decades, with hundreds of studies attempting to measure, characterise and understand this ‘modern form of slavery’. Legislators have also struggled to understand the scale and nature of the problem of human trafficking in order to establish effective prevention and prosecution initiatives. In the midst of these efforts, anti-prostitution – or abolitionist – activists have characterised the problem of sex trafficking as one fundamentally influenced by markets in destination countries. They have argued that demand for sexual services and the normalisation of prostitution through legalisation or decriminalisation act as ‘pull’ factors that fuel the global trade in women and children.

Abolitionist advocates typically describe the relationship between prostitution and sex trafficking as one of cause and effect, claiming that legalised prostitution creates the conditions for sex trafficking to flourish [18, 22, 40]. This claim has been put forward in debates leading to the development of anti-trafficking legislation in Australia, the United States, the Netherlands, the UK, Sweden and New Zealand [34, 50].

This research does not seek to prove or disprove this claim. Nor does it seek to add to the extensive literature attempting to quantify the phenomenon of human trafficking. This paper instead critically analyses abolitionist attempts to substantiate a causal relationship between legalised prostitution and sex trafficking, and identifies the extent to which decision-makers have been persuaded by these efforts.

This paper firstly identifies the competing perspectives evident in public debates on trafficking and its relationship to prostitution. Secondly, it explores the context within which activists attempt to substantiate their claim by highlighting several challenges inherent in determining the scope and nature of human trafficking. Thirdly, this paper highlights the efforts of abolitionist campaigners to prove

their claim that legalised prostitution leads to increased trafficking during the Australian Parliamentary Inquiries and US Congressional hearings. Finally, it concludes by exploring the extent to which legislators relied on evidence in policy-making, and identifies some potential dangers in the perpetuation of false statistics. This paper argues that abolitionists' attempts to prove that legalised prostitution leads to increased trafficking are fundamentally undermined by unreliable data and inconclusive evidence. Despite this, some decision-makers have relied upon unreliable evidence, contributing to the perpetuation of an inaccurate understanding of the phenomenon of human trafficking.

Methodology

This research is drawn from a comparative study of the development of anti-trafficking legislation in Australia and the United States at the turn of the twenty-first century¹. Australia and the United States have been selected as case studies for this research primarily due to their relevance to international trafficking debates. The United States is a self-declared world leader against human trafficking [58] and has utilised its extensive resources in providing funding to combat trafficking not only to organisations in the United States, but around the world. The US has also positioned itself as the world's watchdog when it comes to trafficking by establishing its annual Trafficking in Persons (TIP) Report, which rates nations according to their efforts in preventing and prosecuting trafficking. The US threatens to impose sanctions on nation-states that under-perform in this area. Thus the selection of the United States as a case study for this research is almost mandatory due to its self-declared status as the leader in efforts against human trafficking, and the significant influence it can wield over the approaches of other nation-states. Australia has been selected as a point of focus for this study largely because of its distinctiveness within sex work debates at present due to the trend towards the legalisation of prostitution across several states.

¹ The implementation and evolution of legislation on human trafficking is ongoing in both Australia and the United States. However, the US Congressional hearings held between 1999 and 2005 and the Australian Parliamentary Inquiries held between 2003 and 2005 have guided anti-trafficking efforts in these countries over the last decade and thus set the basic framework for debate in the years that followed. This research is therefore restricted to this time period in order to best reflect the government policy on trafficking, and to work with a manageable set of texts.

These two countries provide an interesting comparison as they represent somewhat dichotomous approaches to domestic prostitution, as well as its relationship to trafficking. In the United States, prostitution is criminalised across the country² and decision-makers have demonstrated a clear willingness to accept abolitionist arguments asserting a causal relationship between legalised prostitution and trafficking [58]. By contrast, prostitution is legalised across several states of Australia³ and legislators have demonstrated a greater scepticism regarding the claim that legalised prostitution leads to increased trafficking [46]. These differing legislative approaches to prostitution allow for an exploration of the impact of abolitionist claims within two different contexts.

Australia and the United States also share political similarities that offer an essential common point when comparing the policy-making process. Australia's political system is based, in part, on that of the United States, enabling a reasonable comparison of policy-making processes. Australia is essentially a hybrid system drawing on the political structures of both the United Kingdom and the United States. While Australia has a Parliament, like the US it is also a federal structure that allows for division of responsibilities between the State and the Federal Governments. In both Australia and the United States, criminal law relating to prostitution is established at the State level, while responsibility for human trafficking legislation lies at the Federal level. Both nations have a bi-cameral system, with legislation required to pass through two houses of government. Vitaly, both nation-states utilised hearings and inquiries as an information-gathering tool in the development of anti-trafficking legislation, which enables a comparison of similar data sources in order to adequately reflect the discourse.

A discourse analysis of Australian Parliamentary and US Congressional hearings between 1999 and 2005 was conducted through the analysis of government statements and reports, and legislation about sex trafficking. Semi-structured interviews were also conducted with 14 government officials and representatives of non-government organisations involved in campaigning on the development of trafficking legislation in Australia and the United States. Those interviewed represented several different perspectives and included the former director of the Office to Monitor and Combat Trafficking in Persons, John Miller, representatives of the abolitionist organisation Coalition Against

² with the exception of a few counties in Nevada.

³ In Queensland, Victoria and the Australian Capital Territory legal sex work includes licensed or registered brothels and private workers. In New South Wales this is extended to street based sex work in designated areas, escort agencies may operate with a license and private workers without a license. In South Australia there are no laws forbidding prostitution and thus private operators are legal. The situation is similar in Tasmania where only self-employed sex workers may operate.

Trafficking in Women, representatives of sex worker rights organisations the Scarlet Alliance and the Sex Workers' Project, and other key informants.

Competing perspectives

Political debate on the relationship between prostitution and trafficking is typically characterised by two competing perspectives – the abolitionist perspective and the sex work perspective. Advocates of the abolitionist perspective believe that the cause of trafficking is directly related to prostitution, particularly legalised or decriminalised prostitution. They claim that a causal relationship exists between the two in which legalised prostitution creates the conditions for sex trafficking to flourish [40]. A key assumption here is that legalised prostitution involves a social 'acceptance' of prostitution and that this will lead to an increase in the trafficking of women into the sex industry.

At the heart of the abolitionist perspective is the belief that prostitution is not a legitimate form of labour and that 'rape and prostitution sex are undifferentiated for the women who are its vehicles' [1]. While the abolitionist perspective was widely supported during the late nineteenth and early twentieth century debates concerning a 'white slave trade' [34], contemporary abolitionist arguments have been consistently refuted by other anti-trafficking activists including some feminists as well as international sex worker movements [49]. These activists support a sex work perspective, characterising prostitution as legitimate labour [47]. They argue that trafficking in the sex industry is similar to trafficking in the garment, agricultural or manufacturing industries. The existence of trafficking does not necessarily require the elimination of an industry. Opponents of the abolitionist perspective also include those who support legalised prostitution for the purposes of harm minimisation, or in accordance with a liberal ideology. However the sex work perspective has become the most prominent counter-argument to the abolitionist perspective.

Advocates of the abolitionist and sex work perspectives have clashed in numerous contemporary trafficking debates including at the Beijing Women's Conference [16], as well as at the negotiations held between January 1999 and October 2000 leading to the development of the *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

[47]. These competing perspectives were also present during the development of domestic anti-trafficking legislation in many nation-states.

The abolitionist perspective was also present during the development of anti-trafficking legislation in both Australia and the United States. Abolitionists testified that legalised prostitution fuelled the traffic in women and girls. Jessica Neuwirth, Director of women's rights organisation Equality Now, testified that, 'the commercial sex industry as a whole promotes trafficking' and demanded that the United States Government move away from 'a position of so-called neutrality on the question of legalisation of prostitution' [53]. Donna Hughes, an academic and prominent member of the Coalition Against Trafficking in Women, echoed this view at the Congressional hearings, criticising the then-Director of the Office to Monitor and Combat Trafficking in Persons (also known as the Trafficking in Persons, or TIP, Office) Ambassador Nancy Ely-Raphel's stance on the relationship between prostitution and trafficking. Hughes testified,

Ambassador Ely-Raphel has said that the connection between legalised prostitution and trafficking is only anecdotal. I believe that view is either naïve or a lack of political will to face up to what trafficking and the sex trade is all about [54].

Janice Raymond, co-founder of abolitionist organisation the Coalition Against Trafficking in Women, also attempted to persuade Congress of the link between legalised prostitution and trafficking. She argued that,

We have found that there is a fundamental connection between the legal recognition of prostitution industries and the increase in victims of trafficking. Nowhere do we see this relationship more clearly than in countries advocating prostitution as an employment choice; or who foster outright legalization [55].

Several others, including the Co-Directors of the Protection Project Laura Lederer and Mohamed Mattar, also testified that legalised prostitution fuelled demand in the sex industry [51, 54, 55].

The abolitionist perspective was advocated at the Australian Inquiries by Sheila Jeffreys, Australia's leading abolitionist and founder of the Coalition Against Trafficking in Women Australia (CATWA). Jeffreys made a similar argument to that put forward in the United States, arguing that,

The demand that leads to the trafficking of women and girls into “sex slavery” is the demand of the men who want to buy women and girls for sexual use ... The traffic in women to supply the legal and illegal brothels is an inevitable result of legalisation [5].

Several other organisations echoed these arguments including anti-prostitution organisation Project Respect, which urged the Australian Government to consider ‘pull factors’ such as the legalisation of domestic prostitution [39]. The Catholic Women’s League of Australia also supported an abolitionist perspective, declaring that, ‘Efforts to legalise prostitution must be understood as inhibitors to the prosecution of those running illegal brothels, and trafficking women [4]. The National Council of Women of Australia, not traditionally an abolitionist organisation, also declared that the legalised brothels ‘in many Western countries are fuelling the demand for sexual services’ [31].

In Australia, decision-makers expressed some scepticism about the validity of the claim, however it was not explicitly rejected, nor embraced, with a clear indication that the Australian Parliament intended to remain agnostic about the legitimacy of prostitution [37]. In contrast, the claim has been endorsed by the US Government and is the basis for key aspects of anti-trafficking legislation and policies that seek to prohibit prostitution in order to combat trafficking [57].

Trafficking estimates in Australia and the United States

Efforts to substantiate the abolitionist claim that legalised prostitution leads to increased trafficking are hampered by ongoing uncertainty about the true size and nature of the trafficking problem. In both Australia and the United States, the process of determining the scale and nature of the trafficking problem has been fraught with inconsistencies, competing claims and unproven estimates.

During the 2003 Australian Inquiry estimates of the number of trafficking victims entering the country each year ranged from 10 (put forward by the Scarlet Alliance) to 1,000 (suggested by Project Respect). Witnesses from government agencies were reluctant to provide estimates, though the Australian Federal Police declared, ‘We have solid, sustainable evidence and information to support 14 victims that have come to notice for slavery and sexual servitude’ [36]. The final report of the Joint Committee Inquiry avoided declaring an estimate of the size of the trafficking problem in Australia. A

report recently prepared for the Australian Parliament tentatively estimates between 300 and 1,000 trafficking victims are brought to Australia annually, but notes that between 1999 and 2005 only 133 cases of suspected trafficking were referred to the Australian Federal Police, with just 10 prosecutions by the Department of Public Prosecutions [38].

In the initial US Congressional hearings leading to the development of the *Trafficking Victims Protection Act 2000*, the figure most often cited as the number of trafficking victims brought into the United States each year was 50,000 [33]. Over recent years, however, this estimate has been progressively downgraded. In 2003, the then-Director of the Trafficking in Persons Office, John Miller estimated that between 18,000 and 20,000 victims arrived in the US each year (US Congress, House, 29 October 2003, 58). By 2004, Senator Russell D. Feingold had lowered this estimate to between 14,500 to 17,500 [56]. This lower figure also appeared in a Department of Justice Report produced in early 2006 [32], though in that same year, US Attorney General Alberto Gonzales suggested that government estimates of between 15,000 and 20,000 victims each year may have been too high [60]. The substantial disparity between the estimated and identified number of victims (1,362 between 2000 and 2007) was so stark that the George W. Bush administration hired a public relations firm, Ketchum, to assist in the effort to 'find' victims [60]. A 2006 report by the United States Government Accountability Office also strongly questioned the global and US estimates on trafficking, declaring that 'the accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies' [17].

Challenges in measuring human trafficking

The ambiguity surrounding estimates of the trafficking problem is partly a result of the many challenges researchers face in attempting to measure this phenomenon. Differing definitions of trafficking victims and an over-representation of sex trafficking in overall estimates are two factors that may render Australian and US estimates unreliable.

The way in which each nation-state defines the crime of trafficking and characterises trafficking victims has a direct impact on the collection of data about the crime. Distinguishing between a person

whose illegal entry into another country has been facilitated by a third party (typically referred to as a smuggled person), and one who has been transported forcibly or faced with exploitative and coercive conditions on arrival (typically referred to as a trafficked person) [27] is a definitional problem that law enforcement officials, policy-makers and researchers consistently grapple with. Legal definitions that differentiate between smuggled and trafficked people are often too rigid to account for the continuum on which migrant labour exists [21]. Definitions that rely on 'consent' as a distinguishing factor can also further complicate estimates, as many victims may consent to be smuggled, but not to be exploited for their labour upon arrival [3].

A second definitional dispute comes from the ambiguity surrounding the UN Trafficking Protocol's term 'exploitation of the prostitution of others' [49]. This ambiguity arose as a result of strong disagreement between advocates of the abolitionist and sex work perspectives during the Protocol negotiations over the legitimacy of prostitution. The term 'exploitation of prostitution of others' was intentionally left undefined in order to move on from a debate over prostitution that could have derailed the negotiations [14]. However, there is much confusion over and politicisation of this definition. Abolitionists argue that there should be no distinction between prostitution and trafficking [41] while others argue that not all prostitution is exploitative and that it should be viewed as legitimate work [25]. This renders all trafficking data subject to highly politicised understandings of trafficking and the legitimacy of prostitution [21].

One result is that the term 'trafficking victim' is often applied too willingly to individuals or groups who would not identify themselves as such, or would not be identified as a trafficking victim according to many national definitions. In particular, some campaigners group all migrant sex workers under the category of 'trafficking victims' because they do not recognise a distinction between 'free' and 'forced' sex work [12].

Recent discussions of the size of the trafficking problem in Europe highlight these definitional issues. Abolitionist organisations such as the Coalition Against Trafficking in Women and Equality Now [26, 43] claim that approximately 80 per cent of women working in prostitution in the Netherlands have been trafficked since the sex industry was decriminalised. However, the Dutch National Rapporteur

[13] reports that although the number of trafficking victims identified has risen in recent years, it certainly does not constitute 80 per cent of the sex industry. This difference in estimates is most likely a result of abolitionists' refusal to distinguish between sex workers who have migrated, possibly illegally, from other countries, and women who have been transported to the Netherlands and forced into sex work through threats, intimidation and debt bondage.

During the Australian Inquiries and US Congressional hearings, disputes over the definition of smuggling versus trafficking, and the distinction between migrant sex workers and trafficking victims, plagued legislator's efforts to determine an accurate assessment of the scope and nature of the trafficking problem.

In Australia, the Human Rights and Equal Opportunities Commission urged legislators to ensure that legal definitions would 'avoid overlap between people smuggling and people trafficking offences' [19]. Parliamentary Committee members certainly showed a wish to understand whether estimates about the size of the problem were operating under a definition that included all victims of people smuggling, or only those who were coerced into coming to Australia. Committee member Sercombe asked Project Respect, 'You are not including in the estimate women who may be here on, say, a student visa or a fraudulently obtained visitors' visa who have not been deceived? Or are you including all women?' [35]. Maltzahn declared that the estimate covered women under the UN definition who 'have been either deceived about the conditions or subjected to threat, violence et cetera' [35].

In the United States, however, Congressional representatives did not demonstrate the same degree of interest in determining whether or not definitions governing the data presented distinguished between trafficking victims and smuggled people. Congressman Chris Smith, a leader in the creation of the *Trafficking Victims Protection Act 2000*, did recognise that there was some confusion about the definition of a trafficking victim in regard to research from Europe, stating, 'it is unclear how many of those are by force or some form of coercion are there' [55]. However, Smith saw this lack of clarity only as a problem for the researchers, and not a limitation on using the data to inform policy.

The differentiation between a migrant sex worker and victim of trafficking was also the topic of some discussion during the inquiries and hearings, although this issue received less attention than the definition of smuggling versus trafficking. In Australia, CATWA urged a Senate Inquiry to adopt a definition that would not differentiate between migrant sex workers and trafficking victims. They argued that, ‘The Bill distinguishes between “forced” and “free” trafficking. Such distinction is contrary to the definition of “trafficking” in the UN Protocol’ [6]. As noted above, the definition in the Protocol is open to interpretation on that issue. The Joint Committee Inquiry recognised that the definition of trafficking and perceptions of the sex industry had an influence over the research. In their final report they confirmed that the differences in the statistics offered by organisations, particularly the Scarlet Alliance and Project Respect, were the result of differing definitions, based mostly on the way in which the sex trade and migrant sex workers were viewed by those conducting the research [37]. In the United States, the recognition of a dispute was less explicit. Representatives did acknowledge competing views on the legitimacy of the sex industry [53]; however, this was not linked to discussions about the estimates being offered on the size of the trafficking problem.

A second major limitation on the validity of trafficking data concerns the ways in which conclusions are drawn about the nature of trafficking. Data on trafficking can become skewed due to both politicised data collection, and a primary focus on trafficking for sexual exploitation instead of all forms of forced labour.

ILO researchers suggest that the most reliable data is produced by national police forces in conjunction with service organisations and international agencies which come into direct contact with trafficking victims [20]. However, most domestic assessments of the problem are typically produced by ‘unofficial sources’ — academic researchers and non-government organisations [20]. Clearly, it is necessary to look beyond criminal justice data due to the many of victims of trafficking that may never come into contact with law enforcement officers. However, even this does not guarantee more reliable and comprehensive information due to a politicisation of the issue. There is a significant need for more empirical research that goes beyond victims who come into contact with the police and employ rigorous methods in order to minimise the impacts of ideologically driven research. The legitimacy of prostitution has been, and still is, the topic of much heated debate. Organisations that work with

victims of trafficking and provide advice to decision-makers on policy are expected to have a position on the legitimacy of prostitution, especially in the United States where the Anti-Prostitution Pledge has polarised the debate. The Anti-Prostitution Pledge was established through the National Security Presidential Directive 22, which declared that organisations receiving funding for anti-trafficking work (and later HIV AIDS outreach work) must not support the legalisation or decriminalisation of prostitution. This funding rule was also contained within the *Trafficking Victims Protection Reauthorization Act 2003*. As a result of this directive, when NGOs collect and analyse data, there is a risk that political interests will influence outcomes [9]. Anti-trafficking activists interviewed for this research agree that the politicised nature of the debate over prostitution and trafficking will typically result in biased research [24, 59].

Skewed data production also occurs for reasons that are not political. Survey samples of trafficking victims often suffer from ‘severe selection bias’ because the nature of the service provided by the agency has an impact on the type of victims who use the service [10]. Organisations that provide services only to a specific group, typically women, will record data only on that group, often under-representing male victims of trafficking. The skewing of data towards the interests of service agencies is not new. Weitzer argued a decade ago that data on prostitution and related activities usually offered only a sample of women who experienced the most exploitation and victimisation in the industry because these women most frequently came into contact with the police or contacted service agencies [61]. Thus, it remains very difficult to produce a random sample that can be accurately assumed to represent the population of trafficking victims.

The possible over-representation of victims trafficked for sexual exploitation versus other forms of labour is also partly due to an institutional focus on sex. The concentration of international and national public debate and the media on sex trafficking is further exacerbated through the distribution of government funding which prioritises victims of trafficking for sexual exploitation [10] over victims of trafficking for other forms of forced labour. This results in a misleading impression that the majority of victims are trafficked for prostitution.

This focus on sex trafficking versus other forms of labour was also identified during the Australian Parliamentary Inquiry as a limitation on the reliability of evidence. The Scarlet Alliance questioned the validity of the Government's focus on sexual servitude over other forms of forced labour, arguing that laws 'single out one industry and target that one industry for the incidence of illegal migrant workers' [45]. In the United States, the General Accountability Office also reported that data may over-represent victims of trafficking for sexual exploitation [17], however this was not discussed during the Congressional hearings.

It is clear that the challenges researchers typically face when attempting to quantify and characterise trafficking worldwide were evident during the development of anti-trafficking legislation.

Substantiating the causal relationship

Many of the challenges that researchers face in measuring the overall scale and trends in human trafficking also undermine attempts to measure variables associated such as the 'push' and 'pull' factors that fuel illegal migration and human trafficking. Despite a persistent lack of credibility in trafficking data, abolitionist advocates testified to the Australian parliamentary inquiries and US congressional hearings that legalised prostitution operates as a 'pull' factor in fuelling trafficking. They offered both statistical evidence and logical argumentation to support this claim.

Statistical evidence

In Australia, only a few organisations offered statistical evidence of a causal link between legalised prostitution and an increase in trafficking. The Catholic Women's League of Australia quoted Sister Lynda Dearlove, who argued that the Swedish model, which criminalises the buyer of sexual services, had 'ensured that 60 per cent of women in Sweden have left the prostitution industry' and that 'notably, the number of trafficked women has not increased since the implementation of the legislation' [4]. This

evidence is challenged by others who argue that the Swedish model has simply resulted in a movement of women to illegal brothels, indoor prostitution and internet-based sex work [44].

The Coalition Against Trafficking in Women Australia also offered the Joint Committee Inquiry statistical evidence in support of its claim. Jeffreys argued that,

before legalisation in Victoria there were 60 to 70 illegal massage parlours that were functioning as brothels. We now have 100 legal and an estimated 400 illegal brothels. So I do think there has been an increase [35].

This argument is based on the assumption that an expansion of the sex industry will automatically result in increased trafficking. This logic appears in several CATW documents, and in the work of fellow CATW member Janice Raymond [42].

Jeffreys, along with other abolitionist advocates, also offered the Netherlands and other European countries such as Germany and Sweden as evidence of the link between legalised prostitution and trafficking [35]. As noted earlier, the Netherlands and Germany are popular examples for abolitionists. Donna Hughes testified to the US Congress that:

There are few Dutch women in the brothels, the traffickers control 50 percent of the women. The situation is similar in Germany, where there are an estimated 400,000 women in prostitution; 75 percent of those women come from other countries [54].

Janice Raymond from CATW testified that 80 per cent of women working in the sex industry in the Netherlands have been trafficked [55]. The statistics presented by Hughes and Raymond differ, highlighting inconsistency even within abolitionist circles. Raymond's 80 per cent figure is most often repeated, however, with several abolitionist organisations including Equality Now, relying on this estimate to support their claim that legalised prostitution leads to an increase in trafficking [26].

As noted earlier in this paper, the Dutch and German examples are undermined by a failure to draw a distinction between migrant sex workers and trafficking victims, as well as a failure to consider other influencing factors. In testimony provided by Hughes in 2002, she offered evidence that the number of women working in prostitution in European Union countries had increased from 1997 to 1999 due primarily to the legalisation or decriminalisation of prostitution in several countries. However, Hughes

does not take account of other factors that have influenced the movement of people across EU borders such as the establishment of the Schengen Agreement under European Union (EU) auspices in 1997, which allows nationals from several EU nations to settle and work in other European countries.

Exploring the ‘pull’ factors

In both the Australian Inquiry and the US hearings, limited statistical evidence was offered to support the claim that legalised prostitution leads to an increase in trafficking. This may be a symptom of some of the challenges identified earlier in measuring the phenomenon of trafficking. To overcome the lack of statistical evidence to support the claim, campaigners have offered logical argumentation to attack the ‘pull’ factors of trafficking — demand and legalisation.

Demand as a ‘pull’ factor

Project Respect’s submission to the Parliamentary Inquiry emphasised the importance of considering demand as a pull factor in trafficking, arguing that ‘there is a demand for women who cannot refuse certain sexual acts, numbers of sexual acts, certain customers and sex without a condom’ [35]. Jeffreys, contradicted this argument slightly by suggesting that there is no separate demand for trafficked women. However, she supported Project Respect’s overall call for a focus on demand as a factor fuelling trafficking [35].

In the United States, many witnesses asserted that demand should be addressed. However, few offered testimony detailing the ways in which they believe demand to be directly leading to an increase. Laura Lederer, co-founder of the Protection Project, asserted that ‘There are all those customers on that other end there that are creating the need for the supply’ [51]. Congressional Representative Diane Watson also blamed demand for the trafficking problem:

Simple economics teaches us that without demand there is little need for supply. Therefore Mr. Chairman, I wonder if we are doing enough to address the demands of sex tourism, commercial sex, human servitude, and inexpensive labor here in the United States [54].

Arguments about demand fuelling trafficking are consistently applied to the sex industry [23]. However, Watson's statement offers a very rare example of demand being accused of fuelling the trade in human beings for forced labour in other industries, such as agriculture and garment manufacturing. A research report for the International Organisation of Migration declared that,

Consumers who buy the product of the labour of "trafficked" women, children and men in the form of T-shirts, diamonds, processed meat, etc. are not normally identified as part of the "trafficking chain" [21].

This IOM research also questioned whether or not there is a strong demand for trafficked or 'exploitable' people, particularly in the sex industry. They found that amongst 'clients' there is a 'reluctance to buy sex from prostitutes who work in the most visibly exploitative conditions'. However, this reluctance is sometimes reduced when clients are intoxicated or short of money [21]. The study shows that there is a greater demand for sex workers perceived by clients as being 'free' and voluntarily choosing to work in the sex industry, while migrant sex workers are 'viewed by some clients as a "poor man's substitute" for more desirable and "classier" local sex workers' [21].

This client preference challenges the assumption made by some abolitionists that demand for women who are 'more compliant and will accept higher levels of violence' is responsible for fuelling the trade in trafficking victims in the sex industry. Other studies also question this assumption. Della Giusta's study found that despite clients' fear of public stigma associated with purchasing sexual services, criminalisation of prostitution has not reduced the demand for it [8]. Di Nicola and Ruspini's study of clients also indicated that client preferences for 'non-exploited commercial sex could represent a strong tool against trafficking' [11].

Legalised prostitution as a 'pull' factor

In Australia, the impact of legalised prostitution was also discussed during parliamentary inquiries with witnesses agreeing that victims of trafficking were present in both legal and illegal brothels [35]. Jeffreys devoted most of her testimony to the role that a legal industry plays in fuelling trafficking, further developing her argument (noted above) that a growing sex industry leads to more trafficking:

As the sex industry in Western countries grows, it requires women for male buyers. It is hard for brothels to find enough women locally because often women are not sufficiently impoverished or desperate; thus women are sourced from overseas with the help of organised crime [35].

She added that legalisation has led to a 'real acceptance of men's rights to buy women,' further fuelling demand for trafficking victims [35].

While Project Respect made clear in their testimony that they thought attempts to address trafficking should incorporate a review of prostitution legislation, they did not attempt to substantiate their belief, implicit in their testimony, that legalised prostitution fuels trafficking. However, they did argue that the legalised industry could not be separated from the illegal industry when investigating trafficking [39].

The Scarlet Alliance challenged the attack on legalised prostitution in their submission, arguing instead that a system of decriminalisation could have significant benefits in preventing trafficking and empowering migrant sex workers. They argued that criminalisation was likely to 'drive migrant workers to the most marginal fringes of the sex industry making them difficult to access and isolated from access to support services' [45].

The legalisation of prostitution as a 'pull' factor in trafficking was not as heavily discussed in the hearings in the United States as it was in Australia. This is likely due to the fact that prostitution remains largely criminalised in the United States. It is also possible that in later hearings witnesses were unwilling to openly contest the claim that legalised prostitution leads to increased trafficking, due to rules introduced by the George W. Bush Administration that restricted funding from organisations supportive of the regulation of prostitution. The issue of legalisation did, however, come up in debate about how the United States should respond to systems of legalisation in other countries. Raymond was strongly critical, terming the legalisation of prostitution as 'state-sponsored prostitution' [55].

In her testimony to Congress in 2002, Hughes also provided a detailed argument in support of the belief that demand for prostitution operated as a pull factor.

Countries with legal or widely tolerated prostitution create the demand and are the destination countries ... Where insufficient numbers of local women can be recruited, brothel owners and pimps place orders with traffickers for the number of women and children they need [54].

Sharon Cohn, testifying on behalf of the International Justice Mission, argued that the Dutch Government has been complicit in the legalisation of prostitution leading to an increase in trafficking. She said:

Because many Dutch women do not want to be in prostitution anymore, the Dutch Government has decided to make the market bigger by actively searching for women in prostitution [55].

Government sanctioning of the sex industry, in this case, was viewed as a 'pull' factor for trafficking. However, again no distinction is drawn between migrant sex workers and trafficking victims.

This assertion by abolitionists that legalised, decriminalised or state-sanctioned prostitution is a pull factor for trafficking has also been challenged in studies conducted by the International Organisation for Migration and the International Labour Office. The IOM report suggests that variations influencing the demand for different types of sexual services (exploited versus 'free' women) are more likely to be explained by societal norms 'regarding the right and proper way to act in a commercial sex market' [21].

This finding could be interpreted in a number of ways. Abolitionists might argue that legalising prostitution cements social norms that sanction the purchase of women for sex, leading to exploitation [23]. In contrast, advocates of legalisation or decriminalisation would argue that the illegal nature of the industry allows for the establishment of norms where sex workers are subject to exploitation and violence. The IOM report indicates that the illegality of the sex industry may well be fuelling greater demand for 'exploitable' people than a legalised industry would [21]. In addition, an ILO study on the supply and demand factors involved in human trafficking offered some evidence that demand can act as a pull factor, but rejected legalised prostitution as the cause of this. The study found that while a

larger prostitution sector was accompanied by a higher number of trafficking victims, there was no correlation between legalised prostitution and trafficking [20].

Evidence based decision making

In assessing the efforts of campaigners to substantiate a causal relationship between prostitution and trafficking, it is also necessary to question whether or not decision-makers were persuaded by assertion, or demanded hard evidence. All informants interviewed for this study agreed there was a lack of research on the issue of trafficking. The lack of information about trafficking was also highlighted by several witnesses during the Parliamentary and Congressional hearings [15, 35]. Despite the fact that many abolitionist advocates of the claim use statistical data to support their arguments, even they freely admit both in hearings and interviews that there is a deficit of information on trafficking [26, 43, 51, 59].

Despite this lack of reliable information, it is apparent that most of the organisations that gave evidence to the parliamentary inquiries and congressional hearings have a vested interest in the interpretation of data and the outcome of legislation. In the context of these admissions, it is interesting to assess whether or not politicians were concerned about the validity of the evidence offered to them. During the Australian hearings there appeared to be a greater effort to scrutinise evidence provided. Most witnesses to the inquiries were asked to provide evidence about the size of the trafficking problem. There was also a willingness to further explore the evidence given regarding the legitimacy of the sex industry and its relationship to trafficking.

The Committee questioned Mary Osborn from the New South Wales Branch of the Public Health Association of Australia as to the extent of the problem of trafficking in this country. In particular, they were interested in exploring whether or not this was a problem only in the sex industry, or beyond. Senator Ferris asked,

The issue of illegal workers working in slave like conditions is also well understood in the textile, clothing and footwear industry. I wonder about the extent to which the sex slaves tag is

unfairly put onto the sex industry when actually it applies to a wider range of people in Australia in any case who are exploited in other workplaces [36].

Ferris added,

We are trying as a committee to get an understanding of the breadth of this problem, and it seems that much of the evidence is anecdotal. I am simply asking whether you would agree or disagree with what appears to be quite reasonable evidence from this alliance of sex workers that say they have access to almost 100 per cent of the workplaces in capital cities [36].

The Committee also sought to learn more about men and boys being trafficked into Australia, asking Sally Moyle, the Sex Discrimination Commissioner, if any attempts had been made to provide gender and age breakdowns in research on trafficking [36].

Nina Vallins of Project Respect says that requests for evidence from government officials are ongoing:

There is always a request for data, and it doesn't matter – you know, before they want to fund us to do work they want evidence and so on ... They say they won't give us money to do our work until we can provide them with evidence [59].

However, Vallins also notes that Project Respect and other community organisations do not have the resources to undertake that initial research. This expectation from the government for research prior to funding may have resulted in estimates and evidence that are not robust or comprehensive.

This indicates that Australian decision-makers did not necessarily accept assertions, and sought some evidence to support the claims made by witnesses to the Inquiry. By contrast, decision-makers in the United States showed less interest in seeking statistical evidence beyond anecdotal information from witnesses at congressional hearings. However some Members of Congress did question the data provided. For example, Senator Brownback asked one witness to provide information about the scale of the problem in Thailand [52]. Nancy Ely-Raphel, at the time the Director of the TIP Office, was also asked 'What is the approximate total dollar value, Madam Ambassador, worldwide on the forced prostitution and forced trafficking employment that goes on?' [53]. Chairman Cornyn also questioned the reliability of the data on trafficking:

We have heard estimates of the number of people in this country who are victims of human trafficking, but I wonder how in the world we have any confidence in those numbers, given the nature of the crime and the reluctance of the victim to come forward [56].

Some were also interested in looking more closely at the sex industry to determine whether the sex industry can be blamed for fuelling trafficking. Representative Hilliard asked Lederer, ‘How prevalent is the sex trade here in this country?’ to which Lederer divulged that ‘We don’t know how prevalent it is’ [51].

Ultimately, little more than anecdotal evidence was offered to prove that legalised prostitution leads to increased trafficking, and this evidence was not heavily scrutinised. Ann Jordan, former Director of the Global Rights Anti-Trafficking Initiative, indicated that while it is important to produce concise, reliable research for members of Congress, ‘Members of Congress do not have time to read lengthy research’ [24]. Carol Smolenski of End Child Prostitution and Trafficking USA also claimed that research does not necessarily drive policy in the United States. She believes legislators are more likely to act on the justification that ‘I’ve heard this thing happened, this is a bad thing so let’s do something about it. And that’s what I think has been driving a lot of the legislation’ [48]. Not all interviewees agreed, however. One interviewee who has been on both sides of the lobbying process, serving as a Government official during the Clinton administration and a campaigner for women’s rights during the Bush administration, argued that ‘I think you can have lots of logical arguments and they say well what are the numbers?’ [7].

Even if US decision-makers were interested in trafficking statistics, some interviewees indicated it was unlikely that they would change their minds on the link between prostitution and trafficking. Dr Mattar of the Protection Project suggested that research which disproved a link between legalised prostitution and increased trafficking would not necessarily result in a change of US policy. He says the existence of research would not,

convince me that we should legalise prostitution ... I don’t think that’s the purpose of the research. I think the research would have to be — maybe it won’t change the minds of those who think, well, prostitution is an evil, but it would help us understand more things and that’s what we need. Whether it would change minds, I don’t know [29].

John Miller, Former Director of the TIP Office, claimed that research questioning a link between legalised prostitution and trafficking would have some impact on decision-makers; however he also questioned whether or not it would lead to a change in policy. 'I don't know whether the United States would turn around because obviously there are issues here, principles involved, there is the moral dimension and this and that' [30].

Perpetuation of false statistics

The persistent ambiguity surrounding trafficking data causes substantial problems for legislators, who inevitably make policy on the basis of unreliable or unsubstantiated information. The unfortunate result of the ambiguity surrounding human trafficking data is most often the perpetuation of poorly researched, unrepresentative, or misleading statistics that fill the void left by researchers who are unwilling to make estimates or predictions based on research that is unreliable. Policy is then informed by flimsy estimates, drawn from unsubstantiated newspaper claims, or research that does not carefully articulate the definitions and methodology that inform the study.

Some organisations may have an interest in supporting false statistics, even when they are aware that these estimates may have been exaggerated or inflated, in order to gain political support and resources for their cause [10]. This perpetuation of false statistics is clearly evident in human trafficking debates. Figures mentioned at hearings in the United States have become accepted as truth, despite a lack of evidence to support them. There is agreement on both sides of the ideological divide that a deficit in research can lead to this perpetuation of false statistics [24, 41]. John Miller declared in interview for this research that despite 'thousands of articles' on the topic of trafficking, they 'mostly quote each other' and as a result 'I think we know less' [30].

The use of misleading or unreliable data as the basis for legislation has the potential for damaging consequences. While the full impact of human trafficking legislation in Australia and the United States is yet to be measured, there are two potential harms that could emerge. The possible over-representation of sex trafficking cases within the wider population of human trafficking may result,

firstly, in policies that lead to the harassment and mistreatment of migrant sex workers. Recently sex workers have reported increased harassment as a result of ‘rescue raids’ undertaken by government and non-government organisations operating under the banner of ‘saving’ trafficking victims. Raids of this type in Cambodia have forced women into custody where they later had to ‘bribe their way out’ of either prison or forced rehabilitation centres before returning to sex work [2].

In the United States, efforts to address sex trafficking have veered towards a focus on the entire sex industry with the introduction of the *Trafficking Victims Protection Reauthorization Act 2005*. More commonly referred to as the ‘End Demand Act’, the legislation introduces measures designed to achieve a reduction in demand for commercial sex including increased funding to law enforcement to support raids on brothels [57].

A second possible outcome may also be the limited focus on trafficking for other forms of labour exploitation. As noted above, several nation-states still recognise only trafficking for sexual exploitation in their legislation, relegating trafficking in the agricultural, garment, manufacturing and domestic service industries as crimes associated with labour exploitation or people smuggling as separate offences. This could prevent researchers and legislators from gaining an accurate picture of the true nature of human trafficking.

It is also likely that the perpetuation of this mischaracterisation of trafficking adds weight to abolitionist arguments that legalised prostitution leads to increased trafficking. The argument that prostitution is the most significant aspect of the trafficking problem also enhances campaigners’ efforts to convince politicians of the need to increase scrutiny of the sex industry.

Conclusion

This article has explored the efforts of campaigners to substantiate the claim that legalised prostitution leads to increased trafficking. These efforts during the US hearings and Australian inquiries took place within the context of much ambiguity surrounding human trafficking. This article demonstrated that

researchers face enormous challenges in quantifying and characterising the trafficking phenomena. These challenges include ongoing disputes surrounding the definition of trafficking victims and the politicisation of data. In the absence of reliable information, a perpetuation of false and unreliable statistics has occurred. These problems plagued attempts to develop credible estimates of the scope of the trafficking problem in Australia and the United States. They also undermine the efforts of campaigners to use statistical evidence to substantiate the claim that legalised prostitution fuels trafficking. In comparison to the US, Australian decision-makers showed a greater awareness of the limitations of the research and engaged in more scrutiny of the data presented to them. It is clear that in the United States, however, ideology is more important than evidence in influencing US policy on human trafficking.

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